



Department of Planning and Community Development

DPCD REF: CMIN023694

PLANNING AND LOCAL GOVERNMENT

FILE REF: PL-PL/02/1424

REQUESTED VOLUNTARY

MINISTERIAL REF: CMIN023694

FOR DECISION

CRITICAL DECISION DATE: **As soon as practical**

MINISTER FOR PLANNING

**SUBJECT: REFERRAL UNDER THE ENVIRONMENT EFFECTS ACT 1978
PRINCES HIGHWAY DUPLICATION, TRARALGON EAST TO FULHAM**

DATE: 15 October 2010

	Name	Position	Phone no.
Prepared by	Anthony Wansink	Senior Environmental Assessment Officer	9412 4657
Reviewed by	Geoff Ralphs	Deputy Chief Environmental Assessment Officer and Program Manager	9637 9547
Reviewed by	John Ginivan <i>JG</i>	Executive Director, Planning Policy	9637 8045
Approved by	Jeffrey Gilmore <i>JG</i>	Executive Director, Planning Policy and Reform	9637 9055
Endorsed by	Prue Digby <i>PD</i>	Deputy Secretary, Planning and Local Government	9637 8345

RECOMMENDATIONS

That you:

- a) Sign the attached statement of decision (**Attachment 1**) under section 8B(3)(a) of the *Environment Effects Act 1978* (EE Act) that an Environment Effects Statement (EES) is required for the proposed duplication of the Princes Highway from Traralgon East to Fulham, for the reasons set out in the attached Reasons for Decision (**Attachment 2**). ✓ Approved
[] Not Approved
- b) Sign the attached letters notifying the proponent (VicRoads) and the Minister for Roads and Ports, under section 8B(4) of the EE Act, of your decision to require an EES, including the applicable procedures and requirements in accordance with section 8B(5) of the EE Act. ✓ Approved
[] Not Approved
- c) Sign the attached letters to the Minister for Environment and Climate Change, Wellington Shire Council and Latrobe City Council notifying them, under sections 8A and 8B(4) of the EE Act, of your decision that an EES is required, and that any relevant statutory decision with respect to the project should not be made until your Assessment of the effects of the project has been completed and considered. ✓ Approved
[] Not Approved

[Signature]
JUSTIN MADDEN MLC
 Minister for Planning
22.10.10

PURPOSE

1. To recommend that an EES be required for the proposed duplication of the Princes Highway between Traralgon East and Fulham.
2. To request that you sign the attached letters notifying the proponent and statutory decision-makers of your decision, and directing decision-makers not to make any relevant decision until the EES process is completed for this project.

BACKGROUND

3. **Project Description:** VicRoads propose to duplicate the Princes Highway between Traralgon East (Stammers Road) and Fulham (Templetons Road) as part of a larger project to duplicate this highway from Traralgon to Sale. This larger project has been identified in the *Victorian Transport Plan*. The project has received \$175 million in funding from the Commonwealth Government's Nation Building Program. Construction is proposed to commence in 2011.
4. The referred project between Traralgon East and Fulham, (herein referred to as 'the project'), involves the construction of a duplicated section of road for approximately 35 kilometres (km). The referred alignment of the duplication is proposed to be located within existing road reserves, where sufficient space is available, and private freehold land where additional space is needed. The project would require the acquisition of approximately 40 hectares (ha) of private freehold land. A location plan is provided as **Attachment 3**.
5. **Required Approvals:** A Planning Scheme amendment (PSA) under the *Planning and Environment Act 1987* would be required to incorporate a Public Acquisition Overlay and Road Zone to the Wellington and Latrobe Planning Schemes to allow for the acquisition of land. Planning permits may also be required under the *Planning and Environment Act 1987* for a range of matters, including native vegetation removal. Consent may be required under the *Flora and Fauna Guarantee Act 1988* (FFG Act) and a Cultural Heritage Management Plan (CHMP) will require approval under the *Aboriginal Heritage Act 2006*.
6. A referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has been lodged with the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPC). DSEWPC decided on 8 October 2010 that the project is a 'controlled action' under the EPBC Act due to potentially significant impacts on listed threatened species and communities.
7. **Referral Timing:** The referral under the EE Act was accepted on 26 August 2010. Therefore, the 20 business day target for a decision set in the *Ministerial Guidelines for the Assessment of Environmental Effects under the Environment Effects Act 1978* for this referral was 20 September 2010. Extensive consultation with the Department of Sustainability and Environment (DSE) and DSEWPC have resulted in a delay in the preparation of this response.

ISSUES/COMMENTS

8. **Project Impacts:** A detailed analysis of the potential environmental effects of the project is provided in **Attachment 4**, with the key matters summarised below.
9. **Options Assessment:** VicRoads have completed an assessment of alignment options prior to the selection of a preferred alignment. Four alignments were investigated as part of the options assessment described in the referral, with road safety, project cost, land-use impact (due to compulsory acquisition) and environmental impacts forming the criteria for determining the preferred alignment. A fifth alignment was identified and discounted due to prohibitive costs associated with avoidance of rail infrastructure.

10. The options assessment provided with this referral does not adequately compare the environmental impacts of the four options. DSE and DSEWPC strongly support further assessment of alignment options, particularly in relation to the impacts on biodiversity and the avoidance of significant native vegetation. DSE have also advised that due to the inadequacy of the options assessment, it is unlikely that VicRoads would be able to provide justification to satisfy the 'avoid' principle underpinning *Victoria's Native Vegetation Management – a Framework for Action* (NVMF).
11. Both DSE and DSEWPC have suggested that the fifth alignment, located to the south of the railway, should be further assessed to determine whether it would provide a significantly improved environmental outcome.
12. Native Vegetation: The alignment preferred by VicRoads would result in the removal of approximately 63.5 ha of native vegetation, which includes approximately 20 ha of very high conservation significance native vegetation and 43.5 ha of high conservation significance native vegetation. The native vegetation proposed to be removed comprises Plains Grassy Woodland (EVC 55), Grassy Woodland (EVC 175) and Swamp Scrub (EVC 53), which all have an endangered conservation status in the Gippsland Plain bioregion. Plains Grassy Woodland and Plains Grassland correspond to Gippsland Red Gum Grassy Woodland and Associated Native Grassland community, which is listed under the EPBC Act as critically endangered. DSEWPC have advised that this patch of vegetation was referenced in the documents to support this community being listed under the EPBC Act.
13. The NVMF states that the Minister for Environment and Climate Change (MECC) needs to endorse clearance of native vegetation with a very high conservation significance. The MECC must take into consideration the potential to avoid this native vegetation and the economic and social significance of the project when making a decision. As outlined above, the documentation prepared by VicRoads is unlikely to adequately demonstrate that VicRoads has appropriately avoided and minimised the impacts on this significant native vegetation. The NVMF provides a potential mechanism for addressing this impact through offsets if avoidance and minimisation have been demonstrated and there are appropriate offsets available. DSE is not yet satisfied with VicRoads' proposed offsets.
14. Threatened Flora and Fauna: Four species of flora listed under the FFG Act potentially occur within the project site. An additional two EPBC Act listed flora species occur within the project site, including the endangered Matted Flax-lily. Consultation with DSEWPC indicates significant concerns with respect to the extent of impact this project may have on the Matted Flax-lily, particularly given the importance and size of this population. A limited targeted survey has been undertaken for Matted Flax-lily, which located 18 individual plants.
15. Seven fauna species listed under the FFG Act are likely to occur within the project area. The consultant engaged by VicRoads has suggested targeted surveys for Dwarf Galaxias and Growling Grass Frog at two locations (Blind Joe's Creek and Flynn Creek). In addition, the consultant recommended targeted surveys for the FFG Act and EPBC Act listed Southern Brown Bandicoot following the identification of potential habitat and possible tracks near Blind Joe's Creek. This species has not been previously recorded within 10 km of the project area.
16. It is likely that the project will impact on listed flora and fauna species, given the extent of native vegetation and habitat proposed to be removed and/or disturbed. The extent of these impacts is difficult to determine, particularly as advice from DSE suggests further weaknesses exist in relation to the ecological assessments undertaken to date.
17. Land Use Impacts: The project may result in land use impacts associated with land acquisition (i.e. loss of viable farming land), residential amenity impacts and access issues associated with the introduction of a second carriage way. In addition, the project has the potential to sterilise land which may contain a viable coal resource (as identified during the Traralgon Bypass investigations). This issue has not been addressed as part of the EES referral documentation.

18. VicRoads' options assessment has stated that loss of viable farming land has been a key consideration in the selection of the current alignment. However, limited discussion or quantification of impacts on farming land has been provided with the referral documentation. The acquisition of farming land could have impacts in terms of future viability for agricultural purposes, but this has not been assessed to sufficiently determine the significance of such impacts.
19. The project may also result in residential amenity impacts due to increased traffic noise and short-term construction impacts. The proposed area has a low population density and it is expected that any residential amenity impacts could be appropriately managed.
20. The project may also impact on property access arrangements due to the introduction of a second carriage way. Alterations to access arrangements may require some residents to undertake additional travel to allow for safe access to their properties; however, it is not expected that this impact will be significant.
21. Cultural Heritage: The project is likely to impact on both Aboriginal and non-Aboriginal cultural heritage. The project is likely to impact on several previously identified Aboriginal cultural heritage sites including artefact scatters and scar trees. It is likely that further sites of Aboriginal cultural heritage interest will be identified during the inspections required for a CHMP. The process to prepare a CHMP provides an appropriate mechanism for assessing and managing these impacts.
22. Two previously identified non-Aboriginal sites are located within proximity to the referred alignment and may be impacted by this project. Nambrok Ruins is listed on the Victorian Heritage Inventory and consent would be required from Heritage Victoria should impacts be unavoidable. A monument to the explorer Paul Strzelecki could also be impacted by this project. This monument is not listed on either the Heritage Inventory or Heritage Registry, but may be locally significant.
23. **Process Options**: The decisions available under section 8B(3) of the EE Act, in response to this EES referral are: (i) an EES is required; (ii) an EES is not required subject to conditions being met; or (iii) an EES is not required.
24. Given that the proposal has a clear potential for effects on the environment of state and possibly national significance, with respect to associated removal of native vegetation and impacts on biodiversity, it is recommended that further assessment is required under the EE Act. The two options available for assessment are: (i) an EES; and (ii) conditions in lieu of an EES to specify a tailored or focussed assessment approach.
25. An EES process is likely to be the most suitable option as it provides for a rigorous, transparent and integrated assessment of alignment options, including all the relevant environmental effects and project implications. The EES process is also accredited under the *Commonwealth-Victorian Bilateral Agreement for Environmental Impact Assessment 2009* and, therefore, provides a recognised means of assessing impacts on matters of national environmental significance, thus avoiding process duplication.
26. It is recommended that you determine an EES is required for this project, for the following reasons:
 - The proposed alignment is likely to result in significant adverse effects on biodiversity, including on native vegetation, listed flora and fauna species and communities of both state and national significance;
 - The opportunity to avoid or minimise significant adverse effects through alignment selection, roadway design as well as mitigation and offsetting measures is uncertain and requires further investigation; and
 - An integrated assessment of environmental effects associated with alternative alignments, including biodiversity, waterways, existing land uses and infrastructure is needed to inform decision-making.

27. In light of VicRoads' desire to commence construction in 2011, the Department of Planning and Community Development will assign necessary resources to facilitate the rapid completion of this EES.

CONSULTATION

28. DSE and DSEWPC have been consulted during the preparation of this referral response.



John Ginivan ☎ 9637 8045
Executive Director
Planning Policy

Date... 15/10/2010



Jeffrey Gilmore ☎ 9637 9055
Executive Director
Planning Policy and Reform

Date... 18/10/10