

# TRANSCRIPT

## STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

### Inquiry into infrastructure projects

Melbourne — 18 October 2016

#### Members

Mr Joshua Morris — Chair

Mr Khalil Eideh — Deputy Chair

Mr Jeff Bourman

Mr Nazih Elasmr

Mr Bernie Finn

Ms Colleen Hartland

Mr Shaun Leane

Mr Craig Ondarchie

#### Participating member

Ms Samantha Dunn

#### Staff

Secretary: Lilian Topic

#### Witnesses

Mr Adam Fennessy, Secretary, and

Mr Julian Lyngcoln, acting deputy secretary, planning, Department of Environment, Land, Water and Planning.

**The CHAIR** — I declare open the Standing Committee on the Economy and Infrastructure public hearing. Thank you, gentlemen, for being present here. I welcome those in the gallery as well. Today we will be hearing evidence with regard to our infrastructure inquiry. Today's evidence is being recorded. This hearing is to inform the third of at least six reports into infrastructure projects. Witnesses present may well be invited to attend future hearings as the inquiry continues. All evidence taken today is protected by parliamentary privilege. Therefore you are protected for what you say in here today, but if you go outside and repeat those same things, those comments may not be protected by this same privilege.

Gentlemen, thank you once again for your attendance today. I might get you each to state your name and title, then move into some introductory comments — I see you have got a presentation for us — and then we will follow with some questions from the committee.

**Mr FENNESSY** — Thank you very much, Chair, and thanks, committee members. My name is Adam Fennessy. I am the Secretary of the Department of Environment, Land, Water and Planning.

**Mr LYNGCOLN** — I am Julian Lyngcoln. I am the acting deputy secretary, planning, in the Department of Environment, Land, Water and Planning.

### **Visual presentation.**

**Mr FENNESSY** — Chair, we will go through a few slides. I will start by saying that we were here, as you will remember, on 20 April, presenting on similar issues but in the broader sense. We will go through and recap some of those comments, but we will get to the specifics, because you would have seen the earlier presentation in April. In terms of project life cycle and environmental regulation, last time we were before the committee we went through quite a few different slides. This is just a reminder that the focus of environment effects processes is at the design and assess stage of the project cycle for any major infrastructure projects, so that is what our comments will be focused on today.

I also advised the committee last time that 'environment' is much more broadly defined under the Environment Effects Act to include social, amenity, human health and natural environment considerations. The process is designed to confirm the scope, de-risk the process, allow a forum for natural justice and public input, and to look at specific issues around planning, water environment and other relevant legislation. So it sits alongside those other pieces of legislation. The Environment Effects Act is one of several statutory instruments that can be used to support an assessment process. Again you will remember from last time we talked about pathways under the Planning and Environment Act and the Environment Effects Act and how they relate to a whole range of projects that are currently being delivered across Melbourne and Victoria. Julian will go into some of that detail later on in his presentation.

Where does the EES process fit in? You can see there are many different pieces of legislation, many directly relevant to or administered by our department, DELWP, the Department of Environment, Land, Water and Planning, and you can see there that they cover things like heritage and water at the issue-specific level. For the broader primary planning the two that are familiar to you are the Planning and Environment Act and we also have the Environment Protection Act, which is administered by the Environment Protection Authority. Then for comprehensive and formal assessment, that is where the Environment Effects Act is relevant as well as others, including the Major Transport Projects Facilitation Act. Again we spent a fair bit of time at the last presentation going through the detail, so I will not go through that detail again today, but just as a reminder: the environment effects statement process fits in the context of quite a range of different pieces of legislation.

In terms of why an EES is used in particular, when we were last in front of the committee a lot of the questions were, 'When is an EES triggered, how do the guidelines work and how does that apply to a range of different projects?'. As you can see from the slides, historically in Victoria until the present day EESs have been used for those large-scale impact assessments so that they can take into account a wide range of impacts where they are significant and varied enough that that sort of large-scale approach is the best way to consider all of the impacts.

The Minister for Planning may decide that an EES may not be needed, even for large-scale projects, if there are other ways through other legislative paths to best manage those impacts. You can see from the earlier slides that if there are very specific impacts around, for example, heritage or water, there may be other pathways that are better used. We gave examples last time and we will refer to them again today that for large projects in and around Melbourne like the regional rail link project from a few years ago or indeed the current Mernda rail

project, the EES pathway has not been chosen because there are a range of other tools to manage that specific assessment.

That is again high level for the EES. That was a pretty quick recap of our presentation last time. I will ask Julian to give you some examples of which pathways are being applied to a range of current projects, Chair. So if you are happy, I will pass to Julian.

**The CHAIR** — Certainly.

**Mr LYNGCOLN** — Thanks, Adam. What I will do now is just take you through the two major projects that are running currently through the EES process: namely, the Melbourne Metro rail project and the western distributor project. These are the two infrastructure projects that are currently subject to the EES process, and the proponents for both projects have been preparing EES material. Those EESs are in a couple of different stages, and I will give you an overview of those in a moment.

I will talk first of all about the Melbourne Metro rail project. The EES and draft planning scheme amendment were placed on public exhibition from May to July of this year, and 397 submissions were received in response to that exhibition. A joint inquiry advisory committee, which we have called an IAC, was appointed by the Minister for Planning under the EE Act and the Planning and Environment Act. The IAC reviewed the EES and the draft planning scheme amendment as well as all of those public submissions. Public hearings were then held between 22 August and 7 October. Parties that made submissions were asked if they would like to be heard, and more than 100 parties took up that offer and were heard as part of that public hearing process. That process was completed on 7 October.

Under its terms of reference, the IAC is now required to submit its report within 30 business days of the last hearing day, so we would expect that by about 21 November this year we will have a report from that advisory committee. Then under the ministerial guidelines the Minister for Planning has up to 25 business days after receiving that report to issue his ministers assessment, so that will take us towards the end of the year for the minister to provide that assessment. That is where we are at in terms of the Metro rail project.

In terms of the western distributor, in March of this year the final scoping requirements for the EES for that project were issued by the minister to the Department of Economic Development, Jobs, Transport and Resources, which is the proponent for that project. A technical reference group was convened earlier this year, with representation from a number of parties, including councils and relevant authorities, and they have provided guidance around the scoping requirements and preparation of the EES. The Western Distributor Authority is now preparing the EES in accordance with the scoping requirements that were put together in consultation with that technical reference group. When the Minister for Planning is satisfied that DEDJTR has prepared a suitable EES, he will authorise the statement to be exhibited for public comment for a period of 30 business days, and then that EES will be advertised and submissions invited. We would expect that to occur in early 2017.

Flicking over now to the level crossing removal program, that program, as you are probably aware, is being delivered by the Level Crossing Removal Authority. There are currently no projects that are subject to an EES process under the Environment Effects Act, but to date there have been quite a number of level crossing removals — 18 level crossing removals — that have been facilitated through planning scheme amendments and approved by the Minister for Planning for that purpose. Then in addition to the level crossing removals, there have also been the Pakenham East train maintenance depot works, which have also been approved through a planning scheme amendment process.

In relation to the Frankston rail corridor that has been recently announced, the LXRA is currently doing an assessment of the crossing removals on that part of the rail network, and they will do an assessment to determine whether they believe a referral is required for the Minister for Planning to make a decision on whether or not there would be an EES required. So at this stage there is nothing before the Minister for Planning in relation to that, but it is possible that at some point in the future a referral could be made.

That really gives you a bit of an overview of the current state of play in relation to current major infrastructure projects.

**The CHAIR** — Thank you. In terms of EESs undertaken with projects of the current government, there are currently just the two: the Metro rail tunnel and the western distributor — is that correct?

**Mr LYNGCOLN** — That is right, yes.

**The CHAIR** — Something that has certainly been brought to the attention of this committee over a period of time has been the Caulfield–Dandenong sky rail, which has been subject to much debate. I am hoping you might be able to provide some clarity around how it is that an EES does actually occur because, just upon my basic reading of it, it appears as though a proponent asks the minister and the minister gives an indication of whether or not they believe an EES is appropriate. Is that correct?

**Mr LYNGCOLN** — That is one possible pathway to an EES, but it does not necessarily play out that way. There are guidelines that sit under the EES legislation that spell out the process of determining whether an EES is required. Under those guidelines a proponent would undertake an assessment, and there are some criteria in those guidelines that spell out how they should undertake an assessment. In undertaking that, they come to a determination as to whether they believe a referral should be made to the minister to decide whether an EES is required. It is only if they go through that assessment and determine they should refer it to the minister that there is then a decision before the minister where he would make that sort of determination.

In the case of the Caulfield–Dandenong rail project that you referred to, and particularly the CD9 level crossing removals as part of that program, the LXRA made an assessment against the criteria and determined that it did not need to refer it to the Minister for Planning, so there was no decision put to the Minister for Planning as part of that process for him to determine whether or not there would be an EES. Subsequent to the LXRA making that determination, it put a request to the Minister for Planning for a planning scheme amendment under the Planning and Environment Act to facilitate the project, and that submission was considered by the minister and he made a decision under the Planning and Environment Act that included an incorporated document that facilitated those works under that project.

**The CHAIR** — Who was that second document that you referred to authored by? Who developed that document?

**Mr LYNGCOLN** — The way that that works is that the proponent put a request to the Minister for Planning, saying, ‘We are seeking you to make a planning scheme amendment to facilitate the project’. Our department puts advice then to the Minister for Planning to indicate to him that we felt he was justified in making a decision under section 20(4) of the Planning and Environment Act and to do that. The Minister for Planning then made a decision, but that decision, which approved that planning scheme amendment, was also subject to conditions that were placed on the LXRA in the delivery of the works.

**The CHAIR** — My concern and the concern of many residents that have expressed this to me is that basically you have someone who is developing a project deciding themselves whether or not they are going to be subject to an EES, and then you have a minister, who may be politically motivated one way or the other to decide whether or not there is going to be an EES, receiving advice from his department that he is either going to accept or not. My concern is who is standing up for the residents in this case who have significant concerns about diesel fumes, about the sound of trains that are going to impact directly upon them, their homes and their lives. I cannot see how their needs, their wants are being looked after in this case.

**Mr LYNGCOLN** — In relation to that, the material that the LXRA put to the Minister for Planning in requesting that planning scheme amendment included a whole lot of documentation. Part of that documentation was a report on the consultation activity that it undertook. So the LXRA when it went out publicly with a design solution invited comments and had a whole lot of engagement activity. So there was a report on all that engagement activity that went to the Minister for Planning, and that highlighted a number of concerns that had been raised through that consultation process. Many of those concerns are reflected in conditions that the Minister for Planning placed on the planning scheme amendment — for example, in relation to something like noise, it would have been picked up in the consultation report that the community had raised issues around noise. In the planning scheme amendment there is a condition relating to noise in the approval.

So the minister did have line of sight of consultation that was undertaken by the LXRA on issues that were raised and sought assurance, essentially, through the advice that the department put up about how those issues were being managed. In some cases, though, issues could be managed through other regulation that is out there,

but in some cases it was decided that conditions were required to give the Minister for Planning assurance that those matters would be dealt with.

**The CHAIR** — I am actually glad that you raised consultation, because that was something that was certainly referred to in our last infrastructure report. It was described by many residents as a sham. It could have been described as saying, ‘Here’s your sky rail. Do you want to in light grey or dark grey’, in terms of the options that the community were given about the impact sky rail was going to have. I certainly hear what you are saying about consultation, but those who have been directly affected by this project are saying there was not true consultation; they were told this was what was going to happen.

**Mr LEANE** — Is that a question? What is that? Is that just a rant?

**The CHAIR** — No. It is a preamble to a question, thanks, Mr Leane.

**Mr LEANE** — It is an unqualified rant.

**The CHAIR** — My concern is again that the residents who are being impacted are being denied the opportunity to share their views through an EES process and their views are not being heard. How is it these residents’ views can genuinely be heard if they have concerns about how the LXRA is conducting their consultation processes and concerns about how they are actually going to have a say on the project as it develops?

**Mr FENNESSY** — I might make a few comments, Chair. This really does follow that discussion at the earlier committee hearing. Back then, in April, we had not had the request in yet from the level crossings rail authority, so what we said at the time was if and when the request came in for a planning scheme amendment, we would consider it at that time.

I know the point we made at that time as well was that the EES pathway and the planning scheme amendment, or planning and environment pathway, are used very commonly for projects in Victoria. In fact the Planning and Environment Act pathway is used in the vast majority for planning assessment processes, and that does include that consultation process. Of the level crossings to date, I think it was 18 of them had undergone that pathway of planning scheme amendment. That was often because they were in existing rail corridors, and the environmental impacts were known to the point that that was the appropriate pathway.

We also said at the time — and I will certainly say that again today — that it really does depend on every particular project. At that stage the majority of level crossings projects — in fact I think all of them — underwent the planning and environment pathway. Then since April — and in fact it was in May — the request did come in to the Minister for Planning for that planning scheme amendment. That is a very well known and well tested pathway, and not only does that require the minister to consider the consultation that had been undertaken but it is always subject to legal challenge. In fact, as you are probably aware, it is currently being tested in the courts.

Putting on the community lens, there are two very well known and well tested pathways for planning approval, and they are always subject to judicial review. If the community is not happy, or segments of the community, they have got that pathway, and in fact they are using that for this particular project. In the discussion we had last time we could not speculate; now we know that that came in to the minister. We were asked to give advice under that, and as Julian said, that has then got noise policy conditions, and it is also subject to heritage, environment protection, flora and fauna, the Water Act and a whole lot of existing legislation to keep in mind those environmental concerns that might come out of the Caulfield–Dandenong level crossing projects.

**Mr LEANE** — So, the roles that you have played in the department, have you been in those positions for a long time? Have you been there a number of years? Have you traversed governments?

**Mr FENNESSY** — From my point of view, I have been involved in major projects within government in Victoria for probably about, I think, 12 years, and I have seen lots of different pathways for projects, ranging from EastLink, as it is now known, the Victorian desalination project, lots of major roads projects as well as regional rail link and now these level crossings projects. So we have got a long-term exposure to how these projects are put through different pathways. It really does, as we said before, depend on the scope of the projects and what the best pathway is for those particular impacts.

**Mr LEANE** — Right. So with both of those pathways that you suggest, it is not unusual for either pathway to be applied. So a decision made at Ventnor in Phillip Island by a previous planning minister, that went through which — I know the decision was overturned, but which process did that go through?

**Mr FENNESSY** — I think the Ventnor process would be the Planning and Environment Act.

**Mr LYNGCOLN** — We might have to that on notice. I was not around for that decision, but I believe — and we would need to confirm this — that that would have been a decision made under 20(4) of the Planning and Environment Act.

**Mr LEANE** — I am interested — when it does come to public transport projects, and let us take, for example, the Frankston line or the Dandenong line upgrades. One of them is actually reaching the ground and the other is going through a process. As far as an environmental impact, do you take into account the future impact, which I would imagine would be improved as far as more rail services meaning less vehicles on the road and so forth — is that taken into account as well?

**Mr LYNGCOLN** — The decision about the planning pathway is a decision that is made on each project on its merits. The path that was taken in relation to, for example, the CD9 by the Minister for Planning, part of the justification for exercising these powers under 20(4) can be that it is in the interests of Victoria. So certainly that would play to some of the things that you have mentioned there around the benefits that would come from the project — changes that would be made to the rail system, any questions around urgency of particular works being delivered. That is definitely a factor in the decision-making around what planning pathway would be followed. Under the legislation, the interests of Victoria is one of the tests under which the Minister for Planning can potentially justify taking that particular pathway.

**Mr LEANE** — In either gateway, what environmental impacts have to be taken into account? You spoke before about a prescribed list that the proponents have to go through to either come to the minister for an EES or the legislation, so what sort of impacts have to be taken into account?

**Mr LYNGCOLN** — The environment effects statement guidelines that sit underneath the legislation spell out the criteria a proponent should consider in determining whether to refer. Those criteria would include things like impact on noise, impact on water quality, impact on air quality, impact on biodiversity, vegetation — I do not have an exhaustive list but it is those kinds of environmental matters. When a proponent considers all of those, generally you would expect to see multiple criteria needing to be met, and not just in terms that there would be some impact but in a lot of cases the criteria around significant impacts. So you would need a number of criteria with significant impact to be met for the project then to be referred to the Minister for Planning for him or her to make a decision as to whether an EES is required.

Then the question for the Minister for Planning would really become: the kinds of impacts that there are appear to be a potential for in this project, can they be managed through either existing regulation and legislation, through existing mechanisms, through conditions I could put on a different pathway, or are they so significant that we would need to look at the scale of those impacts and the measures that would be needed to address them and therefore we might need to go down an EES path?

**Mr LEANE** — For example, on the Frankston line, the Edithvale wetlands is in close proximity to some of the line, and so you might put contingency on how that can be dealt with for those projects to go ahead?

**Mr LYNGCOLN** — Yes. So I would expect on something like Frankston, where you do have Ramsar wetlands in the vicinity of the project that that would be a factor that the proponent would have to consider in looking at those referral criteria. Without wanting to pre-empt where that lands, it is quite possible that that could result in referral from the project to the Minister for Planning to make a decision. That is possible.

**Mr LEANE** — That could be one of the triggers that takes in the EES?

**Mr LYNGCOLN** — It could be, yes.

**Mr FENNESSY** — Just to add to that, as the committee would be aware from I think our last presentation, for something like Ramsar wetlands, they are protected under an international Ramsar convention, and that will likely trigger the commonwealth Environment Protection and Biodiversity Conservation Act. They are the sorts

of factors that go to when an EES is more likely. As Julian said, that decision is not in front of us yet, but for other projects in Victoria where you have got proximity to wetlands that is usually the path that is taken.

**Mr LEANE** — Usually. Wetlands is an example, but I am sure you have other examples that a lot of times will trigger the EES process. How many examples would you have of not cross-government projects but private developers that have been deemed to go down the EES process?

**Mr FENNESSY** — I will make a comment, but we might have to take the specifics on notice. Non-government projects will often be pipelines, so gas or energy corridors delivered by private companies. If they go near either wetlands or biodiversity areas of the state that are also triggered under the commonwealth act, they are the ones that likely require that consideration. A specific example is the regional rail link project, which did impact on a couple of commonwealth threatened species. In that case an EES ultimately was not decided to be required because under a planning scheme amendment those particular threatened species could be accommodated. So it really depends on the project, but if there is a threatened species or a wetlands, that will require a deeper level of consideration because it brings into account the commonwealth minister for environment's decision-making.

**Mr LEANE** — I understand what you are saying about pipelines and those sorts of projects. So your commercial private developers very rarely — is that fair to say?

**Mr FENNESSY** — Yes. Well, it will often relate to the scale. All those projects — pipelines, roads, rail — tend to be large scale. If there was a very large-scale industrial land development that was next to, say, a commonwealth-listed woodlands, that might trigger it, but a lot of it is about landscape scale. The other example that certainly is very well known publicly was a government decision to expand the urban growth boundary. What that effectively did was allow a whole lot of private housing developers to work within an overall strategic assessment of all of the biodiversity impacts for new housing developments on Melbourne's fringe or in our growth area suburbs. So that is an example of a whole lot of private sector developments that have gone through that environment assessment process, but we did it as a one-off strategic assessment. They tend to be the examples in Victoria. For big government projects EES will usually be very relevant; for smaller private sector developments — smaller in landscape scale — if they are aggregated up, they will often go through the same pathway.

**Ms HARTLAND** — I have a number of questions relating to the western distributor. From your slide — and you spoke about the technical committee for the EES. Can you tell us who is on that committee?

**Mr LYNGCOLN** — Yes. That technical committee was set up to help determine the sort of scope of the EES. I do not have a definitive list of everyone who was on the committee, but it certainly included councils, and I believe it also included some other government authorities that would have technical expertise around the kind of impacts the project could potentially have.

**Ms HARTLAND** — Could you supply that list to me?

**Mr LYNGCOLN** — Yes. We would be happy to supply that list of who was on that technical committee.

**Ms HARTLAND** — That would be great. In terms of the consultation for developing the EES, was that done by Transurban or by the department?

**Mr LYNGCOLN** — My understanding of the EES for the western distributor is that ultimately the reference case that is being considered as part of that EES is being put forward by the state. Certainly Transurban has had an involvement in dealing with the state in determining what a scope would be, but it is actually a state reference case that will be considered as part of that EES process.

**Ms HARTLAND** — No. I am asking particularly who did the consultation for the EES process, because I understand there were a number of community sessions in April and May to inform the preparation of the EES. I just want to know who actually did those; was that Transurban or was it the government?

**Mr FENNESSY** — We can certainly confirm that. My understanding is that within the DEDJTR portfolio — economic development, jobs, transport and resources — there is the western distributor project team leading all the work for this. So they have led all the work, and the Transurban aspect is an input into that process.

**Ms HARTLAND** — Well, Transurban have been running a number of consultations or what they call consultations. So I am just a little unclear as to: was it Transurban that actually ran the consultations for the EES, or was it another body, because I have attended a number of these, and I have not been aware of anybody but Transurban doing the consultation. So am I right in my understanding?

**Mr LYNGCOLN** — That consultation would have been a process that is in the DEDJTR portfolio rather than in the planning portfolio, so we would need to get advice from DEDJTR as to the running of those consultation processes.

**Mr FENNESSY** — We will confirm.

**Ms HARTLAND** — Because it is my understanding that the only people who have been doing them have been Transurban, which I have always felt was odd. It felt like a conflict of interest that the people who are going to benefit financially are running the consultations for the EES and doing an extremely inadequate job. They do not seem to have very much regard for the concerns of local residents, and they are certainly not prepared to give information. I am in fact in VCAT at the moment attempting to get a number of documents that have been refused to me under FOI, so it is certainly not an open process. If you could confirm who actually did those.

**Mr LYNGCOLN** — I mean, we can confirm that. I guess the thing I would add to that is — I mean, once we are into the actual EES process obviously there will be an exhibition and an opportunity for people to make submissions and raise any concerns that they have and then a chance for those people to be heard and for a committee to consider those concerns and put advice to the Minister for Planning in relation to that.

**Ms HARTLAND** — Having been involved in a number of EESs over the years, it is not a level playing field for community. You are expecting people who are not engineers, do not have a background in chemical — whatever the project is — and yet you are expecting them to actually be able to put forward a submission to an EES project. So for community this is by no means a level playing field. I have not experienced an EES yet that actually took any notice of community or their concerns. So how do you address those issues?

**Mr FENNESSY** — Perhaps through the Chair I could make a couple of comments. I am certainly aware that, going back to the western distributor project, as the planning department our dealings will be through the western distributor project team. We will certainly confirm that back through the committee.

On that second issue we have just finished hearings for the Melbourne Metro project, and it is a challenge for such large-scale projects as to how you get as deep engagement with the community as possible. So Planning Panels Victoria, which is convening that consultation and is DELWP — part of the department — is being chaired by Kathy Mitchell. We ran that process down at the Mercure hotel in Spring Street. We set it up so that we can get as much community engagement as possible, being very aware that some proponents will have deep pockets and access to lots of advice and other interested people will be a citizens group and a community individual. So we are working with Planning Panels Victoria — and I am talking in this case about the Melbourne Metro tunnel — about how to give as much access and opportunity for communities to be part of that hearing process. So it is a challenge, and that is one of the ways we have done it for that. We will be taking a consistent approach through Planning Panels Victoria for the western distributor project.

**Ms HARTLAND** — My problem with that is, if I go back to the VCAT case that I am engaged in — and one of the sets of documents I am looking for is how the traffic modelling was ascertained; how the government or Transurban is able to say that it will take 5000 trucks off these roads a day — if I cannot get access to those kinds of documents, the community does not have access to those kinds of documents, so the EES is flawed right from the beginning because we are not on a level playing field. We do not actually have access to all of the material that goes towards this project. So I will be doing a submission, but if I cannot have those documents, how can I possibly be putting forward an informed submission?

**Mr LYNGCOLN** — In relation to traffic I would expect in an EES for the western distributor that traffic and traffic modelling would be an issue that would be of interest to the advisory committee set up in Planning Panels Victoria. I would be expecting through that EES process and the hearing process that the project proponent would need to make presentations to provide information to the committee in relation to traffic and that that material would be made available through that process as part of that and that others would have an opportunity to be heard in relation to that as well.



**Ms HARTLAND** — I am not sure about that. If I cannot get those documents, I do not know — what powers does the panel have to ask for that modelling?

**Mr LYNGCOLN** — Generally these panels have the ability to ask any questions they like within the terms of the reference of the review. I accept what you are saying at the moment about your access to those documents, but quite often once we are into an EES process, proponents will produce documents throughout that process to back up the presentations that they are making to the committee.

**Ms HARTLAND** — Like I said, having been involved in a few, I have never actually seen that happen. My other question was in terms of the Tulla link widening project. I am a bit confused as to why there was no EES for that project, especially considering how much the off ramp has impacted Strathmore high school, because basically you now have an off ramp going through the grounds of a high school, with obvious major impacts on the health of students who go to that school. Can you explain to me why there was no EES for that, considering there is an off ramp through a high school?

**Mr FENNESSY** — I think with the Tullamarine-Calder widening project, again the pathways of the Planning and Environment Act or EES are considered by the proponent. Similar, I think, to the case of a lot of the level crossings projects, if they are considered part of an existing road corridor, they will have impacts on the surrounds. In the history of Victorian planning pathway assessment projects it is those large-scale projects that go down the EES pathway. We have seen, and as we have already discussed, a \$10 billion to \$15 billion metro tunnel rail project or a \$3 billion, \$4 billion or \$5 billion rail or road project, and I think in that context the Minister for Planning was satisfied that the Planning and Environment Act pathway was appropriate for the Tullamarine-Calder widening.

How those impacts are assessed for the Tulla-Calder project is always subject to legal review, as we are finding now with Caulfield-Dandenong. So to me it is very hard for us to accurately forecast which pathway is going to be applied to which projects, but historically in Victoria it is your very significant ones that go through the EES pathway, and they are usually a small number — I think less than half a dozen in the last decade — whereas scores of projects go down the Planning and Environment Act pathway, and that includes the Tulla-Calder project.

**Ms HARTLAND** — So even an off ramp through a high school is not enough to trigger it?

**Mr FENNESSY** — My comment on that is that when you have a \$12 billion metro tunnel project under Melbourne that triggers that pathway, and that is a much bigger project than one off ramp. But if you had one off ramp that, say, went through internationally protected wetlands, that might trigger it, but in this case one off ramp — —

**Ms HARTLAND** — But these are only schoolchildren so it does not matter?

**Mr FENNESSY** — Well, then it is up to how the project accommodates the impacts on human health and environmental health. It is not that they are schoolchildren and it does not matter; it is how does the project then take into account the impacts on that school in terms of noise and amenity? In Melbourne and in Victoria there have been road projects for decades and decades that have been able to take into account local impacts on community, so that is a different sort of issue than a multibillion-dollar city-wide-scale project. It is always a matter of degree and advice to the minister, and I think in the case of every project that comes before the minister, the proponent and then on our advice, for the Planning and Environment Act, has got to satisfy the minister that those impacts are managed, including impacts on schoolchildren.

**Ms HARTLAND** — So then it is clear the minister did not have any concern about an off ramp going through a high school?

**Mr FENNESSY** — I think in terms of that particular project, what we will confirm is whether there were conditions around that part of the project. So it is not that the minister does not have regard to that; it is that through that planning assessment the minister makes sure that anything relevant to that will be subject to conditions. That is what we have seen with all of these rail projects: when they go through the Planning and Environment Act pathway they are often subject to very specific conditions. The point we have been expressing is that if something does not get considered or trigger an EES, it still triggers a Planning and Environment Act assessment. So it is still assessed, it is a very rigorous assessment and it is the most common form of

assessment. So these projects get assessed. They are subject to specific conditions. On the Calder-Tulla what I do not know today is whether there were specific conditions to that, and we can get advice on that.

**Ms HARTLAND** — That would be good. Thank you.

**Mr FINN** — You have just answered my first question. Thank you. I am looking forward to hearing what the conditions were on that, because as I drive past it every day I am absolutely staggered that it has ever been approved — the off ramp from the Tulla that literally goes through Strathmore Secondary College. It is just extraordinary.

On the issue of the western distributor, now, I may be a little slow — in fact there is no shortage of people around here who will attest to that — but do we actually have a western distributor project at the moment? Have the contracts been signed; is everything going ahead? We know that the government and Transurban are swinging hands furiously, but have they actually consummated this relationship that they have, or are we just sort of whistling in the wind here in the hope that something might happen, or maybe in the hope that it will not happen, at some stage in the not-to-distant-future?

**Mr FENNESSY** — I will start the answer, and then I will ask Julian to add any detail. I guess from the point of view of the planning department, the very strict answer is we know we have a project but we have got to consider when the submission comes in to the minister. From a whole-of-Victorian-government point of view, there has been a lot of work in the DEDJTR portfolio on the business case, and we are now actively expecting a pathways approval process to happen. So from the planning department's point of view, there is a project, we have not officially gone through the planning pathway decisions and we are waiting for the proponent to approach us at the right point in time.

**Mr LYNGCOLN** — From a planning point of view in relation to the commercial arrangements and the procurement of that project, that is something that we stay out of. That is a matter for DEDJTR. From a DELWP point of view and from a planning point of view, we deal with the planning approvals and obviously the EES process, but the commercial arrangements are not something that we get involved in.

**Mr FINN** — Right. I was not anticipating that you would be involved in that. I just was wondering if you had been told that this is actually going ahead because, to my understanding, we have not. I thought you may be able to enlighten us as to actually what is happening with the western distributor, because nobody else seems to be able to.

**Mr FENNESSY** — I think — and again, through the Chair, I will get Julian to confirm this — in terms of EESs being undertaken as public works, we have talked about the Melbourne Metro rail project, and the western distributor project is the other one that has been declared under that pathway, but we have not gone through the assessment yet.

**Mr FINN** — So to what point do you get now before you are actually given the approval or given the go-ahead or you are actually told that the contracts have been signed and this is going ahead?

**Mr FENNESSY** — The western distributor project has been declared by the Minister for Planning as public works. There is a whole lot of consultation that has to happen through the EES process. So from our point of view, the final decisions have not occurred yet under the EES act, but the project team in the DEDJTR portfolio will undertake a whole manner of work on the project. So if you are asking the planning department, we will wait until the planning hoops have been jumped through. So it is in the process, it is going down that EES pathway, it has been declared as public works down that pathway, but it has not been given final approval yet because we are still working through the consultation and all of the information that we need to see before we can advise the minister.

**Mr LYNGCOLN** — Just the other thing, I guess, to add to that is it is not unusual for projects to go through a process of getting their planning approvals first before contracts are signed, because obviously to enter into a commercial arrangement the state would want to have confidence that the arrangement it is entering into is something that can be delivered on. Something like an EES may well provide direction in terms of the scope of the project. Whether or not contracts have been signed is sort of a matter for DEDJTR, but it is not unusual in the general sense that a planning process would be run through first before there is a sort of financial close on the procurement side of things.

**Mr FINN** — Given the number of changes that we have already seen in this proposed project, and we have seen quite a few, how do you know which track to go down? If you are three-quarters of the way down one track and Transurban changes its mind or the government changes its mind, do you have to go back and start again or do you do a U-turn? What exactly is the process there?

**Mr LYNGCOLN** — Usually the process with something like this is that what would be exhibited and considered through the EES is often what is called a reference design. That reflects the fact that the government will have a broad concept for the project to be delivered, but the detailed design that sits underneath that often happens at a later stage in the project.

Usually the process would be that that reference design is put forward and people make submissions in relation to that. If there were to be changes coming out of any sort of discussions between the proponent and any other stakeholders, really, whether that is okay would depend on whether those changes materially impact on the reference design that was put forward. So often the reference design will be broad enough that there are some small changes that can be accommodated. But if it is a substantial change, then there would be a question about whether the planning approval really covers that change or not. So it will be in the state's interest to make sure that any changes it thinks could happen to scope would be dealt with and covered in a reference design that is considered through that process.

**Mr FINN** — We heard in the last day or so that the federal government is not contributing to this project, which I would imagine will impact it significantly. I am not going to ask you about the commercial side of things, obviously. But if this project is cut back in its scope, how does that impact on the way that you do things from this point or the way in fact you have done things up until now?

**Mr LYNGCOLN** — The important thing with that will be what it is that goes on exhibition for the EES. There is a whole range of factors that could affect the scope, but ultimately a decision will be made about the scope that is put on exhibition. From a planning point of view, our interest is in what it is that goes forward for exhibition, what it is that people respond to and therefore what is considered by the committee. From a planning perspective, that is how we view the scope questions.

**Mr FINN** — There are a number of impacts that we would anticipate on people living around the area that the western distributor is, I think, proposed to go through. Are you speaking to those people now? Are you consulting with those people now or does that happen after the contract has been signed? If the contract has been signed, can it be changed if indeed the locals convince you that it is not an appropriate project?

**Mr LYNGCOLN** — In terms of consultation on the project, that is something that would be run by DEDJTR, so it is not really something that is in our remit in the planning portfolio. That would be up to the project proponent to work out appropriate consultation processes. Typically there may well be consultation both before scope decisions are made and after, but that is really for the proponent to sort of work through. From our point of view, what we are interested in is where that ultimately leads in terms of scope that, as I said before, is then put on exhibition and goes through that planning process. So issues around consultation, around scope, are really probably more for DEDJTR to respond to than ourselves.

**Mr FINN** — So it would be fair to say at the moment, from your point of view, you have got to a certain point and you cannot go much further, or is that underestimating the situation? Are you pushing ahead regardless?

**Mr LYNGCOLN** — We are preparing for an EES that we expect to run. We have been working through, as Adam said before, the declaration of the project and the scoping of the EES. The proponent now has work to do to prepare material for exhibition, and that is the work that they now need to undertake, so we are kind of where we expect to be in relation to that process.

**Mr FINN** — The proponent being Transurban.

**Mr LYNGCOLN** — No, I understand DEDJTR to be the proponent in relation to the EES.

**The CHAIR** — I just have a couple of further questions more broadly about infrastructure. In the 2015–16 budget the Andrews government allocated \$5 million to Parks Victoria's critical infrastructure fund, I believe, and estimated the project's completion to be the fourth quarter of 2015–16. However, the funding has now been

spent and the project is now due to be practically completed by 2017–18 as per the 2016–17 budget. I am just wondering if you might be able to detail the reason for this delay.

**Mr FENNESSY** — With Parks Victoria infrastructure, that is certainly very relevant to our portfolio because that is delivered on behalf of the minister for environment. On the specific reasons for delay, I will have to get back to you. The general comment I can make is that a lot of the Parks Victoria parks infrastructure is subject to weather. What I mean by that is some seasons there are delays to projects because of bushfires, and currently there is a lot of challenge with floods.

In the Grampians region, for example, there have been a lot of layers of natural resource impact, and some of the projects that DELWP is also delivering have been subject to recent landslide risks and others down on the Surf Coast and in the Otways. I am very happy to get back to you with the details around that.

**The CHAIR** — That would be great. And if you do not mind, if you could provide a cost breakdown of each of the projects that were funded by that fund as well, it would be very much appreciated.

Last year the former minister for the environment told PAEC that a key critical issue for Parks was the Twelve Apostles and that the toilet system there was about to collapse. Since then overflows of wastewater have occurred. I am just wondering if you might be able to update the committee on those concerns and that issue.

**Mr FENNESSY** — Yes. I will be able to update the committee. The general point is that that is subject to the Shipwreck Coast master plan work that Parks Victoria is undertaking with the department, and that gives you the broader outline for the upgrades of these projects. That does include the visitor facilities and the toilets. I will get back to the committee on that too.

**The CHAIR** — Thank you. There are several accommodation buildings at Wilsons Promontory lightstation, which is of course a very popular tourist destination, and they are constructed from asbestos. Due to severe adverse weather conditions, paint was stripped from the roofs and the asbestos fibres were left exposed. Can you advise whether these asbestos issues have been resolved and what the cost was to rectify them?

**Mr FENNESSY** — I am happy to take that on notice and give the committee the advice.

**The CHAIR** — That would be great. Also, this year the minister confirmed that Parks Victoria was undertaking an entire asbestos audit of buildings within the Parks estate. I am just wondering: has that been completed?

**Mr FENNESSY** — I am not aware of whether it has been completed. I know it is a priority for Parks and for the department, and again we will give follow-up advice to the committee on that.

**The CHAIR** — I am also interested as to whether or not an interim audit might have been seen by the department, if that has been the case. One final one from me: the former minister has detailed that she would have received a full remediation cost of removing asbestos from the Parks estate. I am wondering if these costs have been forthcoming and what they might have been.

**Mr FENNESSY** — I am very happy to report back on that as part of our follow-up.

**The CHAIR** — That would be very much appreciated.

**Mr LEANE** — Can I just ask a question following on from some of my committee colleagues around concerns and potential hypotheticals when we are talking about future projects like the western distributor? The question I have is around the triggers where regulations kick in, where acts kick in, where your department kicks in and where a minister kicks in. None of that is new. That has been around for a number of years. It is not a new implement resulting from this particular government coming in and changing the rules. Is that a fair comment?

**Mr LYNGBLON** — Yes, that is a fair comment. The only change in a substantial way to the regulation and legislation that governs this was probably the Major Transport Projects Facilitation Act. That legislation has not been widely used, so in terms of all the pathways we have been talking about today, the regulatory settings for those have been in place for a considerable time.

**Mr LEANE** — Thank you.

**The CHAIR** — Thank you very much, gentlemen, for your attendance today. You will be provided with a copy of today's evidence for proofreading, and that will ultimately make its way onto the committee's website. Once again, thank you for your attendance today.

**Mr FENNESSY** — We will follow up on those questions through the secretariat.

**The CHAIR** — We very much appreciate that.

**Witnesses withdrew.**