

TRANSCRIPT

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Inquiry into infrastructure projects

Melbourne — 20 April 2016

Members

Mr Joshua Morris — Chair

Ms Colleen Hartland

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Witnesses

Mr Adam Fennessy, Secretary,

Ms Christine Wyatt, Deputy Secretary, Planning,

Mr Paul Smith, Deputy Secretary, Environment and Climate Change, and

Mr Don Hough, Director, Regulation and Approvals, Biodiversity Division, Department of Environment, Land, Water and Planning.

The CHAIR — We will move on to our next witnesses. We welcome Mr Fennessy and his team. I might ask if you could introduce yourself and your team and the capacity in which they are here. I then invite you to go through your presentation, and then we will have some questions for you. Over to you.

Mr FENNESSY — Thanks 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. I will go through some preliminary comments and remarks, particularly focused on the environment effects statement process, which is very relevant to the terms of reference of your inquiry. In fact it will provide a very good additional layer of information, building on the first report of this committee.

Visual presentation.

Mr FENNESSY — The role of the department particularly turns to the planning side of this process. From the point of view of the presentation, we will focus in particular on the environment effects statement process that comes out of the Environment Effects Act, and in that I will be supported, particularly for any questions the committee might have, by Christine Wyatt, who is the Deputy Secretary of our Planning group, and Paul Smith, who is the Deputy Secretary of our Environment and Climate Change group. I also have Don Hough here, who is the Director of our Regulation and Approvals team.

Getting into the presentation, the planning system can get complex rather quickly, so I have attempted to keep this as simple as possible. We will see how we go. The first slide is the project life cycle and environment regulation in terms of how this fits in. We will be focusing particularly on those two lighter blue arrows — the assessment process. The overall environment assessment process deals with environmental impacts, but under the Environment Effects Act ‘environment’ is defined broadly, and more broadly than would many people, who will think of ‘environment’ as the natural environment. So environment is defined to include social amenity, human health and natural environment considerations.

In terms of that project life cycle, the focus comes in at the design and assessment stage once there has been an initial policy decision to start with a project. The EES process in particular de-risks project delivery by focusing in on risks to social amenity, human health and natural environment considerations, and that also ensures that value for money is very closely focused on so that we get an efficient and effective use of public funds.

The other strength of this process is that the assessment stage, which is that third arrow across, allows for both public input, which gives a procedural fairness and a natural justice component and allows us to very efficiently consider a whole range of approvals that would otherwise have to be done separately. So that allows for decision-making under planning, water, environment protection and other relevant legislation.

The Environment Effects Act is just one of several different tools that can be used, which we will go through in the presentation, to support assessments, and it tends to be used for significant and broader ranging projects. For example, it is being used for the Melbourne Metro project and the Western Distributor. So that is the first slide.

The second talks to the administration of the EES process. I have just mentioned the Melbourne Metro project, which was declared under the EE Act in September 2015, and the Western Distributor in December 2015. They are two major infrastructure projects that are currently subject to the EES process. In terms of some of the other major projects or programs that are subject to your terms of reference, the Minister for Planning has not been required to consider whether an EES is needed for any of the projects required through the level crossings program.

In terms of administration of the process, it is administered by the Minister for Planning and supported by the planning portfolio within our department. That is the portfolio led by Christine Wyatt. The Minister for Planning can call for an EES to be prepared under the Environment Effects Act. That, again, gives you a snapshot of the administration of the EES process. A very important document to help give life to the process are the guidelines on implementation of this legislation, which set out how the process works, including how the Minister decides that an EES might be required. So that is the administration and current projects.

In terms of where the EES process fits in, as I mentioned earlier, there are a number of different assessment pathways that a project could work through or could trigger. There are three categories. Issue-specific environmental legislation — and you can see examples there, the Heritage Act, the Aboriginal Cultural Heritage Act, the Water Act — they tend to be used for projects where there are very specific impacts for some parts of

the project. That is one pathway, which highlights that an EES is not a default process. That legislation normally focuses on specific locations within a project's footprint, and you could imagine where there may be a specific heritage issue, an Aboriginal heritage issue or whether there is interaction with a waterway.

The second category is primary planning or environmental approvals. This is a more common process for major projects. Primary legislation is then used to manage any adverse impacts of a project on a more broadscale approach. This tends to be used for a lot of public infrastructure, and it is invoked under the Planning and Environment Act 1987. The vast majority of what we would consider to be significant projects go through this pathway. That allows a full range of approaches, from planning permits to full planning scheme amendments, and can address a lot of different issues — for example, native vegetation impacts and urban form design as well as issues like flood flows and other water issues. That is the second tier.

The third tier, which we will talk about in detail today, in particular is the formal impact assessment process. This is for a small number of infrastructure projects where we have a very formalised impact assessment such that a full EES, or environmental effects statement, is warranted. Under State legislation there are in fact two pieces of legislation that give this formal impact assessment. One is the Environment Effects Act 1978 and the other is the Major Transport Projects Facilitation Act 2009, under which the comprehensive impact statement process can be followed. Of those two pieces of legislation, the most common pathway is the EES process, although a comprehensive impact statement process under the MTPFA has a similar scope to an EES. The EES tends to be used where it is applied to a project with a range of potentially significant impacts and where we require a formal multidisciplinary approach to understand not only how each approval might be given but how they interact with each other. So that is an outline of the range of different assessment pathways under quite a number of different pieces of legislation.

In terms of my next slide, while it is a busy-looking slide, it is meant to give you an indication that, to put it in the simplest terms, the greater the number of impacts, the more likely a more significant pathway will be chosen. The greater the number of impacts and their interactions, the more likely that an EES might be relevant. In the case of infrastructure projects, an agency of the state government or the proponent will be the proponent responsible for the delivery of the key project approvals. Importantly, the project proponent is responsible for identifying the impacts of the proposal and any assessment and approval requirements of key approvals.

Starting at the left, you can see the proposal. The process starts with a proposal to build a specific piece of infrastructure. Then when it gets to concept design, which is also the responsibility of the proponent, that gives us sufficient detail to work out, or for the proponent to make informed decisions about, the potential impacts of the project. Studies are prepared to identify the nature of those impacts and any approvals that might be required, and at that stage the proponent will also consider whether a formal impact assessment, such as an EES, is likely to be required. This is initially driven by the proponent's own assessment of the likely impact of the project, and that is how the process has worked under this legislation for many, many years.

In particular the proponent will consider findings of their studies against the triggers referred to in the ministerial guidelines that are issued under the Act. Those triggers then give guidance around whether a project should be referred to the Minister for Planning to decide if an EES is required. As I said before, that shows in simple terms that the greater the number of impacts, the more likely the project will be significant and the more likely an EES pathway will be used. So in the case of Melbourne Metro and the Western Distributor projects the proponent took the view that an EES should be prepared and requested that the Minister for Planning declare the projects as public works under the Act.

I will now expand on the role of the Minister for Planning and our role in advising the Minister in determining whether an EES or other type of assessment process is required in my last two slides — so only two slides to go. Why is an EES used? I have mentioned that an EES will be used for formal large-scale impact assessments for significant projects where it is most efficient and can best manage the interaction of impacts. In terms of the use of the EES, the Minister for Planning has discretion regarding when an EES should apply to any given project, and the guidelines under the Act provide an outline of how the Minister would decide when an EES should be prepared. In essence the Minister should be satisfied that the potential impacts of a proposal are significant and varied enough that a formal large-scale impact assessment process is the right way to address them. You can see in some of the points on this slide that it is generally the best approach where a single process is required to look at a whole range of impacts.

The combined process can look at the interactions of those impacts. It manages the risk for both the project as well as the environment, and that includes social, environmental, amenity and health impacts, because a large number of approvals considered together is more likely to give a coherent approach, and also when a formal public consultation process is considered appropriate. The Minister may decide that an EES may not be needed, even for some significant projects, if the wideranging assessment is not the best approach in a specific case. In some cases an EES may not be required, but it would be a conditional decision. In those cases there are other pieces of legislation that will be used for impact assessment.

To give you context, each year a small number of EESs are used. Historically it has been about 5 to 10 projects a year. That gives you an idea of the order of magnitude. Currently across the state active EESs relate to Melbourne Metro; the Western Distributor; the Western Highway bypass at Beaufort; a large granite quarry project at Garfield; a mineral sands project south of Horsham, known as WIM150, out in the Wimmera; and finally the Beaumaris Safe Harbour, a major boat harbour in Port Phillip Bay. They are examples of current EESs underway.

Then my final slide looks at a recent large-scale infrastructure project in Victoria that you all will be familiar with, the Regional Rail Link. Capital value of around \$5 billion. It was referred to the then Minister for Planning. The Minister decided that no EES was required subject to conditions that addressed noise. As you will recall, the Regional Rail Link project was a mix of brownfields through existing suburbs and then a greenfields component out near Tarneit/Werribee. Because it was predominantly within existing rail corridors in the brownfields area and through broader planning corridors in the greenfields area, the main additional impact that had to be addressed was noise. That is an example of where an EES process is undertaken which may not result in a specific environmental impact assessment or a full EES but conditions were still put on that project. That also recognised that while an EES was not used, the primary approvals were given under the Planning and Environment Act. Again, that goes back to the hierarchy of different legislation that is used for major projects. It also shows how there is flexibility in applying the EE act in response to impacts associated with any particular project.

That is the last slide that goes through a lot of the rather technical detail around environmental planning processes. As I hand back to the committee for questions, I will also be drawing upon Christine Wyatt's expertise, who leads our Planning group, and to the extent that it relates to environmental inputs or commonwealth environmental approvals, Paul Smith and Don Hough. Chair, back to you and the committee.

The CHAIR — Thank you, Mr Fennessy. I appreciate it is quite a complex area that we are delving into. I know committee members have quite a number of questions that we are very unlikely to be able to get through today, but we hope we will be able to send those questions through that you will be able to respond to in writing at a further date.

My first question relates to level crossing removals and the sky rail proposal. I note that level crossing removals is one that is listed, that a full EES has not been requested at this point. I am interested to know, with significant issues with regard to overlooking and overshadowing and significant concerns about noise and vibration issues as well as issues of diesel exhaust being emitted up to 60 feet in the air, will the government and/or the department undertake a full EES study pursuant to the 1978 act and published guidelines along with that?

Mr FENNESSY — In response to that, I will make a general point and then I will ask Christine Wyatt, if that is okay, Chair, to talk to the particulars about the Caulfield–Dandenong project. With the broad range of level crossings, we work very closely with the Level Crossing Removal Authority to consider whether any particular projects in that program would trigger certain assessment pathways, and we have been working very closely with the level crossings authority for quite some time now as those projects come up. In terms of the Caulfield–Dandenong line project and your particular question to that, I will ask Christine Wyatt to give you some further advice.

Ms WYATT — It relates back to thinking where they are at in the process too. They are still undertaking their final assessment against the triggers in the guidelines, so there is no formal request at all before the Minister and their position at the moment is that the guidelines are not triggered. It is common, as the Secretary outlined earlier, for a proponent to go through that assessment. It is not normal for the department to do that. The proponent will come forward with that assessment and discuss it with us and make a decision on whether or not to refer.

The CHAIR — So the proponent you are referring to there in this particular instance would be who?

Ms WYATT — The Level Crossing Authority.

The CHAIR — So the authority themselves. Indeed, I am just having a look at page 7 of the ministerial guidelines for assessment of environmental effects. There are quite a number of triggers there, as you point out. There is a referral for individual triggers and also a combination of triggers as well. In terms of these, just on initial reading, would the view of the department be that an EES would be required or not required? Does the department take a view on this and advise the Minister? What is the role of the department in this?

Ms WYATT — We would take a view when a formal referral is given or a declaration is made. So when the proponent does its request to the Minister to declare an EES, that is one process to get an EES question, if you like. In this instance, the proponent is still going through its assessment of its material against the triggers. So it is not really up to the department to make an assessment because we are not party to all those studies and the design issues. It is up to the proponent to come to us. And they will make their own decision whether or not to refer that to the government.

Mr FENNESSY — Chair, to assist and to give broader context looking at the broader program of level crossings and give you a sense of where in the hierarchy the approvals have been given in the past, in 2014 the first of the major level crossings projects was Main Road, St Albans, and that was done through a planning scheme amendment. In 2015 there were a number of level crossings removals, there were nine, and they were done through planning scheme amendment. Again, that is through the Planning and Environment Act. Without reading them all out, they included the Burke Road one, which is well known, and North Road, Furlong Road. In 2016 so far, planning scheme amendments again under the Planning and Environment Act have been used for Blackburn Road, Heatherdale Road, Mountain Highway and Scoresby Road. That gives you a sense of where they have come through in the planning assessment pathway. As Christine said, in those cases and particularly because of the size of the program, we work with the Level Crossings Authority as the proponent. As the process comes to us we then make the determination on the guidelines.

The CHAIR — Thank you for that. But I do note that all those particular level crossing removals were under road rather than the over-road — sky rail — solutions that are currently being proposed before us. Now one particular point which is a referral criterion — an individual potential referral criterion — is potential extensive or major effects on the health, safety or wellbeing of a human community due to emissions to air or water or chemical hazards or displacement of residences. On initial reading of that, I cannot see how the level crossing removals would not be triggered there. Obviously the government has offered to buy people's homes from them, so just the displacement of residences, one would imagine, would trigger that criterion. As you say, the department will not be necessarily involved in that, but I am quite sure those who are responsible for it will see fit that that is a trigger that will require a full EES to be undertaken.

I did want to go back to the planning scheme amendments that you just referred to earlier, and I do note that the previous government undertook a planning scheme amendment, which is GC15, which I have a copy of here. If you did want to have a look at it, I am happy for you to see that. In this we see note 1 relates to the intervention to facilitate the construction of the Cranbourne-Pakenham rail corridor project. We will note that this is a specific planning scheme amendment which refers to the Cranbourne-Pakenham rail corridor, and the incoming government has obviously ditched the project to which this planning scheme amendment is applied. The project applied to the corridor, in particular the four crossings where rail was to be put under road. In effect, if this is no longer occurring, it is, I suppose, in Monty Python parlance, a dead parrot. I note that the proposed planning scheme amendment circulated by the Level Crossing Removal Authority gave councils along the line merely 72 hours to comment and no opportunity for community comment.

The purpose of the document at point 2 was to allow the use of and development of land for the Caulfield-Dandenong rail upgrade project and involves the removal of nine level crossings and the redevelopment of five stations. These are listed. This extraordinary document is, in effect, a sky rail planning approval document. Will you confirm that the documents that the previous government used and the current government used are different documents that relate to different projects — the first to rail under road and the second to the massive elevated rail now known as sky rail?

Mr FENNESSY — So I think my advice on that, and I will also ask Christine to comment, is that, consistent with what Christine was saying before, the department will then consider projects that come in from proponents.

Proponents, whether they be State government authorities or private sector developers, will have to put to us the best approach for the project at the time that it is ready to come. Particularly as projects evolve, if they change in their nature, we will consider the change in the submission from the proponents. So I think that is how we are approaching the Caulfield-Dandenong nine project — regardless of what may have been considered by proponents in the past, we have got to look at what the proponent now says is going to relate to the project at hand. Christine, did you want to add to that?

Ms WYATT — That is correct. We will come forward with a proposed planning scheme amendment, because you are correct that that is for a particular project and describes a particular project, so there would need to be a further planning scheme amendment.

The CHAIR — So just to clarify, there will be a further planning scheme amendment to facilitate the new project that will be separate from the older GC15?

Ms WYATT — Correct.

The CHAIR — Okay, very good. Thank you very much.

Ms TIERNEY — I am just interested in trying to get an idea of comparisons in how the planning approval process for Melbourne Metro and Western Distributor was structured, and if you could compare that with the approval process for East–West Link.

Mr FENNESSY — So I think with the Melbourne Metro and Western Distributor, as I said in my opening remarks, that is under the EES process. The technical approach taken for east-west was the Major Transport Projects Facilitation Act. And as per my earlier discussion, the process for each of those pathways is very similar, but the EES process is more commonly used. So that is the high-level answer — that East–West Link was Major Transport Projects Facilitation Act, and Melbourne Metro and Western Distributor are EES. Christine, do you want to add to that, given your expertise in planning?

Ms WYATT — They are really complicated to answer sometimes, but if I can do it really simply. The key difference between those two Acts is that the MTPFA will do an assessment and an approval at the one time. I think that is a really important concept because the impact assessment under the environment assessment Act is not an approval of a project. It is an assessment of the environmental impacts of a project, which is then used to inform approvals. So they are two separate things, whereas the MTPFA puts those two things together in one process.

So East-West did a comprehensive impact statement, and approvals documentation was prepared at the same time to have that all dealt with as one single outcome if you like, whereas the EES process can be structured in a couple of different ways with approvals. They can go together but they will go together under their individual acts, or they can go sequentially where the EES assessment will inform a planning decision that follows quite shortly afterwards generally or an EPA Act works approval decision or any other decisions under Water Act.

So Western Distributor and Melbourne Metro are taking the approach of doing an environment effects statement which will inform a planning scheme amendment and a works approval. There will be a draft planning scheme amendment go out on full exhibition as a draft with the environment effects statement to allow that iterative process through the impact statement to inform the planning scheme amendment decision that will happen as a clear second step after the EES process. So that is in simple terms how those two work.

Ms TIERNEY — So following from that, can you just go through how community voices will actually be reflected in the planning process for Melbourne Metro and the Western Distributor?

Ms WYATT — Okay. So they will be reflected through the process of the environment effects process itself, because it is quite clear in that process that the community are being told there is a draft planning scheme amendment, there will be a works approval, and the impact assessment process embraces all of those issues. Then a panel process will consider the impact statement, and it will provide advice to the Minister on the draft planning scheme amendment and the works approval process. There will be advice on that based on community inputs at a panel process and the community being able to see all the documentation.

Ms TIERNEY — What is the timetable for those independent panels?

Ms WYATT — I believe Melbourne Metro is due to go on exhibition in May this year. I just do not want to get the dates wrong here. If you bear with me for 2 seconds, I will get the right dates.

Ms TIERNEY — Sure.

Ms WYATT — Here we go. Melbourne Metro is public exhibition in May and we are due for an inquiry in the last quarter of this year, to be completed by the end of this year. Western Distributor follows sort of closely behind that. We are due for public exhibition of that EES and draft planning scheme amendment in about September.

Ms TIERNEY — Okay.

Ms WYATT — I beg your pardon, September 2017. So the EES process itself and all the documentation by the proponent completed in January 2017, heading towards public exhibition in the first part of probably February-March 2017, with impact assessment and inquiry process and decisions completing by about September.

Ms TIERNEY — So the actual conduct of the public hearings is in what time period, in between — —

Ms WYATT — For Western Distributor?

Ms TIERNEY — For both.

Ms WYATT — Okay. For Melbourne Metro, that will commence around about May this year.

Ms TIERNEY — Straight after it.

Ms WYATT — And Western Distributor, I would say that is February-March, early into 2017.

Ms TIERNEY — Thank you.

The CHAIR — Any further, Ms Tierney?

Ms TIERNEY — Not at the moment.

Ms HARTLAND — I have a number of questions. A number of concerns have been raised with me, and I live in the local area, especially around the drafting and the scoping requirements, which the community had only three weeks to respond to. They felt that that was incredibly inadequate. These are community groups. These are volunteers. They do not have paid staff, and yet they are being asked to respond to the scoping document in three weeks. How is this going to be managed when we go into the full-scale EES? Are they going to be given more time to be able to do their submissions?

Ms WYATT — Can I just ask which project this one is?

Mr SMITH — Are you talking about the Western Distributor?

Ms HARTLAND — Yes.

Ms WYATT — I cannot really comment. Three weeks is generally a normal time frame for scoping directions, and they are directions for the EES. The standard process for exhibition of an EES is generally about four to six weeks of business days, so that generally encompasses about a two-month period when you factor in weekends in that period. So there will be a full process for public input at that point, and then an inquiry process followed on.

Ms HARTLAND — In terms of the contamination that is at the SP AusNet site in Yarraville, this is an old SEC substation and so it is incredibly contaminated. It has a huge range of toxic contaminants. I particularly wanted to ask about how the PFCs and PCBs are going to be dealt with, because as I understand it, there are no centralised storage sites for this waste and there is currently no accepted Australian guidance on the disposal of PFC soil.

Mr FENNESSY — In terms of the Yarraville site and the environmental contamination issues that will arise, what I might do is ask Don Hough to comment on that because that then relates to the environment side of the department and how we work with the EPA and how it fits into that broader waste management issue that you raise. Don, do you want to make some comments on that?

Mr HOUGH — I will respond by saying first of all I will come back to the scoping directions but also come to the role of the EPA. The scoping directions will require the assessment of any contamination, whether it is basically to water, to land or to the air. The detail of that, I request that we either take it on notice or it may be appropriate for the CEO of the EPA, who I think is presenting this afternoon, particularly in terms of the regulatory regime that goes to those organic compounds.

Ms HARTLAND — Okay. So this is nothing that the environment department has anything to do with — highly contaminated sites?

Mr HOUGH — Oh, sorry. It does in terms of the policy setting rather than the detail of those two particular compounds.

Mr FENNESSY — We work very closely with the EPA, but given they have got the statutory regulatory responsibilities, they will work through the particular process.

Ms HARTLAND — I will ask those questions this afternoon. In regard to there being no need for an environment effects statement for the Tulla–CityLink widening, why did that occur? Because the Strathmore high school are going to be presenting to us later today and they are going to have an off ramp through their grounds and over part of their school, you would have thought it was a logical thing to actually have an EES to avoid that problem? Can you explain why that did not happen?

Mr FENNESSY — In general terms there will certainly be impacts that will need to be assessed. The question is whether it is a planning scheme amendment, an EES or various other pathways. Christine, did you have any comments on the particular — —

Ms WYATT — I do not, and I would have to take that one on notice to go back and have a look at the history of that particular situation if I may do that.

Ms HARTLAND — That would be good.

Mr FINN — I am fascinated, as I often am, to hear you say that there have been no EES plans for the level crossing removal project at this point. Given that particularly, I understand, the Cranbourne–Pakenham rail corridor, at the moment we are looking seriously at putting sky rail through there, I would have thought the environmental impact upon people living in that corridor would be absolutely enormous. Given the impact on people living in that corridor, how has no EES been justified?

Mr FENNESSY — I think, going back to the start of your question, there is in fact very detailed planning and environment consideration of level crossings. Looking back for the last few years, as each one comes through the right pathway will be chosen. So far they have been under the Planning and Environment Act. Then going to the second part of your question for the Caulfield–Dandenong line package in particular, that is where we will work with the proponent when they have worked through the first stages of their initial assessment process. So in a sense it has not come to the department and it has not gone through all the triggers of the earlier stages of the environmental assessment framework.

I take the point of the Chair from earlier: each of the level crossings will have its own site-specific issues, whether it be rail under or rail over, whether there are any other triggers at that site. We will work with the proponent when they have worked through all their studies. In the case of at least one of the projects in this broader package, which was the Pakenham East maintenance depot, in that case, for example, there were potential federal environmental triggers. So we really do have to wait to see what the studies bear out.

While a lot of these sites across Melbourne are so-called brownfield sites, there are some parts of the metropolitan catchment which will have federally protected species, so that brings to bear the Environment Protection and Biodiversity Conservation Act process. Really that is a longer way of saying there are so many specifics to any particular level crossing that we do have to wait for the proponent to do that initial assessment

before the final pathway is decided on for the overall planning assessment. That relates to the Caulfield–Dandenong nine or any of the other level crossings.

Mr FINN — I am glad you said that, because once the precedent is set it is going to be very, very hard to go back, and I am looking down the track at further level crossing removals that obviously will be impacted in the same way. Could you tell me, does the department have an assessment at the moment of the number of trees to be removed in the level crossing removals and particularly the sky rail? How many trees do you think will be removed, if indeed you have an assessment of that number, and will you be able to provide those assessments to the committee?

Mr FENNESSY — I will answer in general terms and then I will see if I can get more assistance from my other colleagues. Again you will not be surprised to hear that we will look to each project and the initial assessments of each specific package under the level crossings program. The trees, as you could imagine, could be everything from native trees, which might trigger certain considerations under Commonwealth legislation, or broader amenity impacts if they are non-native trees. The overall numbers of trees then that will be impacted will come through in each case. So at certain points as we move through this whole program we will certainly know what the impacts are on any particular trees for each crossing project, but that will come in after those initial assessments from proponents. That is the start of the answer. Christine, or indeed Paul or Don, did you have any specific comments on what we have been doing so far with flora impact?

Ms WYATT — Really from the planning side of the department’s activities with the Level Crossings Authority, in particular on the CD9, we have really just been providing them with advice informally at this point of the triggers in the guidelines that they need to assess, the studies that they will need to do to consider that. They are going through that process still themselves. So the material is not before us in a formal sense; it is still with the Level Crossing Authority. So I do not have those numbers, but we have certainly gone through — it is a good concept, that last slide — to go, ‘These are all the impact triggers; you will need to look at that in how you assess’. Because it is really up to the proponent in any case, whether it is private or public. They are the ones that do all the work and they have got the designs and the impacts, and then come forward with a proposal that says, ‘Here’s what we’re proposing; here’s our assessment of impacts at that point’. So we are not quite there.

Mr FINN — Okay, thank you. Particularly with the sky rail project we are speaking of, do you have any idea or any estimate at the moment of how many sites of Indigenous significance will be disturbed by the sky rail?

Mr FENNESSY — I think because we are still waiting for those assessments, I do not think we have any line of sight to that. I do not know if Paul or Christine — —

Mr HOUGH — At this point the design detail is not before us, and it is at the point of design and then at the point of construction that you have a full understanding of what the effects might be.

Mr FENNESSY — In a general sense what I can confirm is because a number of previous level crossing projects have come through already, and indeed when I think about the significant one we talked about — the Regional Rail Link project — in those cases there was certainly a very thorough approach to Aboriginal and non-Aboriginal cultural heritage approvals as well as flora/fauna, and in previous cases they were then worked through either the EES or Aboriginal cultural heritage legislation.

So they certainly come before us when those studies are done by proponents, and then we work through the legislation. The benefit of different pathways is either a specific trigger happens under the Aboriginal Cultural Heritage Act or it is through the broader EES framework. So it really does depend on where the project is and what the proponent studies find and then how they work with us to make sure that they are acquitting their legislative responsibilities.

Mr FINN — Mr Fennessy, has the department contributed to the business case for sky rail, and if so, would you be prepared to make available to this committee any contributions that you have made?

Mr FENNESSY — I think in that case we do not contribute to the business case, but we will look at the proponent’s proposal. That is certainly one that you could readily ask the proponent in terms of sharing that

business case, but our role, as you could imagine, is from a regulatory point of view to receive the information, not contribute to it.

Mr FINN — Right. Back to the Western Distributor, how long do you believe the EES will take on the western distributor?

Mr FENNESSY — In terms of the broader time frames, the Minister for Planning finalised the scoping requirements for the EES for the western distributor on 24 March 2016, so last month. In terms of considering public submissions, that is where we are at in the process now. Christine, I will ask you to comment on the general time frames which will be consistent with that framework we put up on the slides before.

Ms WYATT — As I said earlier, really the rest of this year would be the proponent completing the environment effects statement and then submitting that for authorisation for exhibition. Our understanding from the proponent is that we will not be expecting that til February 2017.

Mr FINN — So once that has been submitted, how long is that open for public discussion and consideration?

Ms WYATT — Standard practice for environment effects statements is generally six weeks. Thirty business days is really what we aim for, but we generally try and make sure that it is a six-week period so people have got time to participate. We also try and make sure we avoid Christmas and the early parts of January, because that is not helpful to anybody, really. That is why that period is looking towards early next year. Generally every EES is six weeks.

Mr FINN — Given the size of this project, would you consider extending that period?

Ms WYATT — I cannot comment at this point. In some cases that has been done. To some extent it depends on the proponent's activities for consultation, what they have done in that period of the environment effects statement, but it is a matter that could be requested to the Minister for Planning at that point.

Mr FINN — Thank you.

The CHAIR — Mr Fennessy, can you confirm that the signing of the contract for the sky rail is going to occur this week?

Mr FENNESSY — Sorry, Chair, can you repeat that?

The CHAIR — The signing of the contract for the project with Lend Lease?

Mr FENNESSY — So the signing of the Lend Lease contract?

The CHAIR — Yes.

Mr FENNESSY — Sorry, Chair, I am not sure which — —

The CHAIR — For the sky rail proposal.

Mr FENNESSY — For sky rail, sorry. In terms of the commercial and procurement arrangements, we do not have line of sight to that, so we will wait for any information from the Level Crossings Authority. Correct me if I am wrong, but that would be a question for Kevin Devlin or Richard Bolt, because we very consciously take a role away from the project commercial and business decisions.

The CHAIR — With regard to impact assessments on noise and diesel fumes of sky rail, do you have any reports into that at all?

Mr FENNESSY — We do not have the reports yet, because that process is still being worked through by the proponent. In terms of noise and fumes et cetera, I referred earlier in the presentation to projects like Regional Rail Link. As part of that assessment process, the noise standards were updated for Victorian rail projects. We do not have any information on how it relates to this particular proposal that has not come to us yet, but we certainly have a very clear framework within which to assess that. We would work very closely with the EPA, and the proponent would be submitting to us work that the EPA would consider.

Similar on air emissions, there are many examples in Victoria in our infrastructure history around air quality standards and ventilation around major projects, whether they would be rail and road — road tunnels in particular will put these issues to government over the years. We also work within the National Framework for the National Air Standards that Paul Smith and others in the department work on in conjunction with the commonwealth government. Really we have got the framework for air quality and noise quality — or noise issues — and then we wait for the particular proposal to come in so we can assess against those.

The CHAIR — My concern would just be that there has been speculation around the traps that the contract will be signed this week for sky rail, and, as you have said, you have not received any detail of the assessments about diesel fumes, about potential noise impacts on residents. I will just say that that is of concern to me if the contract is signed without having those reports made available to the appropriate planning authorities.

With regard to advice — and there is obviously a lot of advice that moves about — I would assume that there is obviously advice that has been made available from the department to the proponents of the sky rail proposal to ensure that they go through the appropriate planning processes. You spoke about the triggers that you will have notified the proponent of. Would you be able to make available that advice that you have given to the proponents of the sky rail?

Mr FENNESSY — In general terms, we will certainly work with any proponent, including level crossings, on what they need to do to get through those planning processes when we are involved in that. Christine, did you want to add any detail to that?

Ms WYATT — Only that the department has not provided formal advice as such. We do work with the proponents on a daily basis really providing that more general advice to them as to the sorts of triggers, the nature of the studies, the consultation they might need to consider. The Level Crossings Authority, as I said, are still going through that process themselves.

The CHAIR — Whether it be formal or informal advice, I would certainly be very keen to see that advice that has been provided to the proponent of the sky rail project. I think it is something that might help inform the work of this committee. Would that be made available to us?

Mr FENNESSY — We will make sure we review what our formal or informal interactions are so that we can assist the committee.

The CHAIR — On the topic of advice, obviously there will have been advice being provided to the minister as well as the appropriate planning processes to go through with regard to the sky rail and indeed the western distributor project as well. Would you be able to make that available to the committee?

Mr FENNESSY — We will review the formal and informal and in a sense take that on notice but of course get back to the committee and advise you on that.

The CHAIR — Thank you, Mr Fennessy. I appreciate that. Ms Hartland, did you have further?

Ms HARTLAND — I do, and this is again regarding the western distributor. The air quality currently around Francis Street is, the local community and I believe, quite poor. The monitoring station is on Hansen Reserve, which is some 3 kilometres away from that area. It is in a park; it is not on any major road. There obviously needs to be a baseline for air quality for Francis Street currently. What does the department do to establish that baseline and then monitor the air if this project goes ahead, during construction and afterwards? Because there are major concerns, especially as there appears to be no truck curfew in the area so trucks will not necessarily use the western distributor, so people will still have the same volume of trucks on Hyde Street and on Francis Street.

Mr FENNESSY — In response to that question there certainly are parts of Melbourne that are subject to air quality monitoring, and that is something done by the EPA, whether that relates to road or transport infrastructure or landfill and so on. To give a more specific response, I might ask Don or Paul to comment.

Mr SMITH — Francis Street, as you know, has a long history in air quality concerns, and there is a very active local community there. So the matter that you have raised is principally an EPA matter, as the environmental regulator, and they regulate under the Environment Protection Act and the state environment

protection policies in respect of air and noise. I understand that this afternoon you will have the CEO, Nial Finegan, from the EPA before the committee.

The siting of the air quality station is principally a matter for the EPA. They will have baseline information on all of their sites across Melbourne. In the event that the EPA determines that potentially as a condition there is a subsequent relocation or a new site that needs to be put in place to monitor air quality, then I am sure that they will take that step. But that is principally a matter for the EPA.

Ms HARTLAND — I am not actually sure that the EPA will bother, but the issue is: how is that going to affect the EES if you do not actually have a baseline of what is currently occurring because the air monitor is almost 3 kilometres away from the site? How does that affect what you put into the EES and what you are looking for in terms of air quality standard?

Mr SMITH — The baseline information for the assessment is a matter for the proponent. The EPA will no doubt be providing that information as ambient air quality baseline data for any proponent would be provided, and that would then be a matter for the proponent to bring to the department and to the environmental regulator to deem whether or not that is a sufficient baseline for that particular project.

Ms HARTLAND — So then in reality the EES could be quite flawed if it does not have good information around air quality and air monitoring.

Mr HOUGH — Air quality is certainly an issue for a number of recent EESs. One of them is on the development of Big Hill at Stawell. The EPA have an active interest in it. The assessment guidelines require the assessment of air quality, and I have no doubt, based on past practice, that EPA will have views about the adequacy or not of that material. So with the assessment process that it is going through now, it is the proponent's responsibility to make the case. The document that is exhibited will outline what the results are, and on past practices EPA would make a submission to an inquiry.

Ms HARTLAND — So the fact that the current air monitor is almost 3.5 kilometres away from the site that will be affected by the western distributor will be of absolutely no concern or will not be regarded in the EES?

Mr HOUGH — No. It is the proponent's responsibility to address that issue of the distance. So if it is not applicable, they need to present evidence that gives the ambient concentrations at the location. If it is applicable, it will need to make the case.

Ms TIERNEY — I have a number of questions, but given the time I will submit three questions to you in writing.

Mr FENNESSY — Thank you.

The CHAIR — Fabulous. There may be some other questions from other committee members as well that we will pass to you in written form and look forward to a response. If there are no further questions, thank you very much for your attendance here this morning. We look forward to seeing a response to those questions on notice.

Mr FENNESSY — Thanks, Chair. Thanks, committee members.

Witnesses withdrew.