

### **3 Presentation of officer reports**

#### **3.1 Adoption of Council submission to the North East Link Environment Protection and Biodiversity Conservation Act Public Environment Report**

##### **Abstract**

This report seeks Council endorsement of the submission (Attachment 1) to the Australian Government Environment Protection and Biodiversity Conservation Act (the Act or EPBC) Public Environment Report (PER) for the North East Link (NEL).

The EPBC provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage sites. It also provides approvals for work on Commonwealth land. Under the Act, a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of national environmental significance (MNES) or other matters protected (OMP) without approval from the Minister for the Environment (the Minister).

The following three listed threatened species and migratory species, MNES, known to occur in Boroondara are at risk from the project:

- River Swamp Wallaby-grass.
- Swift Parrot.
- Australasian Bittern.

Submissions on the PER were due on 30 May 2019 following a 30 day exhibition period of the PER documents. In Boroondara the PER was on display at the Balwyn and Camberwell libraries, as well as the Greythorn library lounge.

The submission is a joint submission on behalf of Boroondara, Banyule and Whitehorse Councils. The submission includes an overarching document commenting on the key themes and issues common to all councils along with separate council specific attachments. It was provided to the North East Link Project by the 30 May 2019 deadline. The submission noted it had not received Council endorsement and an endorsed submission would be provided following the 17 June 2019 Special Council Meeting.

The submission (Attachment 1) contends the NEL should not be approved by the Minister. It notes the project will cause unnecessary, unacceptable and irreversible effects on MNES and the environment on Commonwealth land that are not justified by the alleged benefits of the project.

## Officers' recommendation

That Council resolve to:

1. Endorse the submission (Attachment 1) to the Australian Government Environment Protection and Biodiversity Conservation Act (the Act or EPBC) Public Environment Report (PER) for the North East Link (NEL).
2. Make the submission available to the community on the Boroondara website.
3. Notify the following stakeholders in writing of the Council resolution:
  - i. Prime Minister of Australia, the Hon Scott Morrison, MP.
  - ii. The Australian Minister for the Environment, the Hon Sussan Ley, MP.
  - iii. Premier of Victoria, the Hon Daniel Andrews, MP.
  - iv. The Victorian Minister for Transport Infrastructure, the Hon Jacinta Allan, MP.
  - v. The Victorian Minister for Roads, the Hon Jaala Pulford, MP.
  - vi. The Victorian Minister for Planning, the Hon Richard Wynne, MP.
  - vii. Member for Kew, Mr Tim Smith, MLA.
  - viii. Member for Hawthorn, Mr John Kennedy, MLA.
  - ix. Member for Burwood, Mr Will Fowles, MLA.
  - x. Member for Box Hill, Mr Paul Hamer, MLA.
  - xi. RUANELA community group.
  - xii. Koonung Creek Reserve Balwyn North Preservation Group.

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**Responsible director: Carolyn Terry**  
**Acting Director Environment and Infrastructure**

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## 1. Purpose

The purpose of this report is to seek endorsement of the Council submission (Attachment 1) to the Australian Government Environment Protection and Biodiversity Conservation Act (the Act or EPBC) Public Environment Report (PER) for the North East Link (NEL).

## 2. Policy implications and relevance to community plan and council plan

This report is consistent with the Council Plan 2017-21 and the Boroondara Community Plan 2017-27, in particular the following themes, strategic objectives and Council strategies:

- Community Plan theme: The Environment
  - Strategic Objective 3: Our natural environment is healthy and sustainable for future generations
- Urban Biodiversity Strategy 2013-2023

## 3. Background

The North East Link (NEL) is currently being assessed via a Public Environment Report (PER) under the Australian Government's Environment Protection and Biodiversity Conservation Act (the Act or EPBC). The draft PER is the second opportunity for Council to comment on the EPBC related matters associated with the NEL.

This EPBC assessment is in addition to the Victorian Government's Environment Effects Act assessment process, the Environment Effects Statement (EES).

The draft PER was on public exhibition for 30 business days from 16 April 2019 to 30 May 2019. The two volume PER and associated appendices on flora and fauna, groundwater, surface water and Commonwealth land were displayed at the Balwyn and Camberwell libraries, as well as the Greythorn library lounge.

Submissions on the NEL PER were due by 5pm, 30 May 2019.

Consistent with the preparation of Council's submission on the EES, Maddocks prepared a joint submission on the draft PER on behalf of Boroondara, Banyule and Whitehorse Councils. The submission includes an overarching document commenting on the key themes and issues common to all councils along with separate council specific attachments. This submission was provided to the North East Link Project by the 30 May 2019 deadline, noting it had not received Council endorsement and an endorsed submission would be provided following the 17 June 2019 Special Council Meeting.

NELP will review the feedback provided in all submissions to the draft PER and prepare the final PER for assessment, consideration and decision for approval or otherwise by the Minister for the Environment (the Minister). The Minister is the Hon Sussan Ley, MP.

#### **4. Outline of key issues/options**

The Act is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage sites. It also provides approvals for work on Commonwealth land.

Under the Act, a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of national environmental significance (MNES) or other matters protected (OMP) without approval from the Minister.

Of the nine MNES, the following two are relevant to the NEL:

- Listed threatened species and ecological communities.
- Migratory species.

Of the two OMP, one is relevant to the NEL:

- The environment, where actions proposed are on, or will affect Commonwealth land and the environment.

There are three listed threatened species and migratory species, MNES, known to exist in or near Boroondara that are at risk from the project:

- River Swamp Wallaby-grass.
- Swift Parrot.
- Australasian Bittern.

The OMP under threat from the NEL is the Simpson Barracks in Banyule.

The submission (Attachment 1) contends the NEL should not be approved by the Minister and notes:

- The project will cause unnecessary, unacceptable and irreversible effects on MNES and the environment on Commonwealth land that are not justified by the alleged benefits of the project.
- The project is contrary to the principles of ecologically sustainable development (ESD) and contrary to the objectives of the Act.

Importantly, the submission (Attachment 1) notes the position of the three Councils, Boroondara, Banyule and Whitehorse, will be more fully articulated at the Inquiry and Advisory Committee (IAC) convened for the Victorian Government EES process.

#### **5. Consultation/communication**

Throughout the life of the NEL project Council and officers have completed consultation with the community. This consultation continues through 2019 and includes regular communication with community groups and residents.

The submission (Attachment 1) has been prepared with the support of Boroondara officers through an internal working group, a number of external experts and legal team.

## 6. Financial and resource implications

There are no financial or resource implications associated with this report beyond the 2018/19 and 2019/20 priority project budgets.

## 7. Governance issues

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

## 8. Social and environmental issues

The social and environmental issues associated with this report and the submission to the EPBC draft PER are generally positive.

The submission (Attachment 1) contends the NEL should not be approved for various environmental reasons. Should the Minister decide in our favour, the social and community wellbeing benefits are significant in that the project will not proceed and the anticipated negative impacts on Boroondara will not be experienced.

**Manager:** Jim Hondrakis, Traffic & Transport

**Report officer:** Clare Davey, Senior Coordinator Transport Advocacy  
Andrea Lomdahl, Senior Transport Planner