Cabinet Secretariat Reference	
Submission No.	BERC 189
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Submission to: **Budget Expenditure Review Committee**

Submission Title: **East West Link – Payment Mechanism RFP Addendum and Public Sector Comparator**

Portfolio/s: **Roads, Public Transport**

SUBMISSION PROPOSAL

Recommendation:

That the Budget Expenditure Review Committee (**BERC**):

1. **Approve** the Payment Mechanism Addendum to the Request for Proposal (**RFP**) for the East West Link Stage One (**Project**) for release to shortlisted respondents.
2. **Approve** the Public Sector Comparator (**PSC**) for the Public Private Partnership (**PPP**) delivery of the Project **noting** that on 4 December 2013, the Major and State Significant Projects Committee (**MSSPC**) approved:
   a. the delivery of the Hoddle Street Interchange bridge works (**HSI bridge works**) as part of the main project PPP, rather than as early works, meaning that these costs have been reclassified from State costs to the PSC; and
   b. that a report back to MSSPC will be provided in February 2014 on the viability of delivery of new lane configurations at the Mount Alexander Road/Flemington Road intersection as early works. If MSSPC determines in February 2014 that these works should be delivered early, the cost of these works will need to be reclassified from the PSC to State costs.
3. **Note** the PSC and State costs are able to be delivered within the existing approved budget for the Project.
4. **Note** that a separate submission will be made to BERC to re-profile certain State costs over the forward estimates period as part of the usual state budget process in February 2014.

Objectives:

1. To approve the Payment Mechanism Addendum to the RFP for the Project.
2. To approve the PSC for the Project.
3. To provide an update on the acquisition of the Evo apartments.

<u>Key Issues</u>:

Background

1. On 22 October 2013 MSSPC approved the release of the RFP to shortlisted respondents to take forward the PPP procurement of the Project noting that:
   a. the RFP was subject to final drafting and editing; and
   b. the payment mechanism and abatement regime would be released to shortlisted respondents as an addendum and be subject to BERC approval.
2. At that meeting, MSSPC delegated approval of the final RFP (subject to no material changes being made) to the Treasurer and the Minister for Roads.
3. The Minister for Roads approved the final RFP on 29 October 2013 and the Treasurer approved the final RFP on 30 October 2013. The final RFP was noted by MSSPC on 25 November 2013.
4. At its meeting on 21 October 2013, BERC noted the PSC and requested a report back on the final PSC once the payment mechanism and abatement regime for the Project had been finalised. This report back was required to ensure the PSC provided a "like for like" financial benchmark against which to evaluate PPP proposals and to ensure the PSC is consistent with the performance standards required of Project Co under the payment mechanism.

Payment Mechanism RFP Addendum

5. The Project is being delivered as an "availability" PPP project under *Partnerships Victoria* Guidelines.
6. Given that it is the only other "availability" road PPP in Australia, the payment mechanism has been substantially based on Peninsula Link. However, the mechanism has been adapted to reflect the following distinguishing features of the Project:
   a. the existence of a toll revenue stream (intended to be held by the State at least until traffic volumes are proven) which will be affected if the road is unavailable at any time; and
   b. its nature (being largely in tunnel) and location at the heart of Melbourne's freeway network and the integral role it will play in the broader road network.
7. Under the payment mechanism, Project Co will be paid a base quarterly service payment (**QSP**). The base QSP will comprise a capital component, an operations and maintenance component, a lifecycle component and a Project Co cost component. The amount of each component, and the extent to which they are indexed, will be bid by each shortlisted respondent in their Proposal.
8. The base QSP is then subject to abatement for any:
   a. unavailability of any lane on the carriageway or ramps of the freeway; and
   b. failure to meet other defined Key Performance Indicators (**KPIs**).
9. For unavailability, the abatement calculated is the greater of:
   a. the number of affected vehicles multiplied by a defined dollar amount per vehicle

(CPI linked) for each of three vehicle categories (cars, Light Commercial Vehicles and Heavy Commercial Vehicles); and

b. a defined minimum unavailability abatement value (CPI linked).

10. Relief from unavailability abatement is provided:

a. if the road is unavailable at specific times of the day (for example, between the hours of 2am and 6am on a Sunday);

b. where Project Co clears incidents within defined rectification periods (generally 20 minutes);

c. for limited periods of forecast major lifecycle maintenance; and

d. for a limited number of other events (within the State's control or in respect of which the State has retained the risk under the Project Agreement. For example, if the State/VicRoads orders a closure).

11. A failure to meet KPIs will result in the accumulation of performance points. Each performance point attracts an abatement of a defined dollar amount (CPI indexed). KPIs address issues such as:

a. safety;

b. incident detection and response;

c. intelligent transport systems and communications;

d. environmental matters;

e. maintenance; and

f. reporting.

12. The three main differences between the above mechanism and that which applies to Peninsula Link are:

a. less relief from unavailability abatement for the Project compared to Peninsula Link which was a partly urban / partly rural freeway. This is because the implications of the unavailability are more significant given its location at the heart of Melbourne's freeway network;

b. the sizing of unavailability abatements. In Peninsula Link, the abatements for unavailability were measured by reference to closures of sections of the road irrespective of the number of vehicles affected by the unavailability of the road. By contrast, the unavailability abatement on East West Link will be calculated by reference to the number of vehicles affected by the unavailability (in order to align Project Co's financial incentives with the State's objectives as recipient of the toll revenue stream); and

c. the inclusion of additional KPIs compared to Peninsula Link as a result of the project's nature (being largely in tunnel), its location at the heart of Melbourne's freeway network and Project Co's responsibilities for incident detection and response on the Eastern Freeway.

13. Further details of the payment mechanism and abatement regime are presented in **Attachment A**.

14. The Payment Mechanism RFP Addendum will be tabled at the BERC meeting.

Public Sector Comparator

15. At its meeting on 21 October 2013 BERC noted:
    a. the PSC; and
    b. that the PSC is able to be delivered within the existing approved budget for the Project.
16. No changes to the PSC have been identified as a result of completion of the Payment Mechanism Addendum. The PSC noted by BERC in October is considered adequate to meet the performance standards required under the payment mechanism.
17. However, $5 million (nominal) has been reclassified from the PSC to State costs for State delivery of the relocation of sporting facilities in Royal Park (previously assumed to be partially achieved via Project Co's reinstatement works in Royal Park). This has reduced the net present cost of the PSC by $5 million.
18. It is also noted that on 4 December 2013 MSSPC approved:
    a. the delivery of the HSI bridge works as part of the PPP rather than early works (excluding the replacement shared user overpass above the Eastern Freeway between Hoddle Street and Merri Creek which is still to be delivered as early works); and
    b. that a report back to MSSPC will be provided in February 2014 on the viability of delivery of new lane configurations at the Mount Alexander Road/Flemington Road intersection as early works. If MSSPC determines in February 2014 that these works should be delivered early, the cost of these works will need to be reclassified from the PSC to State costs.
19. As a result $97 million (nominal) for the HSI bridge works has been reclassified from State costs to the PSC, increasing the net present cost of the PSC by $87 million. Note that $10 million (nominal) is provided for in State costs for the replacement of the shared user overpass as early works.
20. When combined with the costs of Stage One works which are being delivered outside the PPP (such as the Eastern Freeway upgrade and Public Transport upgrades/Urban Renewal) and other State costs, the PSC is able to be delivered within the existing approved budget for the Project.
21. A final report for the Project's Public Sector Comparator, reflecting MSSPCs decisions on 4 December 2013 will be tabled at the BERC meeting.
22. A separate submission will be made to BERC to re-profile certain State costs over the forward estimates period as part of the usual state budget process in February 2014

Evo apartments

23. The information presented to BERC on 21 October 2013 included an identified State cost of $155 million for land acquisition and compensation costs for the Evo apartment building ($120 million) and other adjacent properties within the Manningham Triangle ($35 million) which was noted by Major and State Significant Projects Committee (**MSSPC**) in August 2013 (but not budget funded at the time).

24. The Linking Melbourne Authority (**LMA**) has now acquired all 175 apartments in the Evo complex and the total forecast cost of purchase is $96 million (a saving in the amount previously allowed for the Evo apartment acquisitions of $24 million, nominal). The total forecast expenditure on the Evo complex reported to MSSPC on 25 November 2013 has been reduced from $99.6 million to $96 million after a ruling was obtained from the State Revenue Office confirming LMA is not required to pay stamp duty on the acquisition of the Evo apartments.
25. Discussions regarding the treatment of the adjacent properties within the Manningham triangle are ongoing and have been the subject of a separate submission to MSSPC.

Risks:

1. The timeframes associated with the procurement process are very tight. Any delay in approving the payment mechanism and its release to Shortlisted Respondents introduces the risk that Shortlisted Respondents will require additional time to prepare their Proposals and (as a consequence) increases risks to meeting the State's preferred procurement timelines for achieving contract close for the Project.

Support/Criticism:

1. The East West Link Project has received both support and criticism from stakeholders, particularly in relation to the potential for direct access to the central city, potential surface impacts and investment opportunities in alternate priority projects.
2. The new Commonwealth Government has indicated its public support for the Project.

Terry Mulder, MP
Minister for Roads
Minister for Public Transport

Date:

FUNDING

Financial Implication Tables

[please only include relevant financial information and delete tables where appropriate]

REVENUE IMPACT	Departmental Estimate				
	2013-14 $m	2014-15 $m	2015-16 $m	2016-17 $m	2017-18 $m
Revenue Impact[1]					
- Taxes	0.000	0.000	0.000	0.000	0.000
- Reg. fees/charges	0.000	0.000	0.000	0.000	0.000
- other revenue[2]	0.000	0.000	0.000	0.000	0.000
- other sources[3]	0.000	0.000	0.000	0.000	0.000
Additional Revenue [4]	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**

Note[1]: As per 'Revenue from ordinary activities', statement of financial performance table in Budget paper No 4.
Note[2]: Other revenue includes resources received free of charge, sale of goods and services and other revenue and revenue from other parties.
Note[3]: Other sources include general-purpose Commonwealth grants.
Note[4]: Additional revenue included in this table should be viewed as benefit paid to the Consolidated Fund.

APPROPRIATION IMPACT	Departmental Estimate				
	2013-14 $m	2014-15 $m	2015-16 $m	2016-17 $m	2017-18 $m
Impact on Department's operating cost	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**
Less offsets from:	0.000	0.000	0.000	0.000	0.000
- internal reprioritisation/existing funds					
- revenue retained[5]	0.000	0.000	0.000	0.000	0.000
Net additional appropriation required by the Department.	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**

Note[5]: Benefit retained by Department to offset cost, as per the revenue retention agreement. This may include Commonwealth Specific Purpose Payments.

ASSET INVESTMENT	Departmental Estimate					
	2013-14 $m	2014-15 $m	2015-16 $m	2016-17 $m	2017-18 $m	TEI $m
Total asset cost[6]	0.000	0.000	0.000	0.000	0.000	0.000
Less: funding from other sources[7]	0.000	0.000	0.000	0.000	0.000	0.000
Net funding to Department	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**

Note[6]: This should only include the capital costs. The associated recurrent costs (if any) should be identified in the 'operating impact' table, where typically the recurrent costs would include, depreciation and CAC.
Note[7]: This includes trust funds such as BRV, RIDF, CSF and asset sales.

FUNDING ALREADY IN DEPARTMENT'S BASE						
	Departmental Estimate					
	2013-14 $m	2014-15 $m	2015-16 $m	2016-17 $m	2017-18 $m	TEI $m
Funding already in Department's base[8]	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**	**0.000**

Note[8]: Explanation to be included regarding what figures are being referred to (i.e. the amount appropriated to the output or the amount within an output associated with a specific project or program, existing TEI should be identified for asset proposals).

DTF and the Department have agreed the financial implications and costings in this submission:

☑ **Yes** ☐ **No**

IMPACT ASSESSMENTS

Social Impacts:

1. Enhanced transport networks, for both private vehicles and public transport, will facilitate improved mobility and access for all.
2. Potential negative impacts from construction activity, changed traffic conditions and changed urban form and will be considered and mitigated as part of the project.

Family Impacts:

1. The Project will create benefits for families through improved access to jobs and services.
2. The project will impact families whose properties are required for acquisition. Impacts are mitigated under the terms of the Land Acquisition and Compensation Act (1986).

Regional and Rural Victorian Impacts:

1. The Project will provide more transport options and improved access to the Port of Melbourne in support of rural and regional economies.

Economic Impacts:

1. Enhancing the transport network will assist supply chain efficiency, business to business interaction and improve the competitiveness of the Victorian economy.
2. Improved freight network capacity and efficiency will contribute to State productivity.
3. Significant construction activity will support the Victorian economy during project delivery.

Regulatory burden, offsetting reductions and evaluation strategy:

Does the submission propose an increase in regulatory burden on the business or not-for-profit sectors that is likely to be ‘material’ as defined in the Victorian Regulatory Change Measurement (RCM) Manual?

☐ **Yes** ☑ **No**

Environmental Impacts:

1. The Project will achieve a number of outcomes, such as smoother traffic flow, improved access to employment and housing and more efficient public transport that will create a positive environmental outcome.

2. The project will be developed in a manner that seeks to minimise any potential negative environmental impacts of construction, operation and traffic use.

<u>Charter of Human Rights and Responsibilities Act 2006 Impacts</u>:

1. The process will be managed to take account of relevant obligations and ensure that any recommendations to government are consistent with relevant responsibilities.