

# *Partnerships Victoria* Project Summary

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## The Peninsula Link Project



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Prepared by  
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in conjunction with  
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## Foreword

Peninsula Link is a key part of the \$38 billion Victorian Transport Plan (VTP) and is one of the first in a pipeline of Projects aimed at supporting the State's economic growth, reducing congestion, improving safety on our road network and linking communities. It is being delivered under the *Partnerships Victoria* framework.

*Partnerships Victoria* is part of the Victorian Government's strategy for providing better services to all by expanding and improving public infrastructure. The *Partnerships Victoria* framework is designed to utilise private sector expertise in designing, financing, building and maintaining infrastructure projects. The *Partnerships Victoria* framework consists of the National PPP Policy and Guidelines and Supplementary *Partnerships Victoria* Requirements. Further information on the *Partnerships Victoria* framework is available at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au).

Twenty *Partnerships Victoria* projects have been contracted with a total value of approximately \$10.25 billion in capital investment since 2000.

This Project Summary is divided into two parts. The first provides a broad overview of the Project, including the rationale for undertaking it under the *Partnerships Victoria* framework, a summary of the tender process, the value for money outcome, the public interest considerations and the timetable for the Project. The second focuses in more detail on the key commercial features of the Project, including the main parties and their general obligations, the broad allocation of risk between the public and private sectors and the treatment of various key project issues.

NB: This summary should not be relied on as a complete description of the rights and obligations of the parties to the project and is not intended for use as a substitute for the contract. The Peninsula Link Project Deed is available at [www.contracts.vic.gov.au](http://www.contracts.vic.gov.au)

# Part One: Project Overview

## 1.1 Peninsula Link Project

### The Project

Peninsula Link will be a 27 kilometre freeway standard road which will significantly reduce congestion on key traffic routes in Frankston and the Mornington Peninsula, particularly during peak periods. It will also avoid eight signalised intersections and five roundabouts on the Frankston Freeway and Moorooduc Highway.

When Peninsula Link is open, a full trip between the EastLink-Frankston Freeway interchange at Carrum Downs and the Mornington Peninsula Freeway at Mount Martha will take around 17 minutes, a saving of up to 40 minutes.

Linking Melbourne Authority (LMA), a Statutory Authority, will manage the delivery of Peninsula Link.

### The Site

The Peninsula Link alignment is generally within a planning scheme reservation with the exception of two deviations, at the Pines Flora and Fauna Reserve (where the alignment remains on Crown Land) and Tuerong Road (where the alignment is on private property but does not impact property improvements). The approved route is outlined in figure 1.1 below.

Figure 1.1 –Project Alignment



## ***Project Objectives***

The following project objectives were established at the outset of the procurement process. The contracted offering by Southern Way maximises the achievement of all these objectives.

### ***Integrated transport network:***

Deliver a major integrated transport route serving the Frankston and Mornington Peninsula corridor in a safe and efficient manner by:

- Reducing travel times and improving travel time reliability.
- Improving freight and commercial vehicle access within the corridor.
- Reducing traffic congestion.
- Delivering the project, and related traffic information systems.
- Retaining flexibility for future enhancement of the Peninsula Link.
- Integrating the Project with the existing surrounding transport network.
- Providing flexibility to improve public transport services both within the Project and on the surrounding transport network.

### ***Environmental sustainability:***

Protect and, where possible, enhance the environment in relation to the Project whilst adhering to applicable government laws, guidelines and standards concerning environmental protection (including noise, water and air quality).

### ***Social amenity:***

Enhance the amenity of the project corridor through high quality urban design, noise attenuation solutions and socially sensitive construction and operations management.

### ***Value for money:***

Deliver value for money for the State and road users through innovative design, optimum risk allocation between the project parties and a whole of life approach to the design and operation of the road.

### ***Stakeholder management:***

To ensure transparent and efficient dealings with all parties associated with the project.

### ***Timeliness:***

To deliver a fully operational Peninsula Link as soon as practicable.

## ***1.2 Partnerships Victoria - A Public Private Partnership***

*Partnerships Victoria* is designed to capture the best of what Government does in delivering core government services, and combine this with the expertise the private sector has in designing, financing, building and maintaining infrastructure projects.

Through 2008 and early 2009, as part of a business case for the Project, an assessment of alternative procurement strategies for the delivery of Peninsula Link was undertaken which considered a range of procurement and funding options. The State funded Design and Construct (D&C) procurement option was used as the benchmark against which alternative procurement options were assessed.

Following a detailed assessment, the *Partnerships Victoria* Availability PPP option was selected by the State as the preferred procurement method for the Project as it was considered likely to offer greater value for money over the other options assessed.

Under this model the Project Company designs, builds, finances and operates the Project for an agreed period of time (taking a long term view) and the State makes payments to the Project Company based on road availability and performance against a set of Key Performance Indicators (KPIs). No charges are imposed on users of the road under this model. Several issues were considered to be key to the procurement decision and these are summarised below:

- **Risk management** – the extent to which the procurement option provides incentives to manage and reduce risks thereby minimising the overall cost to the State.
- **Value for money** – the extent to which the procurement option assists in maximising the State’s value for money through; minimising whole of life costs of the Project, optimising competitive tension, achieving appropriate risk allocation, maximising opportunities for design, construction and innovation, minimising State project development and tender costs and resources, minimising external development and tender costs.
- **Time to deliver** – the extent to which the procurement option assists in minimising the time to deliver the Project.
- **Market interest** – the extent to which the procurement option attracts a high level of participation from the market place, which is a function of market capacity relative to the size of the Project, success or otherwise of precedents (in Australia and overseas) and market players’ perceptions regarding the cost of the process and likelihood of success.
- **Scope changes** – the extent to which the procurement option assists the State in managing and implementing changes to the functional requirements of the Project.
- **Stakeholder management** – the extent to which the procurement option effectively manages the involvement in the Project of stakeholders, including road users, residents, community stakeholders, environmental stakeholders and Government stakeholders.

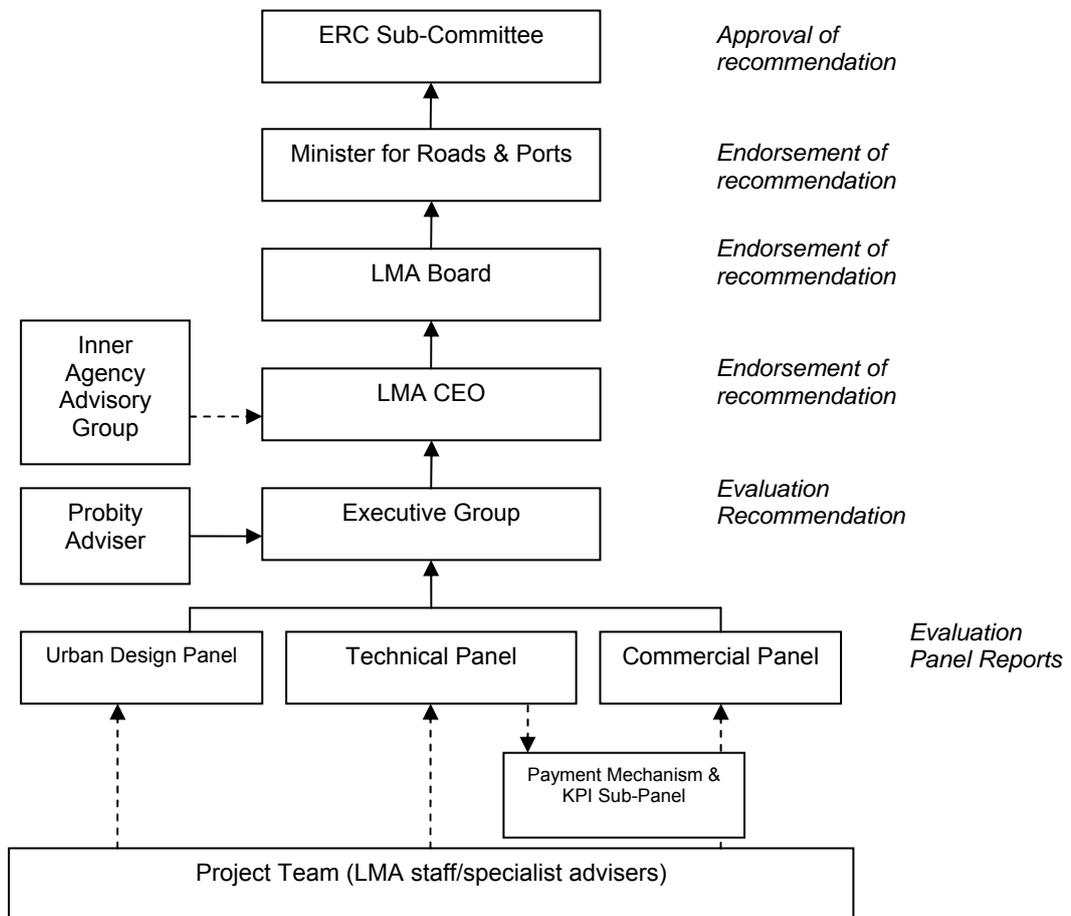
### 1.3 Tender Process

LMA conducted a competitive tender process to identify a private sector party to deliver the Project. The tender process was implemented in accordance with the *Partnerships Victoria* framework to ensure that the State received the best value for money outcome. The tender process involved inviting Expressions of Interest from the market, issuing of a Request for Proposal to three short-listed proponents, submission of proposals, an evaluation and clarification phase, and finalisation of contractual documentation. The short procurement time for the project was a major achievement. The key procurement milestones were as follows:

- 31 March 2009 Invitation for Expressions of Interest issued (five respondents)
- 24 June 2009 Request for Proposals issued (three short-listed)
- 20 October 2009 Bids submitted
- 9 November 2009 two bidders short-listed
- 7 December 2009 Final bids received
- 20 January 2010 Contract close
- 8 February 2010 Financial Close

Following evaluation of the final bids submitted on 7 December 2009, the Southern Way consortium (consisting of Abigroup, Bilfinger Berger and Royal Bank of Scotland) was selected as the Preferred Proponent. The key selection criteria used in the assessment of

proposals are presented in Appendix 4 of this Project Summary. The evaluation structure which applied during the evaluation is summarised below.



The RFP Evaluation was led by three evaluation panels; Commercial, Technical and Urban Design. These panels were assisted by LMA staff, specialist advisers and government departments as required. Each evaluation panel prepared an evaluation report for the Executive Group, which considered the overall merits of each proposal.

As a result of this process, the Southern Way proposal was found to offer the greatest value for money. The major advantages of the Southern Way proposal over the traditional D&C delivery include:

- A competitive risk adjusted whole-of life cost;
- Value for money outcomes in relation to future finance related risks;
- A strong funding and commercial solution; and
- Innovation in design and construction and earlier project completion.

The delivery cost of the Project consisting of Southern Way's construction costs and LMA's delivery costs is \$759 million (nominal). LMA's delivery cost includes land acquisition, implementation of certain EES and EPBC requirements and project management costs.

The tender process was undertaken within a robust probity framework, endorsed by the Project's probity auditor, based on the following probity objectives:

- fairness and impartiality;

- use of a competitive process;
- consistency and transparency of process;
- security and confidentiality;
- identification and resolution of conflicts of interest; and
- compliance with Government policies as they apply to tendering.

#### 1.4 Value for money

The Government's *Partnerships Victoria* framework seeks to identify and implement the most efficient form of infrastructure delivery. The concept of value for money goes beyond the selection of the cheapest solution, focusing on the overall value of each delivery option. This involves a careful analysis of both State managed delivery options and proposals from the private sector. The analysis considered quantifiable elements (i.e. items that can be quantified in dollar terms) as well as subjective or qualitative considerations.

#### *Public Sector Comparator (PSC)*

The PSC is an estimate of the risk-adjusted, whole-of-life cost of the Project if delivered by the State without the introduction of private finance. The PSC is developed according to the same output specifications included in the Project Brief and assumes the most likely and efficient form of conventional (i.e. non- *Partnerships Victoria*) delivery by the State.

The PSC is expressed in terms of the net present cost to the State, calculated by a discounted cash flow analysis and takes full account of the costs and risks that would be encountered by following that style of procurement. The PSC includes amounts to cover the design and construction costs, lifecycle asset replacement costs and the maintenance and facilities management costs during the 25 year operating phase of the Project.

The PSC excludes the State's project management and tender process costs. It is made up of a number of elements as indicated in Table 1 below:

**Table 1 - Public Sector Comparator**

Components of the Public Sector Comparator (PSC)	Net Present Cost (\$m)
Capital Costs	680
Lifecycle Asset Replacement Costs (25 years)	43
Operating Costs (25 years)	80
<b>Raw PSC</b>	<b>803</b>
Transferred Risks (Capital and Operating)	47
Competitive Neutrality	8
<b>PSC (excluding retained risk)</b>	<b>858</b>

**Notes:**

(a) All values are expressed in net present values as at 30 June 2009 and discounted at a nominal pre-tax discount rate of 6.20% per annum in accordance with the Infrastructure Australia guidance applying under the *Partnerships Victoria* framework.

(b) The transferred risk totalling \$47m million refers only to those capital and operating risks transferred to the private sector under the *Partnerships Victoria* arrangements (i.e. those risks that the State would otherwise assume).

(c) The competitive neutrality adjustment removes any net competitive advantages that accrue to a government business by virtue of its public ownership.

#### *Quantitative Value for Money*

To assess the quantitative value for money outcome of the Project, the net present cost of the service payments to be paid to Southern Way was compared with the net present cost of State based delivery. If the cost of the service payments to be paid to Southern Way was

lower than the cost of delivery by the State, it was an indication that, at face value, the bid represents value for money.

**Table 2 - Quantitative Value for money Comparison between Public Sector Delivery and Private Sector Delivery**

	Net Present Cost of Public Sector Delivery (\$m)	Net Present Cost of Southern Way's winning proposal (\$m)	Savings (\$m)	Savings (percentage)
	858	849	9	1%

**Notes:**

*In accordance with the Infrastructure Australia guidance that applies under the Partnerships Victoria framework, the PSC has been discounted at a nominal pre-tax discount rate of 6.20% per annum, and Southern Way's bid has been discounted at a nominal pre-tax discount rate of 8.69% per annum.*

*All values are expressed in net present values as at 30 June 2009.*

**1.5 Public interest considerations**

At various stages throughout the development of the Project, an assessment was made of the extent to which use of *Partnerships Victoria* delivery would satisfactorily protect the public interest. The analysis was undertaken in accordance with the *Partnership Victoria* guidance on how to evaluate whether a project meets the public interest.

At all stages, it was considered that, on balance, the public interest is being protected. The Project will make a wide range of services and facilities more accessible to user groups, and relate well to surrounding development land uses and landscapes. Peninsula Link will resolve road traffic issues in the corridor and cater for long term population and economic growth. The project being a 27 kilometre high standard, continuous, duplicated roadway in the existing road reserve meets the EES evaluation objectives and provides the greatest overall balance between social, environmental and economic outcomes.

Appendix 3 contains a summary of the final Public Interest Test.

## Part Two: Key commercial features

Part Two of the Project Summary outlines the contractual relationships between the parties involved in the Project, including the allocation of risks and obligations of both Southern Way and the State. In some areas, it provides more detail on the issues and topics discussed more generally in Part One.

### 2.1 Parties to the Project

On 20 January 2010, the State executed the Project Deed with Southern Way to design, construct and finance the Project and to operate and maintain the Project over a 25 year period. Financial close was subsequently achieved on 8 February 2010, whereby remaining contractual and funding arrangements were finalised between the State, Southern Way, its key subcontractors and debt/equity providers.

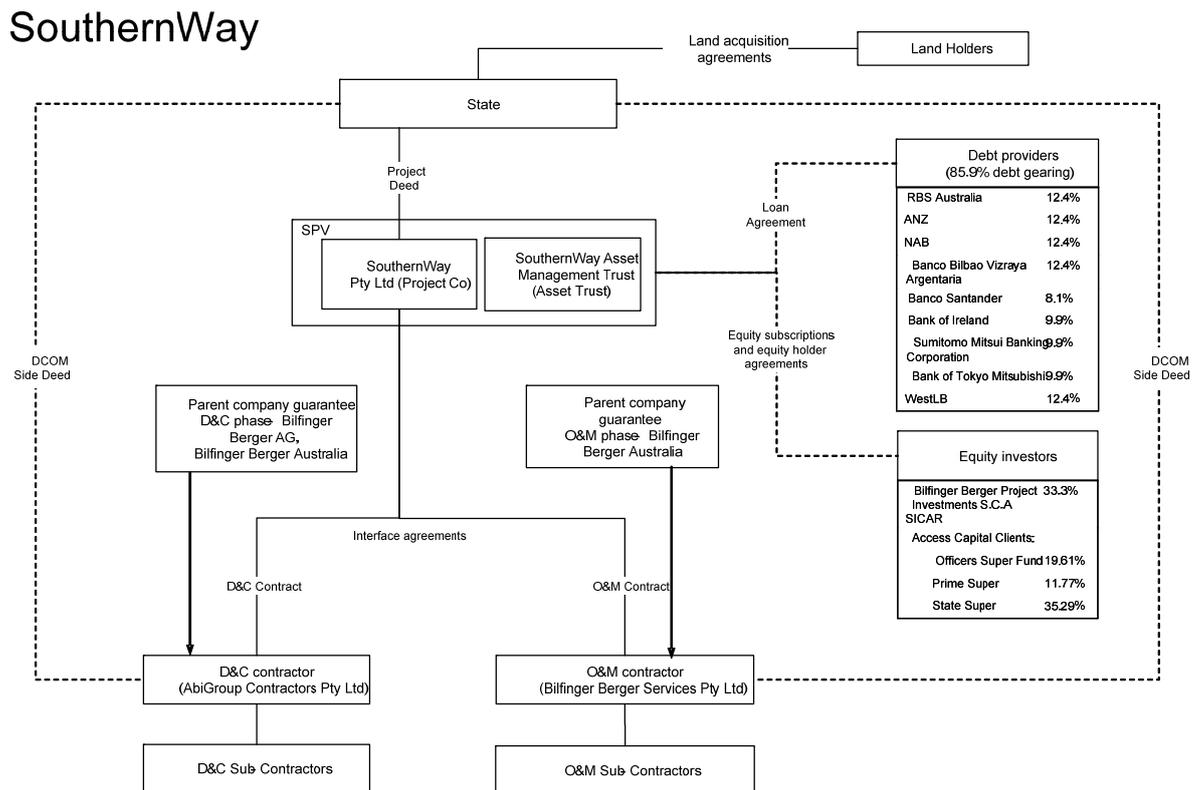
The relevant parties under the contractual arrangements are:

- **LMA:** The Southern and Eastern Integrated Transport Authority, which trades as the Linking Melbourne Authority (LMA) is the State Government authority which has responsibility for leading the delivery of the Project on behalf of the State.
- **The State of Victoria:** The State is the contracting entity for the Project and is a signatory to the Project Deed and other ancillary documents. The Minister for Roads and Ports executed these contracts on behalf of the State.
- **Southern Way:** Southern Way is the main contracting party with the State and has entered into a range of contractual relationships with its consortium partners to deliver elements of the Project. Southern Way will be ultimately responsible for project delivery, with its key subcontractors Abigroup Contractors Pty Ltd responsible for construction and Bilfinger Berger Services responsible for the operations and maintenance.
- **Equity Providers:** Bilfinger Berger Project Investments and Access Capital Clients will provide the equity required for the Project.
- **Debt Financiers:** Southern Way has arranged its project debt funding through the involvement of a number of financiers (including Royal Bank of Scotland, ANZ and National Australia Bank, Banco Bilbao Vizcaya Argentaria, Banco Santander, Bank of Ireland, Sumitomo Mitsui Banking Corporation, WestLB and Bank of Tokyo-Mitsubishi).
- **Construction Contractor:** Abigroup Contractors Ltd will design, construct and commission Peninsula Link on behalf of Southern Way.
- **O&M Contractor:** Bilfinger Berger Services (Australia) will operate and maintain the road for the 25 year term.
- **Independent Reviewer:** Linking Melbourne Authority and Southern Way have jointly engaged AECOM to act as the independent reviewer in respect of the Project.

### 2.2 Project contractual relationships

The relationship between the State, Southern Way and other related parties is detailed in the Project Deed and associated documentation. The structure and principal contracts required for the delivery of the Project are outlined in Figure 4.

Figure 4 - Contractual Structure



### 2.3 Risk transfer

The risk allocation of the Project Deed is consistent with the Infrastructure Australia Guidelines and *Partnerships Victoria* requirements. In *Partnerships Victoria* projects, the entity procuring the project seeks to draw upon the best available skills, knowledge and resources from either the private or public sectors, and to achieve the best value for money by allocating risks to the party best able to manage them. This process results in various risks being:

- retained by the public sector;
- transferred to the private sector; and/or
- shared between the contracting parties.

The Project Deed and associated documents establish the obligations of each party in managing these risks.

Table 4 - Risk Summary

The table below sets out the agreed allocation of the significant Project risks.

## Project Risk Allocation

Type of Risk	Description	State	Project Company	
<b>Site Risks</b>				
1.	Land acquisition - for land agreed at contractual close.	Risk of cost and delay associated with acquiring land identified at contractual close as required for the Project Company's design accepted by the State.	✓	
2.	Land acquisition – for DSE native vegetation policy purposes based on the design agreed at contractual close.  Appropriate reservations of the land required for the Project based on the design agreed at contractual close.	Risk of cost and delay associated with acquiring land required to meet the native vegetation policy objectives based on the design agreed at contractual close.  Risk of cost and delay if the required reservations of the land required for the Project based on the design agreed at contractual close cannot be obtained or are delayed.	✓	
3.	Approval required under the EPBC Act for the Project.	Risk of delay (beyond 30 November 2010) in obtaining approval under the EPBC Act.	✓	
4.	Legal challenges to any approval obtained under the EPBC Act, Project CHMP, Planning Scheme Amendment or Heritage Permit for the Project.	Risk of delay resulting from legal challenges to the EPBC approvals, Project CHMP, Planning Scheme Amendment or Heritage Permit.	✓	
5.	Native title claims.  Discovery of items of aboriginal heritage and artefacts at the site.	Risk of cost and delay if native title claims are made in respect of the Project site.  Risk of cost and delay resulting from discovery of items of aboriginal heritage and artefacts at the site.	✓	
6.	Contamination caused, contributed, disturbed or interfered with during the Project Term.	Risk of contamination occurring, or being interfered with, during the Project Term.		✓
7.	Pre-existing and migratory contamination.	Risk of pre-existing contamination which is not disturbed or interfered with by Project Company and migratory contamination.	✓	

Type of Risk	Description	State	Project Company	
<b>Design and Construction Risks</b>				
8.	Construction delays caused by <i>force majeure</i> .	Risk of delay caused by <i>force majeure</i> events which prevent construction milestones being met and the total cost being different from anticipated.	✓	✓
9.	Construction costs and delays caused by defined extension events.	Risk of cost and delay if caused by defined extension events that prevent construction milestones being met and the total cost being different from anticipated.	✓	✓
10.	State initiated variations to output specifications.	Risk of cost and delay where the State requests alterations to the output specification.	✓	
11.	Construction delays caused by inclement weather.	Risk of delay caused by inclement weather which prevent construction milestones being met and the total cost being different from anticipated.		✓
12.	Interface risk.	Risk associated with the interface between performing the Project Activities and any other works, infrastructure, Utility Infrastructure, plant, equipment or systems (including the Lathams Road Works).		✓
<b>Operating Risks</b>				
13.	Force majeure.	Risk that <i>force majeure</i> events affect the operations of the Project or the availability of the Project.	✓	✓
14.	Handover risk.	Risk that the asset will not be in the required condition at Handover.		✓
15.	Fitness for purpose.	Risk that the works, the Project Scope and Requirements, the Project Plans and the O&M Manuals will not be Fit for Purpose.		✓
16.	Traffic flow risk.	Risk that traffic flow, vehicle mix and volume (including Commercial Vehicle Volumes) on the Freeway is greater, less or otherwise different than estimated or stated in the Project Scope and	✓	

Type of Risk		Description	State	Project Company
		Requirements and has an impact on Project Company's operating costs.		
<b>Industrial Relations</b>				
17.	Industrial action targeted directly against the Project which results from certain acts or omissions of the State.	Risks of strikes, industrial action or civil commotion affecting construction or the operations of the Project which result from certain acts or omission of the State.	✓	
18.	Delays caused by industrial action other than industrial action resulting from an act or omission of the State.	Risk of delay caused by industrial action (other than that resulting from an act or omission of the State) which prevent construction milestones being met or the total cost being different from anticipated.		✓
<b>Other</b>				
19.	Changes in State policy or law directed specifically and exclusively at the Project.	Risk of additional cost or delay resulting from changes in State policy or law directed specifically and exclusively at the Project.	✓	
20.	Introduction of an Australian Emissions Trading Scheme.	Risk of additional cost or delay resulting from the introduction of an Australian Emissions Trading Scheme.	✓	
21.	Cost risk.	The actual cost of the Project or the performance of the Project Activities (both D&C Activities and O&M Activities) being greater than the cost estimated.		✓
22.	Time risk.	The time or period of performance of the Project Activities (both D&C Activities and O&M Activities) being greater than estimated.		✓
23.	Technical obsolescence.	Risk that technical obsolescence occurring in relation to any plant, equipment or systems used, or proposed to be used, in relation to the Project.		✓
24.	Law and Taxes (including change in Law and Taxes).	Risk of Laws or Taxes (or changes in Law or Taxes) affecting Project Company's rights, obligations or liability under the Project Documents (with the	✓	✓

Type of Risk		Description	State	Project Company
		exception of Project Specific Changes in Law or the introduction of an Australian Emissions Trading Scheme (noted above)).		
25.	Insurance risk.	Risk in the ability to obtain and maintain insurances required by the Project Deed, or the adequacy of those insurances.	✓	✓
26.	Finance risk.	Risks associated with the availability and cost of finance (except market disruption risk which the State shares in certain circumstances).		✓
27.	Utilities risk.	Risk associated with the existence, location and availability of Utility Infrastructure.		✓
28.	Damage caused to property during the Project Term.	Risk that property damage occurs during the Project Term.		✓

## 2.4 General obligations of Southern Way

In its simplest terms, Southern Way has contracted with the State to finance, design and build Peninsula Link and then operate and maintain the Project over the 25 year operating phase. The full array of Southern Way's obligations is contained in the Project Deed and ancillary contracts. Table 5 below summarises the obligations of Southern Way over the course of the Project.

**Table 5 – Summary of Key Southern Way Project obligations**

Project Element	Description
Design, construction, financing and commissioning	Responsible for all aspects of design, construction, finance and commissioning of Peninsula Link, including: <ul style="list-style-type: none"> <li>■ coordination and management of the design development process;</li> <li>■ liaising with all relevant government agencies and utilities providers and installation and maintenance works to ensure the provision of utility and external infrastructure to the site as required for the Project; and</li> <li>■ implementing an appropriate communications strategy, in conjunction with the Linking Melbourne Authority, to engage with the community and various stakeholder groups.</li> </ul>
Operations and Maintenance	Provision of the following services for Peninsula Link throughout the 25 year operating phase of the Project, in accordance with the performance standards specified in the Project Scope and Requirement standards specified and the Project Deed: <ul style="list-style-type: none"> <li>■ Operation and maintenance of the Freeway to a pre-agreed standard, including liaison and interface with other road network operators and performance levels relating to road and traffic management and traffic incident management;</li> </ul>

Project Element	Description
	<ul style="list-style-type: none"> <li>■ Provision of traffic management services, including proactive measures to manage traffic flows and performance, and the provision and use of intelligent traffic information systems to maximise road network efficiency, safety and user information; and</li> <li>■ Safety and environmental management, including adherence to applicable approvals, laws, guidelines and standards.</li> </ul>
Insurances	Southern Way is required to take out a range of insurances during both the design and construction and operating phases of the Project.
Finance	Procurement of necessary debt and equity to fund the delivery of the Project.
Hand-back	Undertake all necessary tasks to ensure that the Project assets and site are handed back to the State on expiry of the operating phase in the required conditions and in accordance with the end of term requirements set out in the Project Deed.

## 2.5 General obligations of the State

Under the terms of the Project Deed the State has retained certain obligations. The following is a summary of some of the key State obligations:

- acquire the necessary land to enable Southern Way to deliver the Project;
- establish and facilitate a community advisory group to seek to ensure stakeholder and community involvement in the Project;
- review and endorse design documentation and other material that will be submitted by Southern Way in accordance with the Project Deed; and
- make quarterly service payments to Southern Way during the operating phase of the Project (subject to any abatement that may apply if services are not delivered to the required standard).

## 2.6 Payment mechanism

The State is not required to make any quarterly service payment to Southern Way until the Freeway and other Project facilities have been certified as having been fully constructed in accordance with the requirements of the Project Deed.

During the operating phase, the State will make quarterly service payments to Southern Way in accordance with the payment mechanism set out in the Project Deed. This payment mechanism has been structured to establish financial incentives for Southern Way to deliver the service required, consistent with the underlying objective of the Project, to provide a safe and efficient road link to maximise traffic flow on the broader network.

As part of the payment mechanism an abatement regime applies to incentivise Southern Way to deliver the Project Scope and Requirements, and to compensate the State for below standard performance. In other words, there will be a reduction in the quarterly service payment made for road unavailability and performance breaches, including:

- Availability abatements, which are specified for each half hour of unavailability and are weighted according to the nature and severity of the unavailability (for instance in relation to the number of affected lanes, the length of the affected portion of the road and whether the event occurs during peak or off peak periods).

- Failure to meet required Key Performance Indicators (KPIs), which cover a range of O&M activities including those relating to emergency contact points, incident response, compliance with operational plans, maintenance inspections and works, reporting and environmental management.

Fixed dollar abatements (subject to escalation in line with the general quarterly service payment escalation) are defined for each KPI point incurred for non compliance and ratchet mechanisms apply for repeat or persistent poor performance.

Southern Way must monitor its performance against the requirements of the payment mechanism, with a duty to record all performance failures. This obligation is supported by audit rights for the State.

## **2.7 Finance arrangements**

### ***Initial financing***

Southern Way's financing for the Project comprises senior debt and equity as follows:

- senior debt comprises a capitalising construction facility which converts to a term loan on commencement of the operating phase, with a combined loan term of seven years from Financial Close; and
- equity provided by Bilfinger Berger Project Investments and clients of Access Capital Advisers.

The State and Southern Way's financiers hold a range of security over the Project's assets in order to secure their interests in the Project. The rights and priorities between these security interests are detailed in the Debt Finance Side Deed.

### ***Future refinancings***

Southern Way's debt will be refinanced during the Project term. In accordance with the Project Deed, the State is entitled to a specified share of future refinancing gains. The State is not exposed to any future refinancing losses: these will be borne by Southern Way. This was seen as a positive risk allocation outcome for the State, compared to other market positions taken during the global financial crisis period.

### ***Global Financial Crisis***

The State has retained limited and specific risks associated with the financing of the Project to address the possibility of there being significant adverse developments in the financial markets in the future which affect the debt funding of the Project.

These risks are of the following forms:

- Market disruption – The State retains the risk of increased interest rates payable on Project debt where market disruption causes the cost of funds for more than a specified percentage of senior debt to increase above market rates. However, equity bears the first portion of this risk up to a defined cap and the State has the right to recover any extra costs so incurred, from future refinancing gains.
- Hedge counterparties exercise rights to break hedge agreements – The State is obliged to provide liquidity support (as lender of last resort) in the event that any hedge counterparty exercises a right to break the long term swaps entered into at Financial Close and Southern Way is not able to fund the break costs incurred. Any such liquidity support must be repaid in full by Southern Way (with interest) prior to making any distributions to equity. Southern Way must also satisfy a series of conditions in relation to the circumstances of the swap being broken prior to being entitled to the State's liquidity support.

## **2.8 Modifications**

The State may propose a modification to the Project activities at any time during the Project term. This includes an ability to remove works or services from the Project scope. Under the modifications regime, Southern Way is required to provide an estimate of the cost impact of

any modification proposed by the State, in a manner which complies with the requirements of the Project Deed.

The State will pay for the modification either by way of a lump sum, milestone payments, or an adjustment to the quarterly service payment (if the modification is financed by Southern Way). To provide greater transparency and certainty regarding the cost of modifications, the Project Deed specifies a range of pre-agreed margins as being applicable.

Southern Way can propose a modification which does not adversely affect its ability to carry out the Project activities in accordance with the deed. The State may approve or reject Southern Way's proposed modification. Southern Way will bear all risks and costs associated with carrying out such a modification.

## **2.9 Proximate State Works**

The State may, at any time during the Project term, construct, operate, maintain or repair any road or other means of vehicle, public transport, pedestrian or bicycle access, or utility infrastructure under, on, above or adjacent to the Project land. This can include connections to the Project assets (including the Freeway). Where the State exercises these rights, it must compensate Southern Way for its net incremental costs arising from the proximate State works in accordance with the requirements of the Project Deed.

## **2.10 Default, step-in and termination regimes**

A breach of the Project Deed by Southern Way entitles the State to various remedies.

### ***Default***

Upon the occurrence of an event of default, Southern Way is generally required to provide a cure plan and diligently pursue a remedy within the timeframes specified in the Project Deed.

If Southern Way fails to diligently pursue remedy of the event of default, or fails to remedy the event of default within the required timeframe, it will generally give rise to a State right to terminate the Project Deed.

### ***Step-in***

If an event of default occurs, or an incident subsists which requires an urgent response to protect or repair the freeway, or Project activities are suspended following a force majeure event, the State can step-in. In stepping-in, the State temporarily assumes total or partial management and control of the Project activities and can take such steps as are necessary in the reasonable opinion of the State to perform the Project activities. During step-in the State has its costs reimbursed via a reduction in the quarterly service payment. Southern Way must recommence performance of its obligations under the Project Deed when the State steps out.

### ***Termination***

The Project Deed can be terminated under a number of scenarios. Where it is terminated before expiry of the 25 year operating phase, Southern Way may be entitled to a termination payment (depending on the reason for termination). The three types of termination payments set out in the Project Deed are summarised below:

- *Termination for convenience* - The State may terminate the Project Deed at any time by giving 90 days notice in writing to Southern Way. If the Project Deed is terminated for convenience, the State will pay Southern Way the termination for convenience payment. This amount is calculated as Southern Way's outstanding project debt, plus the greater of the expected or fair market value of Southern Way's equity, plus any other reasonable costs incurred by Southern Way as a result of the termination.
- *Termination for General Termination Event* - Where the Project Deed is terminated for force majeure, or the freeway is wholly or substantially damaged or destroyed upon the occurrence of an uninsurable risk, the State will pay Southern Way the termination for general termination event payment. This amount is calculated as Southern Way's outstanding project debt, less any insurance proceeds.

- *Termination for Southern Way default* – Where the Project Deed is terminated for Southern Way's default, the State will pay Southern Way the fair market value of the Project determined by an independent expert or as a result of a retender of the contract to the market. In either case, the State recovers its costs and if the calculation results in a negative number, it will be deemed to be zero.

## 2.11 Handover on expiry

Starting from three years prior to the expiry of the operating phase, Southern Way and the State will carry out periodic joint inspections of the freeway and the maintained off-freeway facilities to determine the maintenance and repair work required to achieve the asset condition required under the Project Deed at handover.

The estimated costs of carrying out those works will be progressively set aside in a handover account (or subject to a handover bond of that amount) and will be reimbursed by the State to Southern Way as the work is incurred. Within 60 days after the end of the operating phase, the State will give Southern Way a notice specifying matters requiring rectification and setting out the amount which the State considers it will spend to rectify those matters. Upon reaching an agreement, this amount will be a debt due and payable by Southern Way to the State.

At the end of the operating phase, the freeway and the maintained off-freeway facilities will revert to the State at no cost. Money remaining in the handover account will be paid by the State to Southern Way.

## 2.12 Current Version

This document may be updated from time to time. Please check the *Partnerships Victoria* website at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au) for the current edition.

## Glossary

The following abbreviations and definitions are used throughout the document.

Term	Meaning
Commercial Acceptance	The stage of the Project works where all the completion requirements set out in the Project Deed and all the completion criteria are certified to have been satisfied.
CPI	Consumer price index.
Design and Construct (D&C)	All things which the Southern Way is, or may be, required to carry out or do, in connection with the design and construction of the works or otherwise comply with its obligations under the State Project Documents with respect to work
DTF	Department of Treasury and Finance.
Financial Close	The date on which all the conditions precedent to the Project Deed were satisfied or waived, being 8 February 2010.
Operations and Maintenance (O&M)	Includes the operation, maintenance and repair of Peninsula Link and the maintenance and repair of the Maintained Off-Freeway Facilities.
Project Brief	The document issued to those parties short-listed during the Expressions of Interest phase of the Project and which identified the States requirements, including design principles, functional requirements, technical specifications, service specifications and equipment requirements.
LMA	Linking Melbourne Authority
Project	The <i>Partnerships Victoria</i> Peninsula Link Project.
Project Deed	The Deed of that name entered into between the State and Southern Way dated 20 January 2010 in relation to the

	Project.
Project Co	The private party entity that entered into the Project Deed and is responsible for delivering the Project (being Southern Way).
PSC	The Public Sector Comparator for the Project, being the risk-adjusted whole-of-life cost of delivering the same reference project if delivered traditionally by the State.

## Appendix 1: Useful references

- Project documentation, including the Project Deed, is available at [www.contracts.vic.gov.au](http://www.contracts.vic.gov.au)
- *Partnerships Victoria* policy guidance and project information, available at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au)
- Information regarding the project available on the Linking Melbourne Authority website at [www.linkingmelbourne.vic.gov.au](http://www.linkingmelbourne.vic.gov.au)
- The Department of Transport website at [www.transport.vic.gov.au](http://www.transport.vic.gov.au)

## **Appendix 2: Key contact details**

### **Linking Melbourne Authority**

Website: [www.linkingmelbourne.vic.gov.au](http://www.linkingmelbourne.vic.gov.au)  
Building 1, Level 1,  
Brandon Business Park  
540 Springvale Rd  
Glen Waverley Vic 3150

### ***Partnerships Victoria***

Website: [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au)  
Department of Treasury and Finance  
1 Treasury Place  
East Melbourne Vic 3002

### **Appendix 3: Public Interest Issues**

In accordance with *Partnerships Victoria* policy, the Public Interest Test has been re-examined prior to contract execution.

## Protecting the Public Interest - (contract execution confirmation)

Public interest element	Standard	Assessment
<p><b>Effectiveness</b></p> <p>Is the project effective in meeting government objectives?</p>	<p>The key government output/service delivery requirements for Peninsula Link are encompassed in the Peninsula Link Objectives as follows:</p> <ul style="list-style-type: none"> <li>• <b>Integrated, Safe and Efficient Transport Network:</b> to generate growth in economic activity and maximise economic benefits in the Frankston-Mornington Peninsula Corridor by the delivery of integrated, efficient, safe and reliable transport infrastructure and services for road users, public transport users, pedestrians and cyclists.</li> <li>• <b>Environmental Sustainability:</b> to protect and enhance the environment</li> <li>• <b>Social Amenity:</b> to enhance the amenity and desirability of the area.</li> <li>• <b>Value for money:</b> to achieve value for money in the development and operation of the transport network and services improvements over the life of the Project.</li> <li>• <b>Timeliness:</b> to secure the delivery of the Project in a timely fashion, in accordance with target dates and deadlines set by Ministers</li> </ul>	<ul style="list-style-type: none"> <li>• All output/service delivery requirements stated in the objectives are met by Peninsula Link.</li> <li>• The mechanisms to meet the outputs will be included as contractual obligations on the private sector for the design, construction, maintenance and operation of Peninsula Link.</li> <li>• If the outputs meet standards defined here, the project will be judged as effective.</li> <li>• The risk that the Project will not continuously meet the required outputs will be managed by including contractual provisions such as: <ul style="list-style-type: none"> <li>• Liquidated damages where construction does not meet agreed milestones</li> <li>• Performance based payments for service provision</li> <li>• Default regime based on performance</li> <li>• State step in rights</li> </ul> </li> <li>• The BCR is strong regardless of the method of delivery. Public benefits are expected to include: <ul style="list-style-type: none"> <li>• Time savings</li> <li>• Safety improvements</li> <li>• Improved economic activity</li> </ul> </li> </ul>

Protecting the Public Interest - (contract execution confirmation)		
Public interest element	Standard	Assessment
<p><b>Accountability and transparency</b></p> <p>Do the partnership arrangements ensure that:</p> <ul style="list-style-type: none"> <li>the community can be well-informed about the obligations of government and the private sector partner; and</li> <li>these can be over sighted by the Auditor-General.</li> </ul>	<p>The government's current policy on disclosure and transparency during both the bidding and negotiation stages and after contract signing was announced by the Premier on 11 October 2000, and is summarised below:</p> <ul style="list-style-type: none"> <li>Intellectual property of bidders and selection reports are protected from disclosure.</li> <li>Results of selection and contracts are disclosed except for trade secrets. Tendering and selection processes comply with the Probity Policy and Guidelines of the VGPB.</li> <li>The government is obliged to comply with all legal disclosure requirements and government obligations such as the <i>Freedom of Information Act 1982</i>, within normal statutory provisions.</li> <li>Disclosure of EOI and Project Brief documents in line with Premier's disclosure policy.</li> <li>The Auditor-General is entitled to oversee and review all material contracts involving the State, including tendering and selection processes. The Auditor-General reports findings publicly to the Parliament of Victoria, pursuant to the <i>Audit Act 1994</i>.</li> <li>Government policy now requires a clause be inserted into contracts with private providers such that the Auditor-General's has improved auditing powers over such contracts.</li> </ul>	<p>The standards for transparency and disclosure requirements of a legal or policy nature will be fully met by the Project. In particular:</p> <ul style="list-style-type: none"> <li>The VGPB has published updated probity guidelines contained within their "Policy for Conduct of Commercial Engagements (June 2006). This will be implemented for Peninsula Link as will other relevant developing policies in relation to probity.</li> <li>Probity of process has been over-sighted by an independent probity auditor / adviser.</li> <li>Project documents will be published, including the Invitation for EOI and the final contractual documentation subject to the confidentiality provisions of the <i>Freedom of Information Act 1982</i> and commercial confidentiality requirements.</li> <li>Government policy on the increased auditing powers of the Auditor-General in reviewing contracts with private providers will be implemented.</li> </ul>

**Protecting the Public Interest - (contract execution confirmation)**

Public interest element	Standard	Assessment
<p><b>Affected individuals and communities</b></p> <p>Have those affected been able to contribute effectively at the planning stages, and are their rights protected through fair appeals processes and other conflict resolution mechanisms?</p>	<ul style="list-style-type: none"> <li>• Consultation with the community formed an integral part of the EES preparation and the subsequent public inquiry.</li> <li>• The consultation process was guided by a Consultative Reference Group which was appointed by the Minister for Roads and Ports.</li> </ul> <p>The Consultative Committee represented a wide range of government, business and community interests including:</p> <p>Representatives of all local government in the corridor Frankston and Mornington Peninsula Shire Councils;</p> <p>Representatives of key governments departments and agencies (EPA, DoT, DSE, Parks Victoria, Melbourne Water and VicRoads);</p> <ul style="list-style-type: none"> <li>• Formal communication with affected property owners;</li> <li>• Six public displays prior to exhibition of the EES; and</li> <li>• EES public exhibition and subsequent public inquiry.</li> </ul>	<ul style="list-style-type: none"> <li>• Peninsula Link has been through a comprehensive planning process which culminated with the public exhibition of the EES in accordance with the Environment Effects Act 1978.</li> <li>• Once the Project is approved to proceed, a comprehensive Environment Management Plan will need to be developed prior to construction. This plan will build on the management measures proposed in the Environment Effect Statement, the independent Panel Inquiry report and the Minister for Planning Assessment Report.</li> <li>• A communication program is being developed to ensure on-going communication with interested groups through out the Project development and construction phases. (See Appendix O).</li> </ul>

Protecting the Public Interest - (contract execution confirmation)		
Public interest element	Standard	Assessment
<p><b>Equity</b></p> <p>Are there adequate arrangements to ensure that disadvantaged groups can effectively use the infrastructure or access the related services?</p>	<ul style="list-style-type: none"> <li>The disadvantaged groups who are expected to use the infrastructure and access the services are those with physical impairment (sight, hearing, motor functions), the aged, the frail, low income earners, new arrivals unfamiliar with the language or the system etc.</li> <li>The design of Peninsula Link will respect the principles of the <i>Disability Act 2006</i>, in particular the rights of persons with disabilities to receive services in a manner which least restricts their rights and opportunities, and will adopt disability access strategies wherever applicable to avoid discrimination in provision of goods, services, facilities and access to premises as required by the Disability Discrimination Act 1992 (Cth) ("DDA").</li> <li>revenue may be generated from third parties but will not involve individual user payments which significantly disadvantage low income earners</li> </ul>	<ul style="list-style-type: none"> <li>All disadvantaged groups using the new freeway will be catered for in line with existing DDA legislation, relevant codes and standards.</li> </ul>

Protecting the Public Interest - (contract execution confirmation)		
Public interest element	Standard	Assessment
<p><b>Public access</b></p> <p>Are there safeguards that ensure ongoing public access to essential infrastructure?</p>	<ul style="list-style-type: none"> <li>• Peninsula Link will be designed for continuous access for motorists except during times when essential maintenance of the facility may require temporary lane closures</li> <li>• For safety reasons public on foot will not be permitted on the freeway.</li> <li>• Public access across the freeway will be restricted to pedestrian overpasses/underpasses, footpaths on bridges and bike path.</li> <li>• Emergency services and public utilities with assets in the freeway reserve will have controlled access.</li> <li>• The State will have special access rights under contractual arrangements for use of the freeway for emergencies and for other legally required activities.</li> </ul>	<ul style="list-style-type: none"> <li>• All required and statutory public access will be provided, where it is safe to do so.</li> <li>• All relevant public transport access requirements will be implemented.</li> </ul>
<p><b>Consumer rights</b></p> <p>Does the project provide sufficient safeguards for service recipients, particularly those for whom government has a high level of duty of care, and/or the most vulnerable?</p>	<ul style="list-style-type: none"> <li>• Service recipients to whom government owes a high level of duty of care are children, seniors, low income earners, physically/mentally disabled, non-English speaking, overseas tourists, those not familiar with the transport system, etc.</li> <li>• In addition to the measures and standards set out under the heading of "Equity", (in particular the requirements of the DDA in relation to the provision of goods, services and facilities) services provided in conjunction with Peninsula Link will meet the requirements of the <i>Fair Trading Act 1999</i>, the <i>Trade Practices Act 1974</i> (Cth) and competition principles and will be subject to complaints procedures available under those Acts and the <i>Ombudsman Act, 1973</i></li> </ul>	<ul style="list-style-type: none"> <li>• The Project will meet all of the special needs and rights through adequate design, operation and maintenance.</li> <li>• Public transport on Peninsula Link will comply with all consumer rights requirements.</li> </ul>

Protecting the Public Interest - (contract execution confirmation)		
Public interest element	Standard	Assessment
<p><b>Security</b></p> <p>Does the project provide assurance that community health and safety will be secured?</p>	<ul style="list-style-type: none"> <li>The Project requires identification of all public health and safety standards required to be met in design, construction and operation / maintenance stages:</li> <li>The Project will comply with all applicable health and safety laws and regulations, including the <i>Occupational Health and Safety Act 2005</i>, the <i>Dangerous Goods Act 1985</i>, any relevant provisions of the <i>Environment Protection Act 1970</i> (including State Environment Protection Policies protecting human health and beneficial uses of the environment) and any conditions imposed as part of planning and/or environmental approvals and all measures recommended as a result of formal safety hazard assessments (including fire safety regulations and emergency response procedures)..</li> </ul>	<ul style="list-style-type: none"> <li>All identified and relevant health and safety standards will be included in Environment Management Plan for Peninsula Link.</li> <li>Contract specifications will require Peninsula Link to be designed built and maintained in order to meet relevant occupational health and safety requirements in full.</li> <li>An increased risk of a breach of community health and safety is likely to occur during construction and commissioning. Mitigation is planned as follows: <ul style="list-style-type: none"> <li>Construction standards will accord with best industry practice; and</li> <li>The public will be excluded from the construction site.</li> </ul> </li> </ul>

Protecting the Public Interest - (contract execution confirmation)		
Public interest element	Standard	Assessment
<p><b>Privacy</b></p> <p>Does the project provide adequate protection of users' rights to privacy?</p>	<ul style="list-style-type: none"> <li>The applicable privacy standards are set out in: <ul style="list-style-type: none"> <li><i>Privacy Act 1988</i> (Cth)</li> <li><i>Information Privacy Act 2000</i></li> <li><i>Surveillance Devices Act 1999</i></li> <li><i>Health Records Act 2001</i></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Closed circuit television systems will be operated to monitor traffic conditions on the freeway. This practice is in accordance with the <i>Surveillance Devices Act 1999</i>.</li> <li>Tracking devices and/or cameras may be used to determine usage of the freeway. This will be done in accordance with <i>Surveillance Devices Act 1999</i>,</li> <li>Any information collected through the use of these devices will be handled in accordance with the appropriate privacy principles contained in the <i>Privacy Act 1988</i> (Cth), the <i>Information Privacy Act 2000</i> and the <i>Health Records Act 2001</i>.</li> <li>Relevant privacy requirements will apply to public transport on the Peninsula Link.</li> </ul>

## Appendix 4: Project Brief Evaluation Criteria

The following criteria were used by LMA to critically evaluate proponent responses throughout the tender process.

### Technical Evaluation Criteria

The State evaluated each Proponent's technical proposal against the following criteria:

#### A) Technical solution

The key issues included:

- quality and effectiveness of the design concept in meeting the functional and performance obligations;
- certainty of whole of life asset performance in terms of functionality, efficiency and durability;
- quality of road, bicycle, public transport and pedestrian safety provisions;
- incorporation of appropriate engineering, architectural and landscape design;
- extent of innovation in all technical considerations;
- fitness for purpose; and
- compliance with approvals.

#### B) Project delivery proposal

The key issues included:

- the extent to which the proposal provides certainty of delivery of the assets in terms of time, cost and quality;
- the extent of disruption to the surrounding road and public transport network during construction;
- plans for continuous improvement during the Contract Term;
- the management structure proposed for the Project and the arrangements proposed to ensure Project Company is capable of and responsible for managing all aspects of the Project including establishing a collaborative relationship with the State;
- the capability within the design and construction team, and in particular the skills and experience of the Key People, proposed for the Project; and
- the strategy and commitment to retaining key senior personnel within Project Company and its principal contractors.

#### C) Urban design

The key issues included:

- integration of the urban design with the technical solution;
- quality of urban design elements; and
- the level of social amenity created by the Proposal.

#### D) Environmental Management

The key issues included:

- the proposed environmental management methodology;
- the resources, systems and process to be employed for environmental management;

- the recognition of Peninsula Link specific environmental issues and the strategies proposed to deal with those issues, particularly in the context of project decision making and outcomes; and
- certainty of environmental performance of the D&C Activities and O&M Activities.

#### **E) Community and Stakeholder Management**

The key issues included:

- the level of commitment and capability to establish and maintain a co-operative and responsive relationship with the community, stakeholders, affected landowners, agencies and authorities; and
- the level of commitment and capability to establish and maintain collaborative and effective working relationships with LMA.

#### **F) Safety and Industrial Relations Management**

The key issues included the systems and processes proposed to be employed throughout the D&C Phase and O&M Term.

#### **G) Land**

The key issues included:

- the extent and cost of additional land requested by the Proponent having regard to the extent of relevant powers and ownership which the State may have in relation to that land; and
- the extent of any additional land which may need to be acquired over and above that contemplated in the EES due to the Proponent's design, in order to meet the State's requirements under the Native Vegetation Management - A Framework for Action policy.

#### **H) Operation and Maintenance Proposal**

The key issues included:

- the commitment of Project Company to its role as a responsible road authority under the *Road Management Act 2004*;
- commitment to continuous monitoring and improvement of Peninsula Link during the O&M Term;
- commitment to minimising disruption to traffic during the O&M Term;
- commitment to ensuring appropriate maintenance standards;
- provision for appropriate planned O&M Activities;
- demonstrated commitment to asset management requirements;
- the methodology for monitoring and reporting compliance with availability and KPI obligations;
- demonstrated ability to operate the freeway including appropriate incident and hazard response arrangements; and
- certainty of whole of life asset performance including approach to achieving the required residual design life requirements.

#### **Commercial and Financial Evaluation Criteria**

The State evaluated each Proponent's commercial and financial proposal against the following criteria:

##### **A) Commercial solution**

Each Proponent's commercial solution including the legal and commercial relationships between:

- the Project sponsors, equity and debt providers; and
- Project Company, the D&C Contractor, the O&M Contractor and any other contractors (as appropriate).

The key issues included:

- the commercial substance, completeness, transparency and clarity of the terms of the agreements, term sheets and/or letters of commitment between Project Company, Project sponsors, equity providers and debt providers;
- the commercial substance, completeness, transparency and clarity of the terms of, and risk allocation under, the term sheets and/or letters of commitment between Project Company, the D&C Contractor, the O&M Contractor and all other relevant contractors (as appropriate);
- detailed strategy for ensuring the completion and execution of unconditional (other than upon the achievement of Financial Close) agreements between Project Company, the D&C Contractor, the O&M Contractor and all other relevant contractors (as appropriate) by Contract Close;
- certainty of all contractual arrangements;
- commercial relationships, risk allocations and strategies of each party to deliver its aspect of the Project and manage risk allocated to it;
- ownership and management intentions of the equity sponsors (particularly in light of the State's requirement for the same single point of responsibility to the State for all issues arising in relation to the Project over the Contract Term); and
- Project Company's legal structure, including any associated tax rulings and risk to the State.

### **B) Commercial departures**

The nature and extent of the proposed commercial departures from the State's preferred position as set out in the State Project Documents, including the extent to which the nature and extent of these departures impact on the ability to achieve Contract Close and Financial Close within the State's required timeframes.

The key issues included the:

- nature, extent, risk allocation and value for money impact of any proposed departures to the State Project Documents;
- level of commitment and confirmation from the Proponent and each relevant Proponent Group Member (particularly including each equity and debt provider) that the commercial positions are agreed;
- contractual execution risk including the risk of delay in achieving Contract Close and Financial Close; and
- extent to which the departures are legal or drafting changes which do not demonstrably improve value for the State.

### **C) Funding structure**

The appropriateness, competitiveness and flexibility of the funding structure as a whole.

The key issues included the:

- level of gearing and proportion of the various capital components within the structure;
- timing of the capital injections into the structure;
- pricing and other terms of the funding components;

- competitiveness and flexibility of the funding solution; and
- nature and extent of any financial exposures for the State under the proposed solution.

#### **D) Certainty of funding**

The certainty of the funding structure as evidenced by:

- the extent of exclusive debt and equity commitments demonstrated;
- the approvals obtained by all providers of debt, equity and other forms of finance; and
- the circumstances in which funding may be repriced or commitments may lapse (whether for Project-specific or financial market reasons).

The key issues included:

- the level, commitment and nature of debt and equity arrangements;
- the extent of development of associated documentation;
- the proposed structure for managing multiple financiers (where applicable);
- detailed strategy for securing a fully financed and unconditional Proposal by Contract Close (to the extent this may not be achieved at the Closing Time and Date) including for instance as the competitive field may narrow upon selection of a Preferred Proponent(s);
- the ability to deliver the Project within the State's required timeframes;
- the nature and extent of any State support required (whether direct or indirect, such as in relation to the allocation of finance-related risks under the draft Project Deed); and
- any uncertainty or risks to the State of the process to Financial Close, in terms of price, timelines, risk allocation and likelihood of achievement of all Conditions Precedent.

#### **E) Financial strength**

The financial strength of the parties that would contract with the State (or parties providing financial support for the parties that would contract with the State) for the Project.

The key issues included the:

- strength of equity and debt providers and the inter-relationships between these providers (based on information provided above);
- long term commitments of equity providers;
- strength of the D&C Contractor, O&M Contractor and other key subcontractors;
- nature and reputation of parties; and
- strength of credit enhancements and parent company guarantees.

#### **F) Financial robustness**

The robustness of the financial projections for the Project including a review of the assumptions for:

- construction costs;
- ongoing life cycle maintenance and refurbishment;
- operational costs;
- working capital;

- accounting treatment;
- taxation;
- insurance; and
- availability of capital allowances.

#### **G) Risk adjusted cost**

The whole of life, risk-adjusted cost of the Proposal taking into account the financial risk and consequences for the State of the Proposal as a whole.

### **Other Matters Evaluation Criteria**

#### **A) Commitment to the Victorian Industry Participation Policy (VIPP)**

The State evaluated the Proponent's VIPP commitments as detailed in the submitted VIPP Plan.

The key issues included:

- the level of involvement of local and regional suppliers and content (compared to overseas suppliers and content); and
- the extent to which any engagement of local and regional suppliers has been demonstrated to have economic benefits in the form of:
  - building local industry capability and participation;
  - creating and retaining local and regional jobs; and
  - boosting skills, knowledge and employment benefits of the local workforce (including through skills and technology transfer).

#### **B) Probity Investigations**

The State took into account any matters revealed as a result of its probity and security investigations in evaluating Proposals.

#### **C) Conflicts of Interest**

The State took into account the nature of any actual or perceived conflicts of interest and how effectively the Proponent has managed any such conflict during the Tender Process.

#### **D) Pre-Agreed Modifications**

In evaluating Pre-Agreed Modifications, the State considered:

- the value offered to the State by the Pre-Agreed Modification;
- the proposed benefits to the local community or the State; and
- the certainty and completeness of the solution offered by the Proponent.

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