



Stop North East Link Alliance

JOINT SUBMISSION NELP Urban Design and Landscape Plan and City of Boroondara – Koonung Creek Reserve Draft Concept Design



Koonung Creek Wetlands – Elgar Park, Mont Albert North likely to be completely destroyed by Eastern Freeway widening works

Submission Prepared by:

Stop NE Link Alliance

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Stop North East Link Alliance

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Acknowledgement to the late Ron Tandberg and 'The Age'

1. Introduction

Submitter details:

This Submission has been prepared by John Young on behalf of Stop North East Link Alliance.

Stop NE Link Alliance (SNELA) is a group of concerned local residents and affiliated environmental organisations including, Sustainable Cities, a joint arrangement between Friends of the Earth and the Public Transport Users Association; Friends of Banyule, Warringal Conservation Society, and Blackburn and District Tree Preservation Society.

Summary of our submission:

Our Submission discusses the Koonung Creek linear park and associated wetlands as a holistic ecosystem and not as separate areas within municipal boundaries which includes the municipalities of Whitehorse, Manningham and Boroondara.

Koonung Creek flows from Springvale Road to the Yarra River in the Freeway Public Golf Course in North Balwyn. Parkland generally exists on both sides of the Creek with much of this set aside as public open space when the original Eastern Freeway was extended from Doncaster Road through to Springvale Road.

There was considerable public opposition when the Freeway was extended from Doncaster Road to Springvale Road and beyond to Ringwood. It was only through the dedicated work of local environmental groups that the Mullum Mullum tunnels were constructed saving the Yarran Dheran Bushland Reserve and large areas of open space from destruction.

SNELA is opposed to the construction of the disastrous North East Link Freeway and the widening of the Eastern Freeway with the potential loss of at least 24,000 trees and the destruction of public parkland not to mention all of the other environmental and social problems that will eventuate.

We object to the potential loss of thousands of trees along kilometres of parkland on both sides of the Eastern Freeway essentially between Mitcham and Kew in order to widen the road and move the ineffective 'noise attenuation' barriers further out.

We also consider that the potential destruction of the Koonung Creek wetlands at Elgar Park, Mont Albert North, Balwyn North and Boronia Grove, Doncaster East to be morally indefensible.

We consider that NELP's tokenistic tree planting exercise should continue without further destruction of trees or parkland. In other words leave the linear park alone but enhance native vegetation in the area.

We also consider that as a minor *mea culpa* for the catastrophic damage that NELP has already done it should be forced to reinstate Koonung Creek as an above ground natural watercourse through the parkland connecting with existing wetland areas between Doncaster Road and Bulleen Road in North Balwyn.

The government should also direct NELP not to place any further sections of Koonung Creek in an underground barrel drain in line with *Melbourne Water's* far more enlightened environmental approach dating back decades.

2. Loss of Trees and Parkland as a Result of NE Link

SNELA have always considered that public parkland was sacrosanct and protected from infrastructure development by all tiers of government in recognition that scarce parkland once built on is lost forever. Clearly, the Andrews / Allan' Labour government does not hold this view especially in relation to linear parkland through which a watercourse flows. It was the easy option to plough through a creek valley as the government did with the original Eastern Freeway.

When Melbourne was first established in the 19th century many areas were set aside as large parks for recreation forming a ring of green space around the Hoddle Grid and central area. We are fortunate that our ancestors had such foresight and that these major parks have in large part been protected from insensitive development since those early days. (**Reference 1:** City of Melbourne - *Parks and gardens history*).

Contrast this with the present government's contempt for public open space. What right does the Andrews / Allan Labour government have to damage the environment in the north eastern suburbs of Melbourne? What right does NELP have to destroy thousands of trees including many canopy trees in our parks?

One only has to see the destruction that has already occurred along the front of the Simpson Barracks and Borlase Reserve in Yallambie plus the area surrounding the *Veneto Club* in Bulleen to understand that despite NELP's assurances once the bulldozers are let loose they are incapable of doing anything with sensitivity for our environment.

NELP have already shown that they cannot be trusted when it comes to tree loss with accusations of gross underestimates by an independent auditor. (**Reference 2:** "Tree chop underestimated by 80% on North East Link"; *The Age* 1 June 2021).

The Eastern Freeway between Doncaster Road and Ringwood should never have been constructed. The creek valley should have become a linear forest way and wildlife corridor.

We strongly object to the proposed placing of Koonung Creek in an underground barrel drain for up to 1.6 kilometres with the loss of the natural watercourse and surrounding parkland. This is something that *Melbourne Water* stopped doing to suburban creeks thirty plus years ago. It again shows the contempt the government and NELP have for the natural environment.

Koonung Creek from Doncaster Road to Bulleen Road already flows through an underground barrel drain beneath parkland. One wonders about the mentality of the freeway planners when the Eastern Freeway was constructed through this section of parkland? Why was the Balwyn North parkland not provided with a natural watercourse for the benefit of residents and park users? It seems our so called road 'planners' have learnt nothing.

Comments by Municipalities concerning potential loss of parkland at NE Link EES Inquiry held at the *Veneto Club* 2019:

A very comprehensive document prepared by *Maddocks Lawyers* (undated) was submitted to the NE Link EES Inquiry Panel by the combined Cities of Banyule, Boroondara and Whitehorse demonstrating that the municipalities were fully aware of the many negative effects of this appalling project.

The municipalities involved are to be commended on stating the obvious that there are more problems with this project than can be resolved by merely (in theory) 'alleviating traffic jams'.

Briefly the Submission (in relation to vegetation and open space loss) for the Inquiry prepared by *Maddocks Lawyers*, in relation to Whitehorse states, *inter alia*:

- “It is unacceptable that sections of the Koonung Creek are proposed to be undergrounded. Koonung Creek should not be piped underground and there should be no detrimental impacts to these significant wetlands. The social impact of tree removal is dismissed in the EES and shows a lack of appreciation that our community places on a green, leafy environment”.
- “Council strongly objects to the number of trees planned and at risk of removal within Whitehorse, particularly mature trees. Recommendation - Significant reduction in the number of trees to be removed is to be achieved and vegetation at Elgar Park to be classified as native vegetation not amenity plantings”.
- “Council does not approve the use of Elgar Park as a laydown area, due to the significant community impacts. Similar conditions apply to the proposed laydown area at Junction Road Reserve, Nunawading”.
- “The permanent loss of open space is a major concern for Council. The EES is dismissive of the significant social, environmental, visual and health impacts on our community from this loss of land”.

The other municipalities made similar comments in relation to their areas. (**Reference 3:** Maddocks Lawyers; *Submission on NE Link Project: EES* behalf of Banyule, Boroondara and Whitehorse City Councils).

3. Trees, the Environment and Public Health

Catastrophic climate change:

Daily we see news items in the media of disasters both in Australia and globally. All but a few remaining climate change deniers understand that the frequency and ferocity of natural disasters is increasing, seemingly exponentially.

We are heading for an existential crisis with regional conflict, famine, climate refugees and a host of other systemic climate risks looming. (**Reference 4: BREAKTHROUGH – Briefing Note**).

A United Nations Report in 2019 has found that around 1 million animal and plant species are now threatened with extinction, many within decades, more than ever before in human history. (**Reference 5: UN Intergovernmental Science – Policy Platform on Biodiversity and Ecosystem Services (IPBES)**).

We know that large trees are carbon sinks and that motor vehicle emissions are increasing in Australia and these contribute greenhouse gases to the atmosphere. In Australia, road transport emissions have grown more than any other sector, increasing nearly 60% since 1990 (Australian Government 2017).

In Australia, the transport sector is the third largest source of greenhouse gas emissions, with cars being responsible for about half of all transport emissions. (**Reference 6: Climate and Health Alliance: *Clearing the air – Transport decarbonisation and our health*; October 2023**)

Contrast this with the government's cavalier attitude to trees particularly large canopy trees in our parks adjacent to the Eastern Freeway and NE Link. The government knows the importance of trees in acting as carbon sinks and that motor vehicle emissions contribute to global warming yet conversely, they fully understand, but won't admit, that constructing freeways increases motor vehicle use and hence emissions. A double edged sword - less trees and more emissions!

Has the Victorian government, as part of a wealthy nation, forgotten its obligations to the global community to mitigate the impacts of the climate catastrophe?

How does the government's attitude to climate changing motor vehicle emissions and localised air pollution from motor vehicles and health impacts on residents near NE Link sit with previous Public Transport Minister and Minister for Roads and Road Safety Ben Carroll MP's Pledge to reduce transport sector emissions? The word hypocrisy springs to mind. (**Reference 7: CUTTING VICTORIA'S EMISSIONS 2021-2025 – Transport sector emissions reduction pledge**).

The Importance of Trees:

Dr Greg Moore of Melbourne University delivered an address, '*The Trees are Gone*' to a public demonstration, a '*Funeral for the Trees*' held by SNELA in Watsonia on 19 November 2022.

In his address Dr Moore spoke not only of the role that trees play in minimising climate change, flash flooding, wildlife habitat and the 'heat island effect' (to name a few), but extensively of the physical, mental and psychological benefits of trees in human longevity, better health, social and liveability benefits.

Dr Moore told us that research has shown that to maximise benefits provided by trees and their canopy cover, we should be aspiring to a canopy cover of at least 30% but this is threatened by the wholesale destruction of suburban houses and gardens by over development (*'moonscaping' – my emphasis*) allowing no space for any trees let alone canopy trees. There is also pressure for larger sports facilities to be built on existing parkland further eroding native vegetation and trees. (**Reference 8:** Moore, Greg - *The Trees Are Gone*, 19 November 2022).

The City of Whitehorse Draft *Urban Forest Strategy 2021-2031* is a very comprehensive document, with a clear understanding of all of the issues surrounding the protection and preservation of our local natural environment. The *Urban Forest Strategy* identifies many deficiencies in the measures to protect our trees particularly canopy trees across the municipality; (to which the writer and SNELA provided Submissions). (**Reference 9:** City of Whitehorse – Draft Urban Forest Strategy 2021 2031)

The *Urban Forest Strategy* recognises the importance of trees and parkland including as follows:

- Improved health and wellbeing
- Cooling and shading in summer
- Cleaner air and water
- Improved biodiversity
- Reduced flooding
- Places to explore, rest, unwind and rejuvenate

The Strategy also recognises the role of trees in carbon sequestration and the mitigation of climate change. It recognises that in light of the impending climate catastrophe tree planting must be of species tolerant to worsening conditions of heat and potential drought.

All this of course begs the question; why are Whitehorse and the other Councils so apathetic and accepting of the impending destruction of parkland in their municipalities?

Could this be because they were cajoled into secrecy by non-disclosure agreements with NELP when they dropped their joint legal action against the government in July 2020?

The Councils have accepted tokenistic crumbs such as playground and sports field upgrades, upgrades to cycle tracks and retention of facilities for an aero-modeller club and an archery club. This of course, all misses the point that they have a legally binding duty to protect the health and wellbeing of residents in their respective jurisdictions.

4. Legislation Relating to Public Health and Wellbeing, Flora and Fauna and Environment Protection

In 1946 the World Health Organization defined health “as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

Originally public health legislation did not consider ‘wellbeing’, (refer *Public Health Act 1958 VIC*). Times have changed and there is increasing recognition of the aspects of social and mental wellbeing and that this is properly covered by appropriate legislation.

The following comments relate to some of the relevant legislation. SNELA believes that the government and the local municipalities are potentially in breach of the *Public Health and Wellbeing Act 2008* and the *Environment Protection Act 1970* which they are required to both enforce and comply with.

Public Health and Wellbeing Act 2008

In relation to the municipalities:

- Section 24 requires Council’s *inter alia* to seek to protect, improve and promote public health and wellbeing within the municipal district by— (a) creating an environment which supports the health of members of the local community and strengthens the capacity of the community and individuals to achieve better health.
- Section 26 refers to municipal public health and wellbeing plans:

Inter alia, (1) a Council must, in consultation with the Secretary, prepare a municipal public health and wellbeing plan within the period of 12 months after each general election of the Council.

(2) A municipal public health and wellbeing plan must— (a) include an examination of data about health status and health determinants in the municipal district; (b) identify goals and strategies based on available evidence for creating a local community in which people can achieve maximum health and wellbeing;

It follows that the municipalities must consider the mental and social well being of residents at least in relation to the loss of parkland, trees and other amenities in the area of the proposed Eastern Freeway works. The Councils should also consider the health impacts of increased air and noise pollution on residents in the vicinity as SNELA has previously requested.

Not taking action renders the municipalities liable for a breach of the Act for avoidance of their Duty of Care to residents.

Nuisances:

- Section 58 refers to ‘Nuisances’ a concept applying to British public health acts dating back to the 19th Century:
 - (1) This Division applies to nuisances which are, or are liable to be, dangerous to health or offensive.
 - (2) Without limiting the generality of subsection (1), this Division applies in particular to nuisances arising from or constituted by any— *inter alia* (e) noise or emission; or (f) state, condition or activity; or (g) other matter or thing— which is, or is liable to be, dangerous to health or offensive.

(3) For the purpose of determining whether a nuisance arising from or constituted by any matter or thing referred to in subsection (2) is, or is liable to be, dangerous to health or offensive— (a) regard must not be had to the number of persons affected or that may be affected; and (b) regard may be had to the degree of offensiveness.

In our view and in line with modern thinking of the risks to mental health in the workplace and the broader community it follows that the World Health Organisation definition of Health includes 'mental health and welfare' and 'social well being' and thus the definition of a 'Nuisance' applies under section 58.

Contrary to assertions by the City of Whitehorse CEO in previous correspondence to the undersigned a 'Nuisance' does not have to be occurring before Council can take action.

Flora and Fauna Guarantee Act 1988

Section 6 -*Inter alia*, this Act shall bind the Crown. There are a number of endangered species of birds and plants in the area of the proposed NE Link works.

Environment Protection Act 1970 (now 2017)

Section 1G - Principle of shared responsibility (1) Protection of the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.

Section 2 - Application of Act (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Transport Integration Act 2010

Division 2 requires that transport systems meet a number of ethical, social, economic and environmental objectives. It is contended that these requirements have been ignored by the government in its haste to build NE Link.

5. Recommendations

Recommendation 1

SNELA's opinion has always been that the NE Link project should be abandoned completely. The negative effects including from the destruction of trees and parkland far outweigh the positive effects. Freeways do not solve traffic problems and become congested as soon as they are constructed shifting traffic jams elsewhere.

Recommendation 2

SNELA is opposed to the widening of the Eastern Freeway with the potential loss of thousands of trees and the destruction of public parkland. We oppose the widening of the Eastern Freeway at any point where sound barrier walls will be demolished and shifted outwards into parkland.

We do not accept that there is any need to encroach on parkland along the Koonung Creek linear park.

Recommendation 3

SNELA insists that the municipalities make more effort in relation to the Koonung Creek wetlands outlined in this Submission and that they are protected.

Recommendation 4

SNELA opposes any further barrel draining of Koonung Creek and NELP should be required, where feasible to reinstate those sections of the creek already placed underground into a surface landscaped watercourse.

Recommendation 5

We recommend that NELP should be required to construct an open landscaped watercourse in the parkland between Doncaster Road and Bulleen Road, North Balwyn thus connecting Koonung Creek to the wetlands already established i.e. replace the underground drain.

Recommendation 6

If there is any loss of parkland along the linear park the municipalities must insist that all loss of parkland and trees is offset at NELP's expense within their municipalities preferably in a substantial urban forest park with green corridors to the relevant Council's satisfaction.

Recommendation 7

NELP has displayed signs in the Elgar Park area trumpeting how they are going to be planting trees without any mention of the damage that they intend causing. NELP should be required to continue with their tree planting programme even if they are, hopefully, prevented from relocating the sound barriers.

This concludes the submission.

John Young GradDipEnvSc, MOHS, FRSPH, ChFAIHS, ChOHSP

PHOTOGRAPHS



Photograph 1: Walking track between Eastern Freeway & rear of houses on Douglas St., Blackburn North looking east. It is likely that the “noise barrier” will be moved much closer to the rear fences.



Photograph 2: Walking track between Eastern Freeway and rear of houses on Douglas Street, Blackburn North looking east. Refer also photograph 1



Photograph 3: Park near Koonung Road, Blackburn North looking west. Freeway “noise barriers” are on the right.



Photograph 4: Koonung Creek wetlands on the north side of the Eastern Freeway via footbridge from Blackburn North (Boronia Grove Reserve, Doncaster East, City of Manningham)



Photograph 5: Koonung Creek Reserve Balwyn North. Preparations for park destruction (2021 – 2022)



Photograph 6: Walkway across Koonung Creek wetlands, Mont Albert North.



Photograph 7: View of Koonung Creek wetlands, Mont Albert North with pedestrian bridge over Eastern Freeway on the right



Photograph 8: View of Koonung Creek upstream of wetlands, Mont Albert North



Photograph 9: Hypocritical poster concerning tree planting programme with no mention of the thousands to be cut down or that the noise walls will drastically encroach further into public parkland. Near Valda Avenue, Mont Albert North



Photograph 10: Koonung Creek wetlands, Mont Albert North looking east



Photograph 11: Extensive wetlands near Wilburton Parade and Ventnor Street, Balwyn North



Photograph 12: As above looking east:



Photograph 13: As above looking east:



Photograph 14: Site compound near Kosciusko Road, Balwyn North with site sheds cynically labelled 'Eco Site'



Photograph 15: Sign displayed on site compound fence near Kosciusko Road, Balwyn North. Breathtaking hypocrisy shown here - “Site Investigations for Freeway Upgrades”. No mention of tree or wetlands loss or destruction of parkland!”



Photograph 16: Koonung Creek Park Reserve (i.e. Public Parkland) corner Viewpoint Road and Highview Road, Balwyn North



Photograph 17: Eastern Freeway traffic sewer at midday looking east towards Blackburn Road. Note reasonably well treed and landscaped road side, all to be presumably lost in a road widening concrete canyon similar to most other Melbourne freeways.

6. References

1. City of Melbourne: *Parks and gardens history* (accessed 21.10.23).
<https://www.melbourne.vic.gov.au/about-melbourne/melbourne-heritage/history/Pages/parks-gardens-history.aspx>
2. Ms Timna Jacks, *The Age* newspaper: *Tree chop underestimated by 80 per cent on North East Link* 1 June 2021
3. Maddocks Lawyers; *Submission on North East Link Project: Environment Effects Statement Works Approval Application and Draft Planning Scheme Amendment* on behalf of Banyule City Council, Boroondara City Council and Whitehorse City Council (undated)
4. BREAKTHROUGH – Briefing Note; National Centre for Climate Restoration: *What does Australia's first climate and security risk assessment say?* David Spratt, Melbourne, August 2023.
5. United Nations – Intergovernmental Science – Policy Platform on Biodiversity and Ecosystem Services 2019 (accessed 21.10.23)
<https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report>
6. Climate and Health Alliance: *Clearing the air – Transport decarbonisation and our health*; Professor Mark Stevenson *et al.*, October 2023).
7. CUTTING VICTORIA'S EMISSIONS 2021-2025 – *Transport sector emissions reduction pledge*. Department of Environment, Land, Water and Planning, May 2021
8. Dr Greg Moore: *The Trees Are Gone*, address to a SNELA public demonstration against NE Link, Watsonia, 19 November 2022.
9. Whitehorse City Council; *Draft Urban Forest Strategy 2021-2031* (undated)