

Planning and Environment Act 1987

Advisory Committee Report

Monash Planning Scheme

VCAT Application for Review P768/2014

Waverley Park Transmission Lines

17 February 2015

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Kathryn Mitchell, Chair



Michael Malouf, Member



Andrew Natoli, Member

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List of Abbreviations

AFL	Australia Football League (formerly Victorian Football League)
AusNet	AusNet Services (formerly known as SPI PowerNet Pty Ltd (SP AusNet))
DELWP	Department of Environment, Land, Water and Planning
DPCD	Department of Planning and Community Development (former)
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
EMF	Electro Magnetic Field
EPR	Earth Potential Rise
FEED	Front End Engineering and Design
kV	kilovolt
Mirvac	Mirvac Victoria Pty Ltd
The Act	<i>Planning and Environment Act 1987</i>
VCAT	Victoria Civil and Administrative Tribunal

Executive Summary

Waverley Park is located in Mulgrave in the City of Monash, approximately 23 kilometres east of the City of Melbourne. The site occupies approximately 80 hectares of land and was formerly a major Australia Football League stadium. In 2002, through Amendment C20 to the Monash Planning Scheme, the site was rezoned and a planning permit issued to redevelop the site for residential housing and associated facilities. When completed it is anticipated that the estate will accommodate approximately 1,250 to 1,300 dwellings, housing 4,000 people. The sole developer of the estate is Mirvac Victoria Pty Ltd.

A key feature of the estate is the retention of the former oval and much of the heritage listed Sir Kenneth Luke Grandstand, which remains an important focal point of the site.

Running east-west through the southern part of the site are existing above ground high voltage transmission lines of State significance. It was proposed that the transmission lines be placed underground as part of the approvals process for development of the estate in 2002 through condition 50 of the permit. While development of the estate now is almost complete, the high voltage transmission lines remain above ground and the easement on which it is located is largely derelict and in a very poor and unsightly condition.

Mirvac have sought to amend condition 50 of planning permit No STA/2001/000714 which states:

The existing powerline easement through the land must be removed and the high voltage electricity transmission lines must be placed underground in a location and via a route which is to be to the satisfaction of S.P.I. PowerNet Pty Ltd or the relevant electricity authority.

As Responsible Authority, the former Minister for Planning, Matthew Guy, refused the request from Mirvac to amend the condition. Mirvac appealed that refusal to the Victorian Civil and Administrative Tribunal, following which the then Minister for Planning called the matter in and appointed the Waverley Park Transmission Lines Advisory Committee pursuant to section 151 of the *Planning and Environment Act 1987* to provide advice on relevant matters associated with Mirvac's application to amend the permit condition.

The amendment to the permit proposes to retain the transmission lines above ground at Waverley Park, albeit in a modified and different form.

A public Hearing was held over seven days in December 2014 to consider this matter, with parties to the Hearing including the Minister for Planning through the Department of Transport, Planning and Local Infrastructure, Mirvac, Monash City Council, local residents and AusNet Services.

This matter has been a most challenging and difficult case to resolve. It is clear that a high proportion of residents bought in the Waverley Park Estate believing that the transmission lines would ultimately be placed underground. This was particularly so for those residents who bought from the early 2000s through to 2008.

At the time of Amendment C20, Mirvac did not support the condition as it was signed off by the former Minister and issued through the planning permit. Through that Hearing process, Mirvac requested that the permit condition retain some flexibility with regard to placing the transmission lines underground. The evidence and submissions, the considerable volume of

material presented by Mirvac and a sworn affidavit attest to this. Significantly, this position was not challenged by Council, the Department or any other objector.

Because of the nature of the process by which the original permit was considered and issued, Mirvac did not have any right of appeal or other recourse once it was issued. At the same time, it is clear to the Committee that Mirvac made considerable effort to comply with the condition to place the lines underground. This is evident by significant discussions with the relevant electricity provider and through early site work.

The dilemma for the Committee is balancing the genuinely held expectations of the community with the practicality of compliance.

Currently there are three transmission towers in the subject area, two on-site and one immediately adjacent to it. Undergrounding the power lines would require the building of two significant transition enclosures at either end of the estate, which in itself is a major infrastructure construction outcome.

The length of cable to be placed underground would be approximately 530 metres. Effectively, two on site towers would be replaced by two major transition enclosures. The net effect would be the removal of one tower and two spans of wires in the central area of the estate. If the transmission lines are placed underground there will be no tower in the centre of the easement corridor, however, the transition enclosures could create significant new visual amenity impacts for the two abutting residential precincts.

If left above ground, the existing infrastructure is proposed to be upgraded and replaced with three new, and taller poles, in slightly different locations.

From an economic perspective, the cost of placing the lines underground could be as high as \$60 million. This is an extremely significant cost and one which cannot be taken lightly. The Committee questions whether it is sustainable to expend that amount of money to achieve the limited and relatively localised visual amenity benefits.

Transmission lines are an integral part of urban infrastructure and are evident throughout the metropolitan area. In this case, they are over an easement and are not directly above or adjacent to residential development (unlike on the immediate south side of Jacksons Road).

While the Committee accepts that early residents bought into the estate with the understanding that the high voltage transmission lines would be placed underground and argue that they must be developed in this way, it is not uncommon that planning intents for an area can change, sometimes due to unforeseen circumstances. Planning intents and controls are not immutable, nor will they ever be.

A key determining factor in the matter is the quantum of open space that can be released if the transmission lines remain above ground, albeit in a different form. Due to the area required for the transition towers compared with a pole structure and the restrictions on the easement if they are placed underground, the development of Lake Park and the open space easement will result in a larger and more diverse public open space outcome. The above ground pole option would enable Mirvac to provide a substantial contribution to the upgrade and maintenance of all open space in the estate, and for further community improvements elsewhere in the municipality.

The questions which the Committee has considered and for which it has sought to achieve a balanced outcome include whether it is fair to the Waverley Park community that the

transmission lines remain above ground; whether it is fair for a different group of nearby residents to be exposed to new transition enclosures if the lines are placed underground; and whether it is fair to a larger group in the community to enforce a permit condition that has a major cost impact, when some of that money could be utilised in better ways.

AusNet Services was emphatic in stating that there is no reason at all for the transmission lines being placed underground, and that the 'do nothing' option is its preferred position. Indeed, AusNet Services advised the Committee that this situation has never occurred before and it considers the permit requirement to be most unusual.

The Monash Planning Scheme, which is a central document for the Committee's assessment, contains no mandatory requirements that the transmission lines within the Waverley Park Estate be placed underground as part of its redevelopment. Where the Monash Planning Scheme does refer to the potential benefits of the undergrounding option, it is only referred to as an 'opportunity' or an 'intent' reflecting the uncertainty which existed at the time the original planning permit was issued.

Importantly, any assumed benefits of the undergrounding option set out in the Monash Planning Scheme were predicated on what is now known to be an incorrect assumption, that the undergrounding option would remove the need for electrical infrastructure to be placed on the site. This is a particularly important consideration given that the undergrounding option would require a transition enclosure (and its associated infrastructure) to be placed on the site at the termination of what the Monash Planning Scheme identifies as a key 'heritage vista' between the Jacksons Road entry and the Sir Kenneth Luke Stand. The Committee has found the amendment application is consistent with the relevant objectives and policies of the Monash Planning Scheme.

On balance the Committee finds that, due to engineering issues, health, safety and risk factors, economics, visual amenity, and open space reasons, condition 50 of the permit should be amended to allow for the replacement of the existing transmission towers and lines with an above ground pole option.

The Committee finds that the underground option would provide for an improved sense of openness and visual amenity for residents situated within the central areas of the estate and users of Lake Park. However, it considers that this improved visual amenity would be relatively limited, and that many of the visual impacts which are alleviated would be redistributed to those areas nearer to the required transition enclosures.

Whilst the visual impacts are distributed differently under each scenario, the overall impacts of both the underground and above ground options are similar when taking into account the transition enclosures and the mitigating effects of landscaping over time. The Committee finds that proposed above ground option will provide significantly greater public open space opportunities than the underground cable option due to the additional area of open space which would be primarily delivered by not having to accommodate the two transition enclosures. This option also provides the opportunity to provide funding for open space improvements available only under the permit amendment process.

The Committee concludes that, based on superior engineering and enhanced health and safety grounds, the above ground model including steel poles instead of towers, and a realignment to follow the public open space corridor, as envisaged by the proposed amendment is the preferred option. In addition to this, it finds that what was presented to

the C20 Panel and what is now the latest underground solution are so significantly different in cost, scope, construction time and infrastructure risk, that it constitutes a significant a change in circumstances, and undergrounding is no longer feasible.

The above ground option is a more straight forward construction model which should facilitate a more efficient completion time. Further the easement conditions required by AusNet Services are less onerous which will result in greater useable open space.

On balance, the Committee considers that the modified above ground option will provide for a sustainable development outcome that will result in a greater net community benefit.

Based on the reasons set out in this Report, the Advisory Committee makes the following recommendations to the Minister for Planning:

- 1. That leave be granted to Mirvac to amend the application in accordance with the plans filed with the Tribunal on 14 July 2014 by substituting the application plans with the following:**
 - a) Waverley Park Subdivision Master Plan, Drawing No SD MP 01 [TL5] dated 14 June 2013.**
 - b) Waverley Park Proposed Power Line Plan, Drawing No TL-TP1100a, Revision D, dated 11 July 2014.**
 - c) 220kV Waverley Park Development, Drawing No 45M 270KNU, Revision A, dated 8 July 2014.**
 - d) 220kV Waverley Park Development, Drawing No 48M 160KNU, Revision A, dated 8 July 2014.**
 - e) Waverley Park Development 220KV Transmission Line Strain Twin Pole-Double Circuit, Drawing No 60327503-SHT-00-EL-1101, Revision A, dated 11 July 2014.**
 - f) Waverley Park Development 220KV Transmission Line Strain Twin Pole-Double Circuit, Drawing No 60327503-SHT-00-EL-1102, Revision A, dated 11 July 2014.**
- 2. That the permit amendment application be approved and Planning Permit No STA/2001/000714 be amended by substituting condition 50 with conditions 50, 51, 52, 53 and 54, as provided in Appendix D.**

PART A - BACKGROUND

1 Introduction

1.1 The Advisory Committee

The Waverley Park Transmission Lines Advisory Committee (the Committee) was appointed by the former Minister for Planning, Matthew Guy, on 27 October 2014 pursuant to section 151 of the *Planning and Environment Act 1987* (the Act) to consider a request by Mirvac Victoria Pty Ltd (Mircac) to amend condition 50 of planning permit No STA/2001/000714 to retain high voltage transmission lines above ground at Waverley Park, Mulgrave.

The former Minister for Planning (as Responsible Authority) issued a Refusal to Grant an amendment to the planning permit on 28 April 2014. Mircac lodged an application for review at the Victorian Civil and Administrative Tribunal (VCAT) of that decision (P768/2014) on 14 May 2014.

Planning permit STA/2001/000714 was signed and issued by former Minister for Planning, Mary Delahunty, as Responsible Authority on 14 August 2002. Condition 50 reads:

The existing powerline easement through the land must be removed and the high voltage electricity transmission lines must be placed underground in a location and via a route which is to be to the satisfaction of S.P.I. PowerNet Pty Ltd or the relevant electricity authority.

Former Minister Guy called this matter in from VCAT on 14 August 2014, pursuant to Clause 58 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*.

The Committee members appointed to consider this matter comprise Kathryn Mitchell (Chair), Michael Malouf and Andrew Natoli.

1.2 Terms of Reference

The Committee was provided with Terms of Reference (6 October 2014) to provide the context and framework of its review, a copy of which is provided at Appendix A.

The Terms of Reference note at Clause 3:

The purpose of the Advisory Committee is to consider matters raised in the Victorian Civil and Administrative Tribunal (VCAT) proceeding of Mirvac Victoria Pty Ltd v Minister for Planning and others (VCAT reference P768/2014) and to provide advice to the Minister for Planning on all relevant matters associated with Mirvac's application to amend Condition 50 of Planning Permit STA/2001/000714 to enable retention of the electricity transmission lines above ground at Waverley Park.

At Clause 16, the Terms of Reference note that the Advisory Committee may inform itself in any way it sees fit, and must consider all relevant matters, including but not limited to:

- a. *Relevant provisions of the Planning and Environment Act 1987 and the Monash Planning Scheme;*
- b. *All relevant material prepared by or for the applicant; and*
- c. *All material filed in VCAT in the proceeding P768/2014; and*

- d. *The views of Mirvac and Monash City Council; and*
- e. *The views of SP AusNet or any relevant electricity authority.*

The Terms of Reference note that the Committee is bound by the rules of natural justice and that it may regulate its own proceedings.

1.3 Hearings

A Directions Hearing was held in relation to the matter on Tuesday 18 November 2014.

At the Directions Hearing, the Committee tabled a number of matters which it sought a response from the relevant parties to assist in its consideration of the matter before it. These were formalised as Directions in the letter of the Committee to the parties on 19 November 2014. Mirvac provided a response to some of these matters on 28 November 2014, followed by a detailed Chronology of Events on 1 December 2014.

AusNet Services (AusNet) formerly known as SP PowerNet, did not request to be heard, but Committee considered that its advice on a number of matters would be pivotal to its deliberations. The Committee therefore wrote to AusNet, requesting that it attend the Hearing to respond to issues raised. To that end, the Committee compiled a list of issues that it sought a response on, and it sent this in the form of a letter to AusNet prior to its appearance on the final day of the Hearings (Hearing Document 24).

The Committee met in the offices of Planning Panels Victoria on 8, 9, 10, 11, 12, 15 and 17 December 2014 to hear submissions and evidence in respect of this matter. Those who presented to the Committee are listed in Table 1.

There are references to the Minister for Planning throughout this report. Two Ministers are referred to – former Minister Mary Delahunty who signed off on the original Amendment C20 to the Monash Planning Scheme and the permit that issued in 2002, and former Minister Matthew Guy who called the matter in from VCAT in 2014. Given the change of Government in November 2014, this report will be provided to the new Minister for Planning, Richard Wynne MP. There are references to the former Department of Planning and Community Development (DPCD), Department of Transport, the former Planning and Local Infrastructure (DTPLI) and the current Department of Environment, Land, Water and Planning (DELWP) in the context of the name of the Department at particular points in time.

At paragraph 1.1 of his opening submission, Mr Bergin noted *“This submission is made by the Department of Transport, Planning and Local Infrastructure on behalf of the Minister for Planning ...”*, and further at paragraph 1.2 *“the purpose of this submission is to provide statutory and process background information, and to provide preliminary views on relevant matters at officer level within the department ...”*. The Committee interprets this to mean that Mr Bergin presented on behalf of the Minister for Planning, who called the matter in as Responsible Authority, but the opinions expressed are from within the Department.

Table 1 Parties to the Advisory Committee Hearing

Submitter	Represented by
Department of Transport, Planning and Local Infrastructure, on behalf of the Minister for Planning	David Bergin, Planning Manager, Southern and Eastern
Mirvac Victoria Pty Ltd	Stuart Morris QC, with Emily Porter of Counsel, instructed by Norton Rose Fulbright, who called the following expert witnesses: <ul style="list-style-type: none"> - Barry Murphy of MDG in landscape architecture - Michael Barlow of Urbis in planning - Brian McCarthy of AECOM in engineering - Stephen Boyle of AECOM in engineering - Michael Collie of Collie in planning - Peter Haack of Urbis in photo montages (evidence tabled but not called)
Monash City Council	Ian Pitt QC of Best Hooper, who called the following expert witnesses: <ul style="list-style-type: none"> - Tim Biles of Message Consultants in urban design and planning - Allan Wyatt of ERM in landscape and visual amenity
Waverley Park Residents Action Group	John Lourens
Hong K Foo	
Ian and Margarida Hogan, and Colin and Robyn Perkins	Ian Hogan
Satheesan Thangarajah	
Clive Gould	
AusNet Services	James Snaize, Energy Construction Manager Peter Kilevics, Lead Engineer Lines Bin Li, Team Leader, Planning Standards Richard Harris, In-house Legal Counsel

It is instructive to note that Dr Lourens represented the Waverley Park Residents Action Group. Initially the Committee thought this group to be a large community association with multiple members from the Waverley Park Estate. It was not until Dr Lourens made his submission that the Committee was advised that the group comprised five individuals who have worked together to speak against the amendment of the permit condition. The submission made by Dr Lourens had as its cover sheet, the notation: *“A presentation on behalf of Waverley Park residents via the Waverley Park Residents Action Group (WPRAG)”*. Additionally, the opening statement at point two on page 2 said: *“My name is John and I am here on behalf of the residents of Waverley Park.”* The final slide at page 143 noted:

The Waverley Park Residents Action Group, and residents of Waverley Park, wish to thank the Advisory Committee for giving us the opportunity to appear here today and to speak on behalf of the Waverley Park community.

The group is not incorporated as an association, nor does it have office bearers. Dr Lourens is the spokesperson for the five individuals, the others being Richard Balaganeshan, Mark Edwards, Ross Stewart and Rafael Mayoral.

The Committee notes that Mirvac has engaged with the group for several years on this issue.

The Committee accepts the Waverley Park Residents Action Group submission as being representative of the five individuals who comprise this group only, not of residents of Waverley Park. In saying this, the Committee appreciates the involvement of Dr Lourens in the hearing process and it acknowledges the comprehensiveness of his submission.

1.4 Inspections

Prior to the Directions Hearing, the Committee undertook an unaccompanied inspection of the subject site and its surrounds. This was followed up by a further accompanied inspection on Wednesday 3 December 2014. Those present included representatives of Mirvac, Monash City Council, the Waverley Park Residents Action Group and the (former) DTPLI, now DELWP.

1.5 The Subject Site and Surrounds

Waverley Park is located in Mulgrave in the City of Monash, approximately 23 kilometres east of the City of Melbourne. The site occupies approximately 80 hectares of land located on the west side of Jacksons Road between the Monash Freeway to the south and Wellington Road to the north. The site was formerly a major Australia Football League (AFL) stadium and it has been progressively developed for residential housing and associated facilities since 2003. When completed it is anticipated that the estate will accommodate approximately 1,250 to 1,300 dwellings and will house 4,000 people.

A key feature of the estate is the retention of the former oval and much of the heritage listed Sir Kenneth Luke Grandstand as a focal point. Figure 1 shows the subject land and its surrounds.

Figure 1 Subject Site and Surrounds

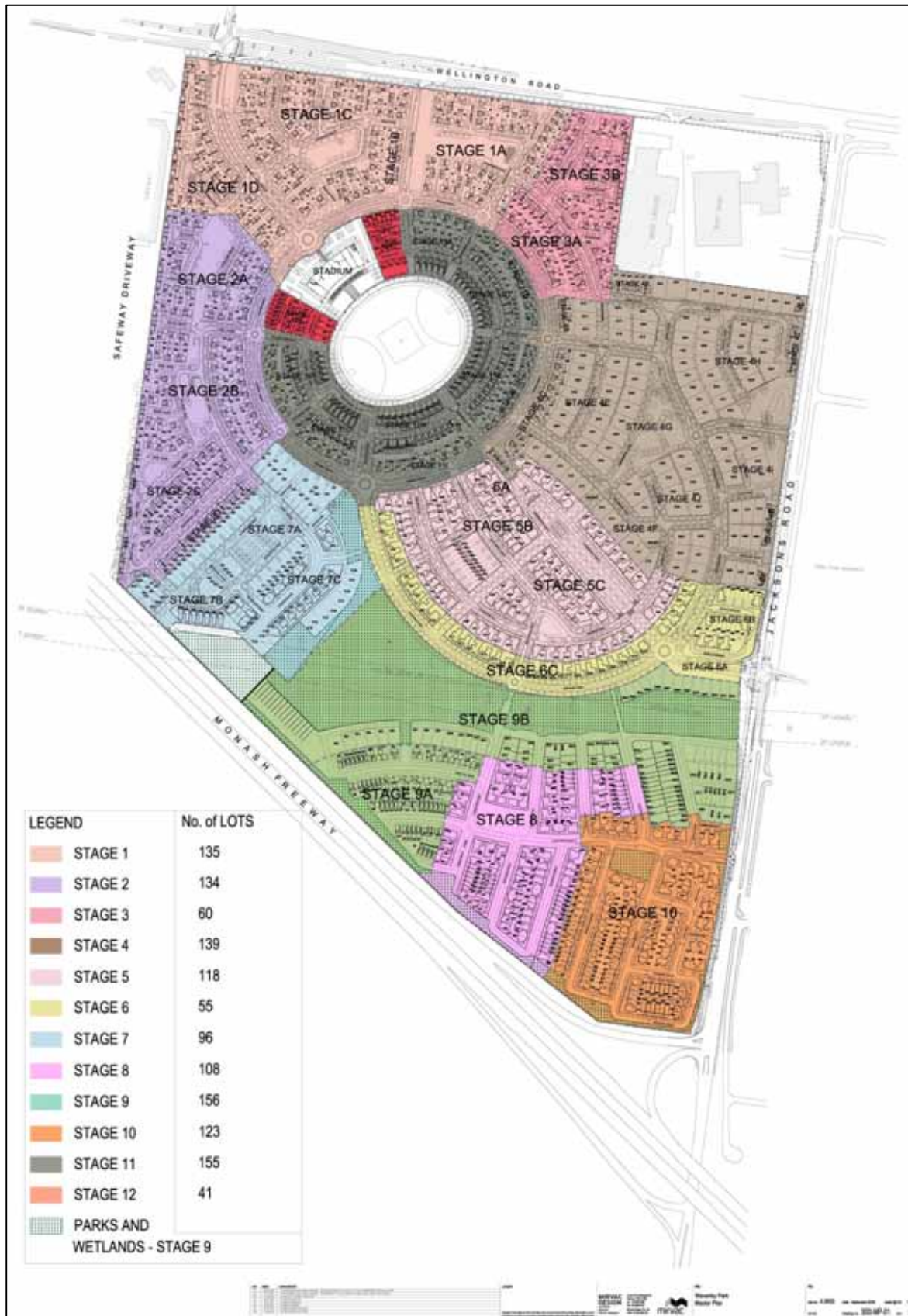


Since approval of the planning permit in 2002, the majority of construction works have been completed. The only exception is the easement and immediate adjacent areas along the transmission lines which are yet to be developed for residential and open space purposes. There are 12 stages to the development, all of which have been approved.

Stages 6C, 7B, 7C and 9 remain partially undeveloped. This includes the area to be known as Lake Park and the remaining public open space reserve in the easement corridor, which is in a current state of neglect and disrepair.

Figure 2 shows the staging plan for the estate and the alignment of the transmission line easement (Stage 9B).

Figure 2 Waverley Park Estate Staging Plan



Above ground 220 Kilo Volt (kV) transmission lines run from the Rowville terminal station to the Springvale terminal station and then onto the Heatherton station on the west side of the site. These lines have a length of some 15 kilometres in this section. This easement was established well before the land was developed as a football stadium. The subject site contains two lattice towers (one at the west end near the Monash Freeway and the second more central but closer to Jacksons Road). A third lattice tower is situated opposite the subject site on the eastern side of Jacksons Road.

The residential area of Mulgrave and adjoining suburbs including the Waverley Park Estate were developed around the easement during the 1970s and 1980s. The transmission line easement across the Waverley Park Estate forms part of one of four easements that run from the Rowville terminal station through the eastern region of metropolitan Melbourne.

2 Background

2.1 Amendment C20 to the Monash Planning Scheme

As early as August 2001, before the rezoning and permit application for the Waverley Park Estate was lodged, Mirvac had sought advice from AusNet regarding the potential costs of undergrounding the transmission lines across the site.

It is not clear exactly when Mirvac decided to adopt the proposal to underground the transmission lines as part of its 2002 permit application, however it is clear that preliminary feasibility advice had been received at that application stage, and discussions were then taking place with AusNet to explore the options.

Mirvac's intention to vary the existing easement and underground the transmission lines was set out in various application documents, which noted the potential visual amenity benefits and that it was "*exploring with the relevant authorities the opportunities*" for placing the lines underground. These documents included:

- Waverley Park Neighbourhood and Site Description.
- Waverley Park Preferred Neighbourhood Character Report.
- Waverley Park Planning and Development Report.

Amendment C20 to the Monash Planning Scheme and planning permit STA/2001/000714 were placed on public exhibition from 26 March to 26 April 2002, and a total of 131 submissions were received. All submissions were referred to a Panel which conducted its Hearing and inquiries over 12 days between 3 and 27 June 2002, and submitted its report to the former Minister Delahunty in August 2002. It is noted that Amendment C30 to the Monash Planning Scheme was gazetted on 7 March 2002 and it made the Minister for Planning the Responsible Authority for the administration and enforcement of the Monash Planning Scheme for the Waverley Park site on the basis that the redevelopment of the site was of State significance. The Minister for Planning remains as Responsible Authority at this point in time.

Planning permission was sought to vary the easements, however the explanatory report exhibited with Amendment C20 did not discuss or refer to the high voltage transmission lines and simply stated that a permit was required to vary an easement.

The draft permit conditions exhibited with Amendment C20 did not include a requirement for the transmission lines to be placed underground. A condition was included requiring Mirvac to enter into an agreement with AusNet "*for the variation of the High Voltage Easement*".

During the C20 Hearing, Mirvac submitted a one page summary document (Document 3 of the Mirvac chronology from this Hearing) outlining two options which both involved undergrounding the transmission lines beneath Jacksons Road, with the preferred option also undergrounding the transmission lines beneath the Monash Freeway. Relevantly, the document did not detail the need for transition enclosures on or off the Waverley Park site, or the potential amenity impacts these might have. Expert evidence provided by Mr Collie at this current Hearing in support of Mirvac's proposal noted the potential visual amenity benefits of the undergrounding proposal.

The Amendment was subsequently gazetted and the permit issued on 14 August 2002, with the changes from the exhibited versions reflecting Panel recommendations and other changes determined by the Responsible Authority.

The permit allowed for the creation of up to 1,500 lots and the construction of up to 1,250 dwellings. Development of the site commenced in 2003 with the demolition of most of the grandstand and the construction of the first dwellings in the north-west corner of the subject site adjacent to Wellington Road.

The former AFL Stadium was rezoned to part Comprehensive Development Zone and part Residential 1 Zone, with a Neighbourhood Character Overlay applying to the Residential 1 Zone. All of the Residential 1 Zone has now been rezoned to the General Residential Zone.

The Amendment C20 Panel made findings and recommendations that the transmission lines be placed underground through condition 50 of the permit. It did however, foreshadow that if there were problems with undergrounding the transmission lines, *“the permit and the Waverley Park Concept Plan must be amended”* and such an amendment could be sought. At page 110 of its report in relation to its conclusion about the planning permit and the *“variation of an electricity easement”*, the Panel concluded (C20 report own bolding):

Agreed. Removal of the overhead high voltage power lines is referred to in the Waverley Park Preferred Neighbourhood Character report but is not shown on the actual masterplan. If the undergrounding of the power lines does not proceed, the masterplan will require amendment because the proposed layout would be inappropriate with the power line easement in its present position. The planning permit should be subject to a condition requiring the removal of the easement and the undergrounding of the powerlines. In fact the undergrounding is so integral to the overall design that the Panel considers agreements should be entered for these works within five years, otherwise an amendment to the permit and Waverley Park Concept Plan must be sought.

The Panel recommends that The Waverley Park Concept Plan should be modified to make it clear that the overhead high voltage lines will be undergrounded and if not, the masterplan will be amended. A condition should be included in the permit requiring agreements to be entered for the undergrounding works within five years, otherwise and amendment to the permit and the Waverley Park Concept Plan must be sought.

The C20 Panel indicated that a period of five years as an appropriate timeframe for the undergrounding of the transmission lines to occur, following which an amendment to condition 50 could be sought.

It is important to note Mirvac’s opposition to the proposed drafting of condition 50 (referred to as condition 49 in the report), where it sought greater flexibility in the event that a commercial arrangement could not be negotiated with AusNet. In response to these submissions, the C20 Panel declined to change the condition but acknowledged that if the requirement proved to be no longer commercially viable, the permit and the Waverley Park Concept Plan could simply be amended (at page 31 of the Panel Report):

Mirvac submits that the words “subject to the owner reaching agreement with SPI Powernet Pty Ltd or the relevant electricity authority” should be included at the commencement of this Condition. Mirvac has consistently submitted through the course of the panel hearing that it intends to place the high voltage power lines underground subject to a satisfactory commercial arrangement with SPI Powernet Pty Ltd.

Mirvac has received preliminary advice from SPI Powernet that the cost of works for the two options detailed in document P47 tendered to the Panel range between \$12m and \$18m. Obviously, if the cost of these works increased substantially, it may no longer be commercial for Mirvac to pay for the works to be carried out. The additional words proposed by Mirvac allow for a commercial agreement to be negotiated with SPI Powernet.

...

The Panel agrees with the Council on this issue. The permit should be subject to removal of the easement and undergrounding of the powerlines. If this does not proceed, then the permit should be amended, which will provide an opportunity to consider the implications for the rest of the design.

2.2 Implementation of Condition 50

A brief history of the actions that Mirvac has undertaken since the grant of the planning permit is provided in Chapter 6 (Section 6.1) in the context of the engineering and delivery issues associated with the underground option.

In summary, over a period of approximately six to seven years following the grant of the planning permit, Mirvac proceeded to develop the site, releasing some 1,100 lots and developing key parts of the site, including the Sir Kenneth Luke Stand. Concurrently Mirvac and its consultants were undertaking feasibility studies, design development and seeking to negotiate commercial arrangements that would bring about the undergrounding of the transmission lines and compliance with condition 50.

In November 2008 Mirvac determined that the underground option was not feasible for a range of reasons, including the significant cost increases, the inability to reach commercial terms with AusNet and the limited amenity benefits that the option would deliver given the large transition enclosures that would be required, and the relatively short distance of underground cable (530 metres) between these enclosures. Prior to this decision, Mirvac had spent approximately \$1.5m on studies and works directed to meeting its obligations under this condition.

2.3 Application to Amend the Planning Permit

Prior to this current permit amendment application, Mirvac had previously lodged an application to amend the planning permit in 2009, following its decision to not proceed with the underground option. This application was supported by (inter alia) a letter from AusNet and an AECOM report, highlighting the risks and practical issues associated with the underground option. This application was advertised and approximately 28 objections were received. Following discussions with DPCD officers, this application was subsequently

withdrawn on 21 March 2010, noting that a further application would be made which responded to feedback from stakeholders.

On 8 June 2011 the current application to amend the planning permit was lodged with DPCD which was supported by (inter alia) two letters from AusNet (dated 3 July 2009 and 28 March 2011) and an AECOM report. In August 2013 Mirvac submitted further information and amended the application to include an updated planning report and information on a proposed Community Benefits Package.

The proposed amended permit included an amendment to the Preamble by the addition of a further dot point as follows:

- *The construction and use of a Place of Assembly and a food and drinks premises.*

Condition 50 was proposed to be amended to read as follows:

- *The alignment of the existing high voltage transmission line and associated easement may be varied to the satisfaction of the responsible authority and the relevant electricity authority.*

2.4 Notification and Objections

Public notification of the current amendment application occurred through letters to residents and a notice in the Waverley Leader in August/September 2013. Approximately 160 objections were received by the Responsible Authority, the majority of which opposed the application.

Following the former Minister for Planning's refusal to grant the amendment to the permit, Mirvac lodged an application for review at VCAT. Of those 160 objectors, 36 became a party to the VCAT proceedings, and their grounds were referred to the Committee as part of its review.

The application was referred to the City of Monash, and at a Council meeting on 27 August 2013 the Council resolved to object to the granting of an amended permit. Monash City Council opposed the permit amendment on the following grounds:

1. *Compliance with Condition 50 can be achieved with a net benefit in urban design terms.*
2. *Retention of the above ground power lines would be detrimental to the visual character of the area.*
3. *Retention of the above ground powerlines would be detrimental to the aesthetics of the permitted development.*
4. *Retention of the above ground powerlines would be detrimental to the amenity of residential properties in Waverley Park.*
5. *Retention of the above ground powerlines would detrimentally impact on the future use and development of public open space.*
6. *Master planning by the Applicant since the grant of the Permit has provided for compliance with condition 50 including the associated transition enclosures.*

Mr Bergin provided a summary of the issues raised in support of the planning permit amendment at paragraph 6.6 as follows:

- *The transition enclosures required in association with placing the powerline underground would be more unsightly than the overhead powerline.*
- *The proposed amendment will provide additional parklands and play areas for children.*
- *Mirvac will redistribute funds to improve other community facilities which will benefit residents.*
- *Placing the powerline underground will do little to reduce radiation and may potentially worsen radiation.*
- *The upgrading of open spaces and community facilities will add value to homes in Waverley Park and improve community life.*
- *There are other residential areas containing an overhead powerline where residents happily live and where children play near the powerline.*
- *The proposed Community Benefits Package is fair to all owners.*
- *The amendment will free up funds to develop parklands.*

Mr Bergin provided a summary of the issues raised in objection to the planning permit amendment at paragraph 6.7 as follows:

- *The information provided to purchasers of properties in Waverley Park has been misleading and retaining the powerline overhead would be in breach of the contract of sale, is unethical and is predominantly driven by financial reasons.*
- *The cost of placing the powerline underground would have been factored into the sale price of individual lots.*
- *Approval of the amendment will result in a loss of trust in the planning system and would set a precedent in other large residential developments.*
- *Retaining the powerline above ground will have a negative impact on property values and Waverley Park homeowners will suffer.*
- *The overhead powerline will have a detrimental visual impact.*
- *The additional open space proposed as part of the Community Benefits Package will attract people from outside the area and may potentially lead to violence, destruction and theft and could create a drug and alcohol problem.*
- *No additional car parking is proposed to be provided with the additional open space.*
- *The risk to health is greater if the powerline remains above ground. Residents will not use the public open space as a result of the potential health implications.*
- *Recreational activities in the open space will be constrained if the powerline remains above ground.*
- *Retaining the powerline above ground is a safety hazard for helicopter pilots.*
- *Council may not be able to properly maintain the open space when the responsibility for management is transferred to Council. Residents will be burdened by the ongoing maintenance of open space through body corporate fees or Council rates.*

- *The proposed ex gratia payments which form part of the Community Benefits Package are insufficient and Mirvac will require residents to sign a legal document before receiving a payment to prevent further legal action being taken against Mirvac.*
- *The 'change of circumstances' including the cost increase of placing the powerline underground and is not a legitimate reason or planning issue.*
- *The delay in placing the powerline underground has delayed the construction of one of the acoustic walls.*
- *The transmission enclosures required to place the powerline underground could be screened to improve their visual appearance.*
- *The reputation of Mirvac as an estate developer will be damaged and Waverley Park will lose appeal as a family development if the powerline is not placed underground.*
- *There have been emotional health implications resulting from the treatment of residents by Mirvac.*

The Committee notes that the key issue raised by the majority of objectors was that they would not have purchased their property in the estate if they had known the transmission lines would remain above ground. It was submitted that it was the reasonable expectation of many residents that the transmission lines would be placed underground. Mr and Mrs Hogan said:

A key aspect of the master-plan, and one which was instrumental in convincing us to invest in this estate, was the under-grounding of the high tension powerlines.

The objectors indicated that they felt 'deceived' by Mirvac, and that the proposal to keep the transmission lines above ground was renegeing on a promise, and in breach of their contracts of sale. Mr and Mrs De Silva said:

Such a change would clearly be a breach of Mirvac's contractual obligations. Granting the application to amend would condone Mirvac's misleading and deceptive conduct.

Other objectors felt Mirvac have been quick to caution residents where there had been a breach of the covenant restricting the residents' use of their land (the location of air conditioning units and garden taps, the type of letter box, front door design and garden maintenance) and Mirvac should in fairness stand by their commitment to underground the power lines.

Many objectors expressed uneasiness about the potential health risks of exposure to electro-magnetic radiation. Families indicated that they would not risk the health of their children and grandchildren by allowing them to play under or near the above ground transmission lines. Mr Mercuri said:

I purchased my property 10 years ago with the view that we would be able to enjoy parkland that would not expose my children (and all children) to unknown health risks from overhead power lines. Clearly, Mirvac does not care about our welfare.

Mr Gould acknowledged that these health risks may not be supported scientifically, but said that, regardless, residents would prefer not to live near above ground power lines due to the implied or perceived threat to their health. He submitted:

There has always been questions about whether there is or is not a threat to health from overhead powerlines and there might be any amount of science which will tell us that there is no risk. There is, however, an implied threat in many peoples' minds.

Objectors expressed that view that it was hard to understand how the amendment to the permit would create an “*improved aesthetic outcome*” for the community compared with placing the transmission lines underground. Reduced visual amenity was raised in respect to negative impact on property values, and reducing the enjoyment of public open space.

Some objectors did not agree that the transition enclosures required for the underground option would be ‘unsightly’ if they were appropriately screened or landscaped. The fact that the proposed slim line towers would be taller, and therefore seen by more residents, was not considered to be an appropriate resolution of the issue. Mr Richardson said:

The impact on visual amenity from the transition enclosures could be minimised through appropriate ancillary design measures to better integrate the enclosures with the surrounding environment.

Other concerns related to the risk to hot air balloons and helicopters, the above ground power lines being vulnerable to extreme weather events, that existing amenities in the estate are adequate and the ongoing maintenance costs of open space.

Some objectors supported the amendment to the planning permit, with Mr Foo submitting:

I think Mirvac's proposal “Community Benefits Package” offer to all Waverley Park Mulgrave residents is the best option and wisely decision rather than spending huge amount of money putting the powerlines underground.

These objectors were in support of public open space and recreation facilities being upgraded and improved, opposed to “*huge amounts of money*” being spent on placing the power lines underground. It was thought that this would add value to the community and house prices.

One objector and a party to the proceedings (David and Lia Crowder) withdrew their objection by letter on 15 August 2014, as they considered that “*the benefits outweigh the potential disbenefits and, on this basis, we now believe the proposal will achieve a net community benefit*”. Their letter of withdrawal further noted that:

Ultimately the factor that has ‘tipped the scales’ for us is the proposal to increase the size of the park, improve the facilities, and upgrade some of the existing pocket parks around the estate. In light of this, our concerns regarding ‘psycho-health’ issues; the visual impact of the infrastructure, and the associated amenity and levels of enjoyment that will be compromised by maintaining the transmission lines aboveground have been counterbalanced.

It is noted that the amendment application was referred to VicRoads and AusNet pursuant to section 55 of the Act. DTPLI advised that VicRoads responded that it did not object to the

amendment to the planning permit, and AusNet responded verbally confirming that it too had no objection.

2.5 Responsible Authority Decision

DTPLI prepared a delegation report for the former Minister for Planning as Responsible Authority, which was dated and signed on 17 April 2014. The delegation report recommended that the amendment application be supported, and accepted the wording as proposed by Mirvac for condition 50:

The alignment of the existing high voltage transmission line and associated easement may be varied to the satisfaction of the responsible authority and the relevant electricity authority.

DTPLI officers further recommended the following additional conditions be imposed on the permit:

- *Before removal of the existing powerline and construction of the replacement powerline and supporting structures, plans to the satisfaction of the responsible authority and the relevant electricity authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided.*
- *The removal of the existing powerline and construction of the replacement above ground powerline and supporting structures must be completed within 2 years of the date agreement is reached with the relevant electricity authority and by no later than 3 years from the date this permit is amended to include this condition or such later date to the satisfaction of and approval in writing by the responsible authority.*
- *Before a statement of compliance is issued for the final stage of subdivision at Waverly Park, payments and/or works in accordance with the Community Benefits Package (Enhancement of Public Open Space Serving Waverly Park), included in the Revised Town Planning Report, 23 August 2013 prepared by Mirvac must be completed to the satisfaction of the responsible authority.*
- *Before a statement of compliance is issued for the final stage of subdivision at Waverly Park, a place of assembly for a community facility must be designed, located and constructed with Monash City Council to the satisfaction of the responsible authority. The community building must have as a minimum a kitchen, toilets, multi purpose meeting spaces and associated carparking.*
- *Before a statement of compliance is issued for the final stage of subdivision at Waverly Park, the provision of an appropriate kiosk (food and drink premises) adjacent to the Lake Park precinct that can provide a permanent commercial food offering. The kiosk facility must have as a minimum connections to water, electricity, gas and be able to be contained safely.*
- *Before the place of assembly and kiosk facility have commenced construction, Mirvac must enter into an agreement with Monash City Council*

under section 173 of the Planning and Environment Act 1987 to provide for the following:

- (a) A maintenance fund for the first five years up to a maximum of \$20,000 per annum to ensure the community place of assembly and the kiosk facility are maintained to a satisfactory standard once they have been completed and are operational.*

Before place of assembly and kiosk facility are completed, application must be made to the Registrar of Titles to register the section 173 agreement on the title to land under section 181 of the Act.

The owner under this permit must pay the reasonable cost if the preparation, execution and registration of the section 173 agreement.

On 28 April 2014 the former Minister for Planning as Responsible Authority did not accept this advice, and determined to refuse the permit amendment application. The reasons for refusal were:

- *There was an implicit obligation by way of Condition 50 of Planning Permit No STA/2001/000714 to underground the powerlines.*
- *The proposal is contrary to the expectations of the Waverley Park community regarding visual amenity.*
- *The proposal does not provide sufficient community facilities or improvements to Lake Park in accordance with the recommendations of the Panel Reports (Monash Planning Scheme Amendment C20), dated August 2002.*
- *The cost increase of undergrounding the powerline is not an overriding planning consideration.*

2.6 VCAT Application and Call-in

In May 2014 Mirvac applied to VCAT for review of the Minister's decision to refuse the amendment permit application pursuant to section 77 of the Act.

VCAT listed the matter in the Major Cases List for directions, mediation and a final Hearing commencing on 25 August 2014 for ten days.

Approximately 36 objectors filed statements of grounds in the VCAT proceeding.

AusNet filed grounds in the proceedings confirming that it *"neither supports nor opposes the Amendment Application. SP AusNet is concerned with providing the safest, technically acceptable solution for the powerlines to assist in meeting the requirements of the planning permit"*.

A VCAT Directions Hearing was held on 20 June 2014 and the Tribunal made a number of procedural orders including an order requiring Mirvac to provide further and better particulars.

On 14 July 2014 Mirvac applied to VCAT to amend its application to replace the lattice towers with monopole structures, including two poles instead of the strain tower in the easement adjacent to the Monash Freeway, and a single pole instead of a strain tower in the centre of the easement. Mirvac sought to substitute the application plans with the following

new plans pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* with the following:

- Waverley Park Subdivision Master Plan, Drawing No SD MP 01 [TL5] dated 14 June 2013.
- Waverley Park Proposed Power Line Plan, Drawing No TL-TP1100a, Revision D, dated 11 July 2014.
- 220kV Waverley Park Development, Drawing No 45M 270KNU, Revision A, dated 8 July 2014.
- 220kV Waverley Park Development, Drawing No 48M 160KNU, Revision A, dated 8 July 2014.
- Waverley Park Development 220kV Transmission Line Strain Twin Pole-Double Circuit, Drawing No 60327503-SHT-00-EL-1101, Revision A, dated 11 July 2014.

Amended plans are normally dealt with by VCAT as a preliminary matter at the final Hearing. As the final VCAT Hearing had not commenced, no formal decision had been made in relation to whether leave should be granted to Mirvac to amend the application.

On 14 August 2014 former Minister for Planning wrote to the Tribunal and requested that it refer the proceeding to the Governor in Council for determination. The Tribunal complied with that direction.

The Committee was then subsequently appointed.

Ms Porter for Mirvac raised the matter of the amended plans at the Directions Hearing, sought clarification that the amended plans as filed could be relied upon at the Hearing. The Committee asked parties present if they had any issues with that course of action, and no party objected to Mirvac using the amended application in the manner sought. Accordingly the Committee confirmed that Mirvac could rely on the amended plans and the Hearing proceeded on this basis.

As a result of its final conclusions and recommendations, for the sake of completeness the Committee formally recommends that leave be granted to Mirvac to amend the application in this manner.

3 Transmission Line Options Presented

3.1 Introduction

This chapter provides a brief overview of the underground and above ground transmission line options as they were presented to the Committee.

The engineering form of the respective options is important in assessing the cost implications, visual impact, health and safety risks and other characteristics of the proposal.

Issues relating to the engineering form of the respective options are discussed in Chapter 6, with the analysis of health, safety and risk, visual amenity and open space and community facilities in the Chapters following.

3.2 The Existing Transmission Lines

As earlier indicated, the above ground 220kV transmission lines run from the Rowville Terminal Station, near the corners of Stud Road and Wellington Road, to the Springvale Terminal Station, near the corner of the Princess Highway and Westall Road. The lines are owned and operated by AusNet.

The lines supply transmission to the south east suburbs of Melbourne via both the Springvale and Heatherton Terminal Stations. A major fault on the lines will have significant impact on the supply of electricity to the south east suburbs of Melbourne.

The existing lines involve conductors strung either side of a single lattice tower. Each line is on one side of the tower and consist of three phases, with each phase consisting of a bundle of two conductors. The lines have two conductors on top of the towers (earth wires) that do not carry current but act to shield the line from lightning strikes.

The easement within which the infrastructure sits is 40 metres in width, with 10 metre Electro Magnetic Field (EMF) buffer zones either side of the easement.

Two lattice towers exist on the Waverley Park estate; tower 12, close to the Monash Freeway and tower 11 within the body of the estate. A third tower (tower 10) exists on land immediately east of Jacksons Road (not within the Waverley Park Estate). The three lattice towers are on a straight line alignment designed to reduce structural loads on the towers, allowing for their lesser size and strength. It therefore reduces the structural risks and lower costs.

The existing towers (11 and 12) on the site are 39 metres in height with a 9.4 metre arm span, and the transmission lines currently span a length of approximately 750 metres over the site. Refer to Figure 3.

The lattice towers (and the proposed monopoles) are classified into structural types. Strain towers are the towers (or poles), that would usually be the most frequently used within the network. Suspension towers are utilised at the termination of sections or where changes of direction occur. They are usually constructed with heavier and stronger materials and cost considerably more.

Figure 3 Existing Location of Transmission Lines and Towers

3.3 Underground Option (the existing requirement)

If placed underground, the existing 220kV lines will be converted to underground transmission lines for a length of approximately 530 metres within the site between two transition enclosures being located at the eastern and western section of the easement. The area required is approximately 8,500 square metres for the eastern enclosure and 4,500 square metres for the western enclosure. The underground easement will be 27 metres wide and will be sited under the road abutting the open space reserve for approximately half of that distance.

The current permit and endorsed plans are devoid of any detail for the existing requirement to underground the transmission lines. Therefore the manner of implementation is to some extent uncertain and this has made the assessment of the relative merits of the permit amendment somewhat difficult. The Committee and the parties have necessarily been reliant on the engineering solution developed by Mirvac and its technical experts. There was considerable discussion at the Hearing about the engineering aspects which have driven specific elements of this option, and how various impacts could be mitigated by different solutions. There was also discussion regarding the extent to which open space outcomes are driven or impeded by the engineering aspects of each option.

The underground option as developed by Mirvac would require the following buildings and works to be constructed:

- Installation of a new termination strain tower 10A similar in height to the existing tower near Jacksons Road opposite the site.
- A new transition enclosure of approximately 4,600 square metres with six staggered height landing poles and cable sealing ends (three per circuit) staggered in heights of 17 metres, 22.1 metres and 30 metres positioned approximately between 20, 30 and 40 metres from Jacksons Road respectively. This area is to be completely enclosed by

three metre high screen fencing and an inner security fence of approximately five metres in height.

- Subject to further design, installation of an underground earthing grid beneath the Jackson Road transition enclosure, which may extend beyond the perimeter fence.
- Installation of a new termination strain tower 12A of approximately 48 metres in height (9 metres higher than the existing tower) to raise the transmission lines above the acoustic wall adjacent to the Monash Freeway.
- A new transition enclosure adjacent to the Monash Freeway of approximately 8,700 square metres with six staggered height landing poles and cable sealing ends (three per circuit) staggered in heights of 17 metres, 22.1 metres and 30 metres positioned adjacent to the Lake Park. This area is to be completely enclosed by three metre high screen fencing and an inner security fence of approximately five metres in height.
- Three underground cables per phase, i.e. nine cables per circuit installed in a direct buried trench of approximately 530 metres in length between towers 10A and 12A.
- Removal of the existing tower 11A.
- Provision of 'Lake Park' of approximately 4.7 hectares.
- Provision of lake and water features of approximately 1.95 hectares.
- Level land outside of easement of approximately 0.57 hectares.
- Provision of park infrastructure including a picnic and barbecue area to the north of the lake, boardwalk and playground space.

The Committee acknowledges that some objectors questioned why no other options for undergrounding were considered, however, this is the only underground option that was sufficiently detailed upon which the Committee could make its deliberations.

3.4 Above Ground Option (the amended application)

The amended application prepared by Mirvac that is before the Committee seeks to retain the transmission lines above ground, but to replace the lattice towers with monopoles. The new poles will be placed at slightly different locations to the existing lattice towers to follow the proposed open space corridor.

The 2014 amendment application makes the following key changes from the endorsed plan:

- *Extension of endorsed wetlands to the east with modifications to the layout and extension of open space fronting Jacksons Road.*
- *Removal of dwelling to the west fronting the entrance from Jacksons Road.*
- *Inclusion of dwellings part-way into the eastern portion of the site adjoining the easement.*
- *Realignment of dwellings and roadways to the north and south of the open space corridor.*

In support of this permit amendment, Mirvac sought to increase and upgrade the open space, and to provide a Community Benefits Package.

The amended proposal will involve the following buildings and works:

- Replacement of the central tower (T11), with a monopole tower to be relocated approximately 35 metres to the south-west. The new monopole tower is proposed to be 45 metres in height (approximately 6 metres higher than the existing tower) with

three cross arms of a 9.8 metre maximum arm span and a base width of 1.8 metres tapering to 0.76 metres at its top.

- Replacement of the western tower 12, with two monopoles relocated approximately 50 metres west closer to the Monash Freeway. Each pole is proposed to be 48 metres in height and has three triangular arms on one side of the pole, and a base width of 1.5 metres tapering to a width of 0.6 metres at the top.
- Although not on the site, replacement of the eastern lattice tower 10, opposite the site on Jacksons Road with a new termination strain tower located approximately 15 metres to the east. The new tower will be approximately 39 metres in height. It is noted that this tower is required to be replaced and relocated under both the above ground and the underground option.
- The provision of open space of approximately 6.7 hectares, including 0.7 hectares of usable space under the wires, and 2.2 hectares of level land outside of the easement.
- Lake and water features comprising approximately 2.04 hectares.
- Additional recreational and park infrastructure within Lake Park, including larger picnic and barbecue facilities, larger playground, 'kick about' area, fitness station and trail and youth recreational space at the eastern end of the park, which would otherwise be occupied by additional house lots and the eastern transition enclosure in the underground option.

It is also proposed to enhance existing open space facilities throughout the Waverley Park development with enhanced park infrastructure.

It is important to note that irrespective of which option is pursued, there is no above ground option to leave the transmission lines where they are (a 'do nothing' option) due to the need to realign the easement to complete the construction of Gertrude Street (the arcing roadway) and to increase the height of the lines to sufficiently clear the acoustic wall to be constructed on the site adjacent to the Monash Freeway.

PART B - KEY ISSUES

4 Key Issues

4.1 Introduction

The circumstances that have given rise to the permit amendment application are complex, and the issues raised by the parties through objections were wide-ranging and at times extended beyond what the Committee would be permitted or entitled to consider, having regard to its Terms of Reference and to the scope of planning considerations generally. During the Hearing, there was a tendency for some parties' objections to confuse private contractual and even moral obligations with the planning considerations normally associated with a proposal to amend a permit.

The Committee's role in assessing the planning merits of Mirvac's proposal to amend the permit is perhaps much narrower than some of these objections appear to conceive. The purpose of this chapter is to identify the principal issues for the Committee's consideration, having regard to the role of the planning system and the statutory framework relevant to the amendment application.

In identifying and assessing these issues, the Committee has considered all written objections, as well as submissions and evidence presented to it during the Hearing. In addressing the issues raised, the Committee has been informed by its observations and inspections of the subject land and its surrounds.

4.2 The Role of the Victorian Planning System

Submissions were put to the Committee regarding the role of the planning system in relation to the proposed permit amendment. In particular, various submissions were made regarding the extent to which the planning system had a role in holding Mirvac to the current permit requirements given the relevant community expectations, as established by the permit and the Monash Planning Scheme.

The Committee agrees that it is the role of the planning system in general and especially planning schemes, to express community expectations for the use and development of land, with this role expressly identified in *Purposes of this Planning Scheme* of the Victoria Planning Provisions (emphasis added):

To provide a clear and consistent framework within which decisions about the use and development of land can be made.

To express state, regional, local and community expectations for areas and land uses.

To provide for the implementation of State, regional and local policies affecting land use and development.

The concept of 'reasonable expectations' is not expressly adopted in the Act, however it is central to the notions of 'fairness' and 'orderliness' which are embodied in the following objective of planning in Victoria (at section 4 of the Act):

(a) *to provide for the fair, orderly, economic and sustainable use, and development of land.*

It would be very difficult for public authorities and private landowners (including prospective landowners) to properly plan for the future use and development of land if the planning system did not establish clear expectations for its use and development. The ability of the planning system to facilitate the assessment of future land use and development outcomes and to communicate these to the community as 'likely to happen' is part of the complexity of planning, but central to its efficacy.

There is a clear public interest in the proper and orderly planning of the use and development of land and this is reflected in Victorian planning legislation that has been enacted by Parliament. This legislation provides for public processes for setting policies, limitations and controls for the use and development of land in local planning schemes and for issuing planning permits for planning proposals that are consistent with those policies and controls.

However this is not to suggest that community expectations, as embodied in local planning schemes or permits, cannot be subject to change and modification over time in response to changing circumstances. Indeed the role of the planning system is to facilitate and manage change, and the Act sets out public processes that seek to involve those people most affected in determining the whether proposed land use and development outcomes acceptable.

Planning schemes are 'living' documents subject to continual review and change. Indeed there are legislative obligations to conduct reviews of schemes. These processes will therefore give rise to changing expectations about the manner in which land is to be used and developed. This can occur in relation to large areas of land or to individual properties. In considering changing planning proposals, their appropriateness in terms of the achievement of sustainable development and net community benefit is at the forefront of review and consideration by decision makers.

Further, the planning system cannot guarantee certainty in relation to the particular manner in which a property may or may not be developed. Permits are often granted and never acted upon. As in the present case, permits may be granted but will be subject to further refinement and amendments which respond to changes to their practical and commercial reality. The above objective of planning acknowledges that the planning system must allow for economic influences and practical reality i.e. 'the real world'. It is common-sense that intended development outcomes must be practical and economic, otherwise they are not 'likely to happen' and incapable of being planned for. It follows that it would be futile and unfair to statutorily enshrine or compel impractical outcomes through planning schemes or permits and thereby establish such expectations in the community. Clause 11 (Settlement) of all Planning Schemes recognises the need for planning to be flexible in responding to its social and economic context (emphasis added):

Planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure.

Planning is to recognise the need for, and as far as practicable contribute towards:

- *Health and safety*
- *Diversity of choice*
- *Adaptation in response to changing technology*
- *Economic viability*
- *A high standard of urban design and amenity*
- *Energy efficiency*
- *Prevention of pollution to land, water and air*
- *Protection of environmentally sensitive areas and natural resources*
- *Accessibility*
- *Land use and transport integration.*

In matters concerning urban consolidation proposals, it has been well established that it is not the role of the planning system to maintain the status quo in terms of amenity expectations, although existing amenity is always a relevant consideration. Similarly, in situations like the present case, it is not the role of the planning system to simply resist proposals for change because it might result in a development outcome that was not originally envisaged or less financially onerous, however desirable that outcome might have been at the time.

This is particularly the case if such requirements were never reasonably capable of being implemented in the manner envisaged and ultimately would not achieve the (planning) purposes for which they were originally imposed.

In the present case, condition 50 of the permit and the approved masterplan have given rise to a legitimate expectation amongst the community that the high voltage transmission lines crossing the Waverley Park site would be placed underground. This much was acknowledged by Mr Morris on behalf of Mirvac in oral submission. The delay in addressing and resolving compliance with condition 50 has perhaps unfortunately served to strengthen this expectation.

It was submitted by Dr Lourens that the special circumstances of this case give rise to contractual and moral obligations that Mirvac should be held to, and the planning system should not provide any concession to Mirvac in this regard. Similarly Mr Hogan submitted that it was a matter of maintaining public trust in the administration of planning in Victoria, which would be negatively impacted if Mirvac were to be successful in amending the permit.

The Committee recognises that there are landowners who will be more directly affected by the transmission lines than others, and who legitimately consider that they are owed such obligations by Mirvac. Whether or not such obligations exist, it is clearly regrettable that this matter was not resolved sooner.

The Committee makes no observations in relation to these issues other than to say that if such obligations are found to exist, then there may be consequences for Mirvac quite separate to this planning process. Breaches of faith or moral obligations can have reputational consequences and contractual breaches can find civil remedies in the courts with potentially serious financial consequences. However the planning system is a system for the making and enforcement of public laws, not for the enforcement of private or contractual obligations.

Mirvac does not accept the submissions by Dr Lourens that it owes any moral or contractual obligations, or that it has broken any promises, but it does recognise that the decision not to proceed with the undergrounding option has caused inconvenience to some residents. Beyond this inconvenience, Mirvac submitted that these matters are not relevant to the Committee's assessment. In the interests of fairness, Mirvac put forward a Community Benefits Package that includes a system of ex-gratia payments for residents. The payments which have been offered to individual property owners vary quite significantly depending on a range of factors, including the proximity of the dwelling to the transmission lines, purchase price of the dwelling and the date of purchase. In oral submissions it was put on behalf of Mirvac that the Committee should have regard to the system of ex gratia payments in determining whether the proposal is 'fair' and delivers a net community benefit.

The Committee finds these submissions somewhat inconsistent and in any event unhelpful. As stated above, if any alleged breaches of private obligations or promises are irrelevant to the Committee's assessment (as submitted by Mirvac), then so too must be any system of individual payments whose purpose is to ameliorate the alleged breaches. Whilst these payments may go some way to addressing these individual grievances, they are not relevant to the Committee's assessment.

The question for the Committee in this regard is really whether the current permit requirements to underground the transmission lines are so central to the vision and expectations for the development of Waverley Park that any alternate above ground option would be unacceptable. This issue is further addressed in Chapter 5, which discusses the strategic framework for the site.

Ultimately the Committee's assessment is confined to whether the proposed development (as amended) represents an acceptable planning outcome, having regard to the relevant objectives and policies of the Monash Planning Scheme which establishes the expectations for this site.

4.3 Statutory Framework for Amendments to Permits

Mirvac as the developer and permit holder, made an application to the Minister for Planning as Responsible Authority pursuant to section 72 of the Act to amend the permit to amend condition 50. Section 72(1) of the Act provides:

72 Application for amendment of permit

- (1) *A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an amendment to the permit.*

Unlike sections 87 and 89 of Act, which provide a broader power for the Tribunal to amend or cancel a permit at the request of other affected persons, section 72 imposes no hurdles or standing requirements for permit holders to seek amendments to permits from a responsible authority.

Applications under this section are to be processed in accordance with sections 47 to 62 (with any necessary changes) as if they were a fresh permit application (see section 73). Therefore the normal matters are to be taken into account, including those set out at sections 84B and 60 of the Act and the relevant clauses of the Monash Planning Scheme.

Various approaches were urged upon the Committee in light of the relevant statutory framework for considering amendments to planning permits and the Committee briefly identifies the key issues in this regard.

These submissions include those that were put to the Committee by Dr Lourens that there are three logical requirements which should be met in order to secure a planning permit amendment, namely (Document 26, page 5):

1. *A planning permit amendment should be sought, and granted only on planning grounds.*
2. *There has to have occurred demonstrable and significant changes in circumstance pertaining to the applicants since the issues of the original permit.*
3. *The change in circumstance pertaining to the applicant must be genuine, externally imposed change arising from a changed external environment.*

In written submissions concerning the statutory framework, the Committee was referred by Mirvac to the Tribunal decision of *Bestway Group Pty Ltd v Monash CC* (Red Dot) [2008] VCAT 860 (19 May 2008). This decision considered the scope of amendments which may be made to permits, including the scope of sections 87A and 72 of the Act. In doing so, the Tribunal made some observations confirming that the scope to amend a permit under these provisions is necessarily broad to provide a practical system for the administration of permits that can respond to changes occurring in the 'real world' and deal with them on their merits without reopening (at paragraphs 18-21):

*Permits are an integral aspect of Victoria's planning system. They are the means by which most use or development of land allowed under a planning scheme is authorised. They are documents of significant commercial value to their holders; they define rights and obligations; and they may be enforced by a responsible authority or any person. The resources that are invested by permit applicants, responsible authorities, referral authorities and third parties in the grant of permits are considerable in terms of time, effort and money, and the process can be most complex. I do not consider that the Tribunal should add unnecessarily to that complexity where it can be avoided. It is important to recognise that the practical administration of the planning permit process must occur within the context of the real world. As the Tribunal said in *Mentone Mansions Pty Ltd v Kingston CC*:*

[14] ... Most planning projects undergo a design and development process which takes a considerable time, and the planning approval phase is early in that process. As a consequence, after planning approval the development of a design for construction purposes, and the construction process itself, can result in a need to amend the development no matter how well resolved the development is at the planning stage. ...

The planning system needs to be able to cope efficiently with such changes or other subsequent changes to the use or development of a site for whatever reason. It is important that changes are handled in a way that addresses their

substantive merits; ensures that when eligible third persons may be genuinely affected, they are notified and given an opportunity to be heard; and that applications are processed and decisions are made about changes efficiently and in a timely way. The reforms to the Planning and Environment Act 1987 by the introduction of Division 1A and section 87A enables these objectives to be achieved by focussing on the proposed changes, rather than re-opening debate about the whole proposal. Importantly, what happens on a site, can be managed through a single permit document, which is a more transparent process and less likely to result in inconsistencies than having multiple permits for the same site accumulate over time.

I have said that it would be possible for a permit to be amended under either section 72 or 87A to include a new primary consent under the planning scheme. This may include a use, a development or other matter for which consent is required under the planning scheme.

Clearly, conditions may be amended as a consequence of such amendments to what the permit allows. Conditions may also be amended without any change to what the permit allows. Situations could arise where the land description might change too.

The Committee accepts that the Tribunal's observations in Bestway cited above reflect the proper approach to amendments to permits under section 72 of the Act and are of particular relevance to the present circumstances.

Having regard to the above, the Committee finds that there is no legal impediment to Mirvac making the amendment application in the manner sought, and the Committee does not need not be satisfied of any 'change in circumstance' or 'imperative for change' as suggested by Dr Lourens.

Notwithstanding the above, the Committee finds that the changes in circumstances surrounding the permit in the present case are highly relevant considerations and go to whether the existing planning permit condition is reasonably capable of being implemented for the purpose for which it was imposed.

4.4 Other Issues

Council submitted that despite its opposition to the imposition of condition 50, Mirvac had proceeded to develop the estate with approximately 1,100 residential lots over the ensuing 12 years and had taken the benefit of the planning permit. Mr Pitt submitted that Mirvac proceeded to exploit the benefits of the planning permit to the greatest extent possible despite its unsuccessful amendment application and opposition to the permit condition, which he submitted was integral to the planning permit granted. He submitted that Mirvac should not be permitted to avoid this obligation. In support of this submission Mr Pitt relied on a High Court decision of *Lloyd V Robinson* [1962] HCA 36 and a VCAT decision of *Goodison & Associates v Port Phillip CC* [2008] VCAT 2401. These two decisions concerned challenges to requirements to set aside land for open space following the completion of subdivisions.

The Committee does not accept this submission and does not find the authorities referred to by Mr Pitt of assistance. The requirement imposed by condition 50 is simply not analogous

to requirements that are imposed on subdivision permits for the provision of land for open space.

In the present circumstances condition 50 is a fundamentally more complex requirement that was imposed in circumstances where its manner or detail of implementation were almost entirely unknown. The final stages of the Waverley Park development are also yet to be completed and are pending the resolution of this issue as it will determine the layout of the final stages of the estate.

4.5 What are the Principal Issues for the Committee's Assessment?

In light of the foregoing discussion the Committee sees its task to consider whether the planning permit (as proposed to be amended) would represent an acceptable planning outcome having regard to the implications for the future use and development of Waverley Park, and relevant planning objectives and policies in the Planning Scheme.

The Committee has taken into account the range of matters put to it in submissions, and it regards the following as the principal issues for its consideration:

- Is the proposed development (as amended) supported by the strategic framework set out for the development of Waverley Park, and is it consistent with reasonable community expectations in this regard? (Chapter 5).
- What are the issues that informed the engineering design of the above ground and underground transmission line options, and what are the critical economic and commercial imperatives required to be taken into account? (Chapter 6).
- What are the health or safety impacts, and risk to the network issues associated with the proposed permit amendment? (Chapter 7).
- What are the visual amenity impacts associated with the proposed development (as amended), and are these acceptable? (Chapter 8).
- What are the implications for the provision of open space and additional community facilities to the residents of Waverley Park for either option, and are these acceptable? (Chapter 9).
- On balance, does the proposed permit amendment deliver sustainable development and net community benefit? (Chapter 10).
- How should any additional planning permit conditions be drafted to support the findings of the Committee? (Chapter 11).

The following chapters of this report address these issues.

5 Strategic Framework

The purpose of this chapter is to provide a brief overview of the strategic context of the amendment application and to distil the key relevant planning objectives, policies and considerations as derived from the Monash Planning Scheme. In particular, the extent to which these considerations establish any relevant expectations in relation to the transmission lines and whether the proposed amendment to the planning permit is consistent with these.

5.1 Planning Context

The Committee has reviewed the policy context and the following briefly sets out of the relevant planning policy, zone and overlay controls below.

5.1.1 Planning Policy

(i) State Planning Policy Framework

Clause 10.04 of the State Planning Policy Framework provides guidance to responsible authorities on ensuring that planning decision-making meets societal needs by balancing and integrating conflicting planning objectives in favour of net community benefit:

Society has various needs and expectations such as land for settlement, protection of the environment, economic well-being, various social needs, proper management of resources and infrastructure. Planning aims to meet these by addressing aspects of economic, environmental and social well-being affected by land use and development. Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. Consistent with the objectives of local government under the Local Government Act 1989, municipal planning authorities are required to identify the potential for regional impacts in their decision-making and co-ordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources (Emphasis added).

Clause 11 Settlement sets out the key matters which are relevant to the consideration of the proposed amendment to the planning permit. See chapter 4.2 of this report.

(ii) Local Planning Policy Framework

The key clause to consider is Clause 22.01 (Residential Development and Character Policy), which applies to all residential land within the City of Monash and is therefore relevant to Waverley Park and the permit amendment. The policy generally seeks to encourage high quality residential development that builds on and contributes to the garden character of Monash and its objectives include:

- *To build upon the important contribution that landscaping makes to the Garden City Character of Monash.*

- *To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the desired future character statement for the applicable residential Character Type.*
- *To encourage the provision of a variety of housing types to accommodate future housing needs and preferences that are energy efficient and sustainable.*
- ...

The policy sets out key statements and objectives for neighbourhoods or character types within Monash, and Waverley Park is identified as *Residential Character Type 'F'*. The character statement largely reflects that provided within Schedule 1 to the Neighbourhood Character Overlay (discussed below) which notes the importance of views throughout the site:

Significant views and vistas link various features of the area, including the lake, oval, Sir Kenneth Luke Stand and the main Wellington Road and Jacksons Road access points. Important views are also obtained from the area towards the Dandenong Ranges, the skyline of the Melbourne Central Activities District (CAD) and Port Phillip Bay.

Relevantly, this policy notes the following as contributory elements to the character of the site (emphasis added), and includes the vistas provided from the main access points such as the Jacksons Road entry:

Contributory elements

Elements that contribute to the current character include:

- *The north-south ridgeline.*
- *Generally gently undulating topography.*
- *The stadium, including the oval, Sir Kenneth Luke Stand and mosaic mural.*
- *The large expanses of grass and gravel of the former car park.*
- *The concentric rings of the road network.*
- *The vistas from the main access points at Wellington Road and Jacksons Road towards the stadium, including the Sir Kenneth Luke Stand and the mosaic mural.*
- *The view linking the lake with the stadium, including the oval and the Sir Kenneth Luke Stand.*

There is no mention of the above ground transmission lines in this policy. The Waverley Park Concept Plan, August 2002 is listed as a reference document to this policy.

(iii) Zones

The majority of the site is zoned General Residential Zone - Schedule 2, with the exception of the Sir Kenneth Luke Stand and oval which are included in the Comprehensive Development Zone – Schedule 1 (Figure 4). The estate was rezoned from Special Use Zone – Schedule 1 to Residential 1 Zone in August 2002 upon approval of Amendment C20. More recently the

Residential 1 Zone was directly translated to the General Residential Zone 2 as part of the residential zone reform process in 2014.

Figure 4 Zoning



The purpose of the General Residential Zone is:

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To encourage development that respects the neighbourhood character of the area.

To implement neighbourhood character policy and adopted neighbourhood character guidelines.

To provide a diversity of housing types and moderate housing growth in locations offering good access to services and transport.

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Schedule 2 to the General Residential Zone contains some variations to the requirements at Clause 54 and 5, none of which are relevant to the Committee’s considerations.

The oval and former grandstand are included in Schedule 1 to the Comprehensive Development Zone. The purpose of Schedule 1 to the Comprehensive Development Zone is:

To designate land suitable for urban development.

To provide for development of land generally consistent with the Waverley Park.

Comprehensive Development Plan, August 2002.

To facilitate a range of uses including Office, Retail, Dwelling (in apartment buildings) and Minor sports and recreation facility.

To ensure that non-residential uses do not cause loss of amenity to people in areas set aside and used for dwellings.

The Waverley Park Concept Plan is an Incorporated Document for the purposes of the Comprehensive Development Zone 1.

(iv) Overlays

Neighbourhood Character Overlay

Neighbourhood Character Overlay Schedule (Figure 5) applies to the majority of the site excluding the Sir Kenneth Luke Stand which is separately covered by a Heritage Overlay. It is only one of very few Neighbourhood Character Overlays which have been applied across Victoria.

Figure 5 Neighbourhood Character Overlay



The Neighbourhood Character Overlay provides permit application triggers for buildings and works and can also provide triggers for the removal of vegetation and the demolition of buildings if a schedule so specifies.

The Neighbourhood Character Overlay seeks to protect both the established and preferred neighbourhood character of the areas to which it is applied, the purposes of which are:

- *To identify areas of existing or preferred neighbourhood character.*
- *To ensure that development respects the neighbourhood character.*
- *To prevent, where necessary, the removal of buildings and vegetation before the neighbourhood character features of the site and the new development have been evaluated.*

The Neighbourhood Character Overlay sets out the preferred neighbourhood character statement for Waverley Park which is relevant to the Committee's assessment. This statement contains the following relevant passages:

The preferred neighbourhood character of Waverley Park is for a concentrated and intensive built form of individual dwellings, terraces and townhouses, and multi-storey apartment buildings, within a framework of local streets, prominent precinct parks and a broader open space and pedestrian circulation system.

The preferred neighbourhood character is the result of integrated site, built form and lot planning, design and development for the whole of Waverley Park by its single developer. The design and preferred neighbourhood character are intended to be implemented through full construction by the developer.

The preferred neighbourhood character of Waverley Park incorporates:

- *Comprehensive built form and lot layout planning and development incorporating integrated architectural design to ensure compatibility of building styles, interrelationships and texture, colours and finishes.*
- *...*
- *The retention and promotion of significant views and vistas within the site.*
- *A generally concentric (based on the oval) main road pattern reminiscent of the previous radial street layout.*
- *...*
- *Precincts based on structured open spaces and clearly delineated circulation paths that provide permeability, passive surveillance of public areas and greater safety.*
- *Retention of the oval.*
- *...*
- *Provision of a lake as a main water feature and sited generally in the area of the existing lake.*

The objective for Waverley Park is to create a neighbourhood character that:

- *Exhibits a planned higher dwelling density and built form intensity.*
- *Reflects the coordinated planning, design and building of a new community including lots, streets, other infrastructure, dwellings, other buildings, open spaces and the landscape.*
- *Is maintained into the future by additions and alterations being consistent with the original character as constructed by the developer of Waverley Park.*

The Neighbourhood Character Overlay requires the responsible authority to consider the design response and the Waverley Park Concept Plan before deciding on an application. The Overlay sets out modifications to the standards of Clauses 54 and 55, however these are not relevant for the purposes of the Committee's assessment.

Heritage Overlay (HO88)

The Sir Kenneth Luke Stand and oval are affected by Heritage Overlay (HO88 Waverley Park) and are listed on the Victorian Heritage Register (H1883).

The Sir Kenneth Luke Stand and oval are key influences on the Waverley Park character and are key drivers of its urban design intents, with the concentric road layout reflecting the historic car park setting and designed to promote axial views to the remaining heritage fabric.

Relevantly the statement of significance includes the following text regarding its setting and views to the stadium:

The stadium was sited in open ground, formerly used for car parking, but the structure has been positioned to take advantage of its elevated location. Even though never completed to its original design, the Kenneth Luke Stand occupies part of the perimeter and closely reflects the original Padey and Connell design. Visible from many vantage points in the district (and itself offering fine views from its higher levels), the stadium as built suggests size, strength and functionality, and this impression is confirmed on approaching Waverley Park itself.

(v) Waverley Park Concept Plan (August 2002)

The Waverley Park Concept Plan is an incorporated document and is a key document that provides the basis for controls applying to the site. It sets out the key planning and design considerations which underpin the masterplan. Much of its content, including the preferred neighbourhood character statement, are reflected in the relevant planning policies and controls. Importantly, this is the only document contained within the Planning Scheme which refers to the undergrounding option.

Section 1.4 of this document outlines the 'Waverley Park Preferred Neighbourhood Character' as:

... a concentrated and intensive built form of individual dwellings, terraces and townhouses, and multi-story apartment buildings, within a framework of local streets, prominent precinct parks and a broader open space and pedestrian circulation network.

The preferred neighbourhood character of Waverley park incorporates a number of characteristics, including built form, setbacks, scale and juxtaposition within streetscapes, retention and promotion of important views and vistas, a concentric main road pattern and retention of the grandstand. The final of these is "Provision of a lake as the main water feature ad sited generally in the area of the existing lake". Significantly, the preferred neighbourhood character does not refer at all to the potential for undergrounding the transmission lines.

Section 3.7 is titled 'Overhead Powerlines' and identifies the opportunity to underground the transmission lines as one of the design issues in the formulation of the Waverley Park Concept Plan, and notes:

As outlined above, an easement containing high voltage powerlines traverses the southern portion of Waverley Park from east to west. Overhead power lines also extend along the south side of Wellington Road and the west side of Jacksons Road adjacent to Waverley Park. The opportunity exists for the visual amenity of Waverley Park and the adjoining roads to be improved by the placement of all of these powerlines underground as part of the redevelopment.

Relevantly this section assumes that all of the transmission line and associated infrastructure on the site and adjacent to the roads would be placed underground, and would improve the amenity of adjoining roads. It does not contemplate the need for transition enclosures.

Based on this assumed outcome, the Waverley Park Concept Plan proceeds to identify the undergrounding of the transmission lines as a positive urban design outcome at section 4.1, where it notes that the Mirvac design philosophy and design strategy offers the following urban design outcomes:

- *Undergrounding of the high-voltage powerlines and relocation of easement.*

The Waverley Park Concept Plan highlights the role of the views and vistas in the design of Waverley Park, in particular views into and through the site towards its key heritage elements such as the Sir Kenneth Luke Stand from Jacksons Road, which Heritage Victoria had also identified. Section 4.3.3 is entitled 'Visual Framework', and includes the following commentary:

Views and vistas are an important historic element of the site as they contribute to a sense of legibility and place. Heritage Victoria has nominated a range of views and vistas and the subdivision masterplan will weave these into the visual framework and legibility of the site. These views will include the focus upon the grandstand from the main entrance at Wellington Road and through the site from Jacksons Road.

Views include:

- *Views through the site connecting the lake and grandstand.*
- *Views into the site from the Freeway looking toward the lake.*
- *...*
- *Views through the site toward the grandstand.*
- *Visual attractors and landmark views of the grandstand.*
- *Main view into the site toward the grandstand and former procession ground.*

Section 4.3.5 specifically addresses the transmission lines and confirms Mirvac's intent to underground the transmission lines. Relevantly, this section assumes that the entire length of the transmission lines from Jacksons Road to beyond the Monash Freeway would be underground, and is predicated on the assumption that the underground option would remove the need for electrical infrastructure to be placed on the site. It states:

It is the intent of Mirvac to realign and underground high voltage lines which traverse the site from Jacksons Road to beyond the Monash Freeway. In accordance with a commitment to enhance the open space amenity for the community, the proposal to underground the wires will provide the opportunity to utilise the easement as road reserve or open space parkland.

The Waverley Park Concept Plan sets out the key heritage considerations and responses in a chapter entitled 'Heritage Response' which identifies the diagonal or axial views between Gates 2 and 7 (Jacksons Road entry) and the grandstand as a 'heritage vista'. Under section 5.6, the following heritage strategy is identified:

- *Retain the vista line between existing gates 2 and 7 and the grandstand which dominate the geometry of the site.*

5.2 Evidence and Submissions

Both DTPLI and Mirvac, including Mirvac's planning expert witness, provided summaries of the planning framework which the Committee has taken into consideration.

Mirvac submitted that Amendment C20 did not bring about any changes to the Planning Scheme which required the transmission lines to be placed underground. Mirvac highlighted the fact that the Waverley Park Concept Plan incorrectly assumed that the entire length of the transmission lines on the site would be placed underground, and that the transition enclosures would be located external to the site. Mirvac relied on the evidence of Mr Collie and Mr Barlow who concluded that the requirement to underground the transmission lines was not a critical element in the preferred neighbourhood character, and was not proposed in the exhibited policy or the permit, nor was it a response to planning policy.

5.3 Discussion

When asked, various parties confirmed that the design, layout and function of the Waverley Park Estate has been developed in accordance with the vision proposed through the relevant planning controls and policy setting, with the exception of the Lake Park area and the retention of the transmission lines.

The Committee notes that the quality of the urban design and landscaping outcomes achieved so far at Waverley Park have been true to the planning vision for site, as embodied in the Monash Planning Scheme and the preferred character statement included in the Neighbourhood Character Overlay and the Waverley Park Concept Plan.

In terms of visual amenity, the relevant aspects of policy and the Neighbourhood Character Overlay place a clear emphasis on the importance of views and vistas within Waverley Park and their contribution to its character. The vista from the Jacksons Road entry is recognised as one of these important vistas, and this has been reflected in implementation of the development, with the axial view provided along Goodison Court to the Sir Kenneth Luke Stand as a key and enduring feature.

The Committee accepts the submissions of Mirvac in respect of the planning framework and agrees that there is no mandatory requirement or expectation for the transmission lines to be placed underground.

Whilst the Waverley Park Concept Plan does refer to the potential benefits of undergrounding the transmission lines and identifies their role in designing the layout, the language used recognises the inherent uncertainty regarding this option. The Waverley Park Concept Plan did not elevate it to a requirement, but merely referred to it as an 'opportunity' or 'intent'. This intention is confirmed by the Panel Report for C20 which gave rise to the planning scheme amendment that incorporated this document. Mr Morris asserted that where the benefits of the undergrounding option are identified in the Waverley Park Concept Plan, they are predicated on the assumption that it would provide an engineering solution that would avoid the need for any electrical infrastructure either on the site or immediately adjacent to the roads abutting the site.

5.4 Conclusions

The planning framework recognises the importance of maintaining Monash's garden city character, with an emphasis on encouraging high quality urban design and landscaping in new residential development.

The relevant neighbourhood character and objectives have been reflected in the urban design and landscaping outcomes that have been achieved to date at Waverley Park, which are now largely complete.

There is no mandatory requirement contained in relevant planning policy and applicable controls that the transmission lines within Waverley Park must be placed underground as part of its redevelopment.

The Waverley Park Concept Plan, an incorporated document, refers to the potential benefits of the undergrounding option, but is only referred to as an 'opportunity' or an 'intent' of Mirvac, implicitly recognising the uncertainty which existed at the time of the preparation of this document.

In terms of visual amenity and neighbourhood character, the planning framework recognises the importance of maintaining key vistas within and to Waverley Park, in particular to maintain visual and landscape connections to its key heritage assets.

These important heritage vistas include the axial view along Goodison Crescent/Queensbury Circuit from the Jacksons Road entry to the Sir Kenneth Luke Stand. This is a particularly important consideration given that the undergrounding option would require a transition enclosure (and its associated infrastructure) to be placed on the site at the termination of what the Monash Planning Scheme identifies as a key 'heritage vista' between the Jacksons Road entry and the Sir Kenneth Luke Stand. The above ground option would avoid the need for these works.

For the reasons set out above, the Committee considers that on balance, the permit amendment application is consistent with the expectations established by the planning framework as provided by the Monash Planning Scheme.

6 Engineering and Economic Considerations

The purpose of this chapter is to address the engineering and economic considerations of the two options. The Committee received submissions on the merits of both options and in particular, their practicality and whether impacts could be mitigated through particular engineering solutions and whether these would be technically feasible and commercially viable.

6.1 The Underground Option (the existing requirement)

(i) What has been done to implement the underground option?

Prior to the Hearing, Norton Rose Fulbright provided a detailed Chronology (the Chronology) of events and issues relating to Mirvac's actions and efforts to fulfil its original commitment to implement condition 50 as currently drafted. This Chronology was in the form of summary document attaching three volumes of documents (the Files). Mirvac also filed an affidavit (including 29 exhibits) of Ms Sally Macindoe (the Affidavit), a Partner from Norton Rose Fulbright who had been involved in the planning process for Waverley Park on behalf of Mirvac from its early planning days.

This material, which was not challenged by any parties, has been crucial in providing the Committee and the parties with a greater understanding of the timelines and complexities of what has occurred over the past 12 to 15 years since the grant of the planning permit, and it has informed the content of this section.

Both prior to and after the issue of the planning permit, Mirvac has undertaken a range of actions towards clarifying the feasibility and the delivery of the undergrounding option, including undertaking initial earthworks.

Prior to the 2002 Panel Hearing, Mirvac had requested a number of preliminary estimates from its advisors and in May 2002 requested AusNet to undertake a feasibility study which was provided to Mirvac in February 2003.

Submitted documents identified that the first advice received by Mirvac on the undergrounding option was provided by AusNet in June 2001, who advised that:

- *It may be possible to underground the existing line and install cables on the existing easement.*
- *This would involve structures on the AFL property, near the boundaries to terminate the above ground line.*
- *A secure fence area would be required for the above ground to underground transition enclosure at each end of the underground cables.*

By May 2004, Mirvac determined to construct the transition enclosures within the site and proceeded with preliminary designs for the transition enclosures, which were endorsed by AusNet in May 2006. In discussions with the owners of the adjacent Oblates site, Mirvac raised the need for the existing tower to be replaced with a strain tower in order to accommodate the transition to the underground cables.

In November 2006 Mirvac engaged AusNet to carry out a Front End Engineering and Design (FEED) study for the underground option, which was completed in May 2007. In February 2008 Mirvac engaged AusNet to undertake a further transition enclosure design. In March 2008 Mirvac sought planning approval to replace the existing tower on the Oblates site. Between May and June 2008, Mirvac sought tenders for the supply of cables for the underground option and subsequently issued a letter of intent to enter in a contract with Olex to supply the cables.

Correspondence and records of meetings provide to the Committee through the Files and the Chronology indicate that commercial negotiations with AusNet for undergrounding the transmission lines had been initiated as early as 2003. It was not until June 2008 however, that AusNet issued a draft Network Modification Agreement to Mirvac for its consideration. This draft agreement brought to light a number of significant commercial issues which would prove to be insurmountable for Mirvac. The negotiations stalled and Mirvac subsequently explored different delivery arrangements to reduce these additional liabilities.

In 2008 and 2009, Mirvac engaged contractors to undertake the bulk earthworks to shape and form the cable trench. These trenching works were evident and noted during the Committee's site inspection.

Issues relating to Earth Potential Rise (EPR) were not known by Mirvac until as late as October 2008 when AusNet advised of the results of an EPR assessment and the need to find a technical solution to mitigate this risk.

(ii) How much would the underground option cost today?

The cost issue was raised consistently by all parties from differing perspectives, and in the opinion of the Committee, is an important component of whether the underground proposal is economically feasible, and whether ultimately it provides for sustainable development and a net community benefit. In his opening submission, Mr Morris noted that Mirvac is not a specialist in the provision of electrical infrastructure, and that it relied and continues to rely heavily on the expert advice of its consultants and AusNet.

The Chronology and the Files provide a significant amount of historical information on the costs, and the increase in costs for undergrounding the transmission lines, and this was not challenged by any party. It is not necessary to repeat all of this or go to it in detail, however an overview is necessary to understand the context of the Committee's overall findings in this regard.

The Chronology and Document 6 tendered by Mr Morris provide a very useful understanding of the evolution of the cost estimates from an indicative estimate for the underground option provided by AusNet in 2001 of \$10m, to the estimate provided by Davis Langdon in October 2012 of \$35.9m, excluding any tax liability (in 2012 dollars). Davis Langdon updated its estimates in August 2013 to \$36m excluding the potential tax liability. The October 2012 Davis Landon cost plan is the only reasonably detailed estimate sighted by the Committee.

There are likely to be further EPR mitigation measures proposed by Safearth and AusNet, and additional costs related to unresolved commercial arrangements.

The understanding of AusNet for the cost estimates of both options was \$7.5m for the above ground option and \$35m for the underground option. Neither includes the tax liability provision required by AusNet (but not agreed to by Mirvac).

A brief dot point summary of key issues and timelines is as follows:

- February 2002 - Norman Disney Young provided Mirvac with expert advice, who said that *"The process will take approximately 12 months to design/approvals and 12 months to construct"*. There was no review of the cost estimates provided by AusNet.
- February 2003 - AusNet issued (Draft) Final Report, issues in undergrounding 220kV Above Ground Transmission Line VFL Park Waverley, the purpose of which was to *"provide advice to Mirvac on the options and constraints arising from the proposal to underground the existing double circuit 220kV transmission line"*. This report provided advice on the estimated cost, which was still at \$10m but now introducing several additional factors +/-20 % variance, ex GST status assigned, and maintenance allowance. The Committee notes that the report did not mention EPR, indemnities on post construction outage costs, or tax liability payments by Mirvac, all matters that featured significantly in later negotiations.
- May 2007 - Maunsell completed the FEED study for the underground option, including preliminary design. AusNet required the FEED stage as being *"required to ensure that there are no major impediments to the proposed design concept before committing extensive resources to the detailed design stage"*.
- May 2007 - dialogue between Mirvac and AusNet regarding a number of matters, but particularly that the cost estimate had increased to \$25m (with 20% contingency). At the same time, AusNet provided an indicative cost estimate of \$28.5m (with 20% contingency). Mirvac advised AusNet that the costings were a *"massive concern"* and it sought a *"significant review of the preliminary figures"*.
- June 2007 - Mirvac sought peer review validation of the Maunsell work, including accuracy of the costings and recommendations of more cost effective solutions.
- Late June 2007 - the peer reviewer (SMEC) concluded that AusNet's cost estimates were acceptable and the design satisfactory.
- October 2007 - AusNet provided the first detailed advice of its procurement program, and in November 2007 Mirvac issued an invitation to tender to the market via AusNet.
- February 2008 - Mirvac engaged AusNet to undertake the transition enclosure design.
- April 2008 – email from Mirvac to AusNet stated: *"Your comments appear to reflect a desire for you to distance AusNet from the procurement process. ... I think it is reasonable to expect AusNet to provide a higher level of support through the process At the moment there is too much room for error"*.
- June 2008 - draft Network Modification Agreement issued by AusNet, which contained a revised cost schedule for non-contract works of \$2.1m, and introduced a requirement for Mirvac to provide a six year indemnity on post construction outage costs.
- July 2008 - Mirvac engaged Maunsell as its project manager on the assumption that it would need to manage the works directly.
- June to August 2008 - significant negotiations occurred between Mirvac and AusNet regarding the Network Modification Agreement, but the parties stalled on number of

issues, including upfront payment, subcontracting of work, commercial disagreements and accountability.

- September 2008 - Mirvac sought the services of a 'head contractor' as required by AusNet.
- October 2012 - AECOM (ex Maunsell) completed an updated FEED study. Davis Langdon provided an updated cost estimate to underground the transmission lines of \$35.94m, excluding any potential tax liability.
- August 2014 - Davis Langdon updated the estimate to \$36.17m, excluding the potential tax liability.

In November 2008 Mirvac determined that the underground option was not feasible for a range of reasons, including the significant cost increases, the inability to reach commercial terms with AusNet and the limited amenity benefits that the option would deliver given the large transition enclosures that would be required and the relatively short distance of underground cable between these enclosures.

Mirvac advised the Committee that by this stage, it had expended approximately \$1.5m in seeking to implement the underground option. One of the major reasons provided by Mirvac for not proceeding with the underground option was the inability to reach a feasible commercial agreement with AusNet.

AusNet representatives confirmed at the Hearing that it had not reviewed the commercial arrangements for some years, and that these arrangements had not progressed.

The Committee notes that a further element of uncertainty for the cost and delivery for either option is the particular procurement model that is pursued for the works. The history and advice provided in relation to the underground option demonstrates that the type of procurement model, e.g. head contractor model and the associated indemnity for transmission outages required by AusNet, can add significantly to the overall estimate depending on the party who is to responsible for delivery and level of risk which is assumed by that party.

(iii) How long would it take to complete the underground works?

During the negotiation process, delivery programs were prepared and issued by AusNet in 2007 and 2008 which initially estimated a timeframe of 17 months which was then updated six months later to 25 months (Documents 23 and 30 of Mirvac's Chronology).

In response to the Committee's questions during the Hearing, AusNet estimated that the timeframe for completion of the underground option as provided by AusNet was two to three years after all approvals were achieved.

6.2 The Above Ground Option

(i) How much would the above ground option cost?

The Chronology indicates that the first high level estimate provided for the above ground transmission line on slim poles was provided in April 2009. Maunsell provided an indicative estimate of \$3.7m and an indicative delivery time of 17 months. In July 2014, AusNet provided an indicative cost for the above ground option of \$7.5m.

In July 2014, Davis Langdon provided a cost plan of \$6.8m which included a 15% contingency amount, and a \$1.56m or 30% nominal allowance for AusNet on-costs, based on 2014 dollars. It did not include the potential tax liability cost. In July 2014, AusNet agreed that they it was willing to use poles in lieu of towers, and that the assumptions made by AECOM were accurate.

(ii) How long would it take to complete the works?

AusNet advised that an indicative time for completion for the above ground option would be 18 to 24 months after agreements have been finalised and any necessary approvals have been obtained.

6.3 Evidence and Submissions

(i) DTPLI

DTPLI did not make any submissions on the engineering or cost issues associated with both options.

(ii) Mirvac

Mirvac relied on the electrical engineering evidence of Mr McCarthy. He advised the Committee that towers 10 and 12 currently have conductors in a suspension arrangement which are not suitable for an underground to above ground transition. Both towers would need to be replaced with heavier 'strain' towers to terminate the conductors on the structure prior to transitioning to underground cable. The footprint and steel size for a strain tower is much larger than that of a suspension tower.

Mr McCarthy provided a summary of the relative advantages and disadvantages of underground cables versus aboveground lines. Some of the more pertinent points of his evidence include the following:

- A short length of proposed cable run (approximately 530 metres) can be installed in a single run without the requirement for cable joints.
- The underground section of the line is not as susceptible to failure.
- The underground option introduces a different maintenance requirement for that specific section of the line.
- There will be a slight increase in EMF directly above the buried section of the cable.
- Underground cable could increase the time to repair in the event of a cable or end fault.
- Undergrounding introduces a non-standard arrangement into the AusNet network by operating a hybrid of both above ground and underground sections.

Mr McCarthy advised that to the best of his knowledge, there is no other hybrid arrangement anywhere else in AusNet's infrastructure network (This was subsequently confirmed by AusNet engineers at their appearance before the Committee).

Mr McCarthy provided the following evidence on the comparative advantages and disadvantages of the steel poles compared with the lattice towers on the existing alignment:

- Even a slight deviation in alignment is a risk which is reflected in the costs involved. For example, a six degree bend could result in a doubling of the cost, and strain towers are triple the cost of suspension towers.
- Steel poles require different maintenance from the existing steel towers which could be more costly.
- Twin single circuit poles would be required at each side of the deviation (towers 10 and 12) to enable the two existing circuits on the tower to be transferred to the new poles.
- EMF may be slightly higher.
- Pole heights would be slightly higher than the existing steel towers. The majority of the height increase is to meet the electrical clearance requirements over the new sound barrier on the Monash Freeway between towers 12 and 13. It is understood that this is required regardless of structure type.

Given that one of the strongest reasons presented against the underground option was the aesthetic impact of the transition enclosures, the Committee was interested to understand why the comparatively much larger fenced off space in the western transition enclosure (Monash Freeway) is in the order of 8,700 square metres, compared with 4,600 square metres for the eastern transition enclosure. Mr McCarthy advised that from a structural engineering perspective, he could see no reason why the proposed tower was included within the fenced area. AusNet confirmed this to be the case.

Mr McCarthy advised that he had previously met with AusNet engineers, who advised him that the underground option is *“definitely not their preferred option. They are concerned that it will set a precedent”*. In his opinion, and that of the AusNet engineers he had spoken with, from a risk and cost perspective, the ‘do nothing option’ was the best option. That is, there is no structural reason to modify the existing lattice towers.

Mirvac submitted that in these circumstances, in particular given the failure to negotiate a practical and commercial arrangement with AusNet over the preceding years, it would be unfair to continue to hold Mirvac to the current requirement to underground the transmission lines.

(iii) Council

Both Council (and Dr Lourens) questioned whether the transition enclosures were the only engineering solution available, and asked whether Mirvac attempted to seek any alternatives that may be more appropriate for the location. In this regard, Mr Pitt questioned whether Mirvac had looked at more than one underground option, and said:

It is not accepted that all options for the above ground to underground transition have been explored – the evidence suggests Mirvac looked at only one underground option.

Mr Pitt submitted that the documents do not contain any evidence of investigating options other than the one looked at.

(iv) Objectors

Dr Lourens questioned how *“Mirvac would propose something without first establishing whether or not the proposal was feasible”* and submitted that *“it is unfair and unreasonable”* that Waverley Park residents should effectively *“subsidise Mirvac’s apparent lack of professional knowledge and apparent lack of due diligence at the time of the 2002 Planning permit was issued”*. He argued that it is difficult to understand how Mirvac can classify the transition enclosures as an *“unforeseen circumstance”*.

Dr Lourens provided two overseas examples of how undergrounding high voltage transmission lines might be rendered more visually attractive than the outcome promoted by Mirvac. These included a 230kV line in Silicon Valley and a 115kV line in South Carolina. He referred to other examples of underground transmission lines around the world.

Dr Lourens went on to say that AusNet may not accept a cable transition mounted on a termination structure as this exposes the cable transition to possible failure during a wind event, significantly affecting the reinstatement time for the line.

Mr Morris responded to Dr Lourens’ alternative transition options in his closing submissions by seeking further advice from Mr McCarthy, who advised that transition from above ground to underground is more common at 132kV and below. He acknowledged that it is possible to mount the transition on a line termination structure as shown in the 230kV Silicon Valley example, however he noted that Dr Lourens’ example was for a single circuit transmission line. It would also require a second structure, or combined H frame structure, to allow the two circuits to transition as required in the Waverley Park situation, which he said *“would increase the width of the easement significantly”*. Regarding the 115kV line in South Carolina, Mr McCarthy advised that a 115kV transition is easier to accommodate as the electrical requirements are significantly less.

Mr Morris further advised that Mr McCarthy’s advice was that while it is possible to mount the transmission lines on the alternative transition structure, he suggested that this would not be practical in the Waverley Park circumstances. He further questioned whether AusNet and or the Australia Energy Market Operator would accept this option.

AusNet confirmed this position in their presentation to the Committee.

(v) AusNet

AusNet tabled a letter (Document 38) responding to the Committee’s letter of 12 December 2014 (Document 24). In the letter, AusNet advised that both the above ground and underground options *“are technically feasible”*. When questioned about the term ‘technically feasible’, AusNet advised that both options *“are acceptable as long as risk mitigation that needs to be taken into account for both options are reasonable”*. This was reiterated several times by AusNet during the course of its attendance.

In response to questions raised by the Committee regarding the transition enclosures option, AusNet advised that *“Never before had it been required to put a piece of underground cable in the middle of an above ground line”*.

AusNet advised that landscaping within the transition enclosure area, between the screen fence and the security fence would not be possible. Under questioning from the Committee,

AusNet conceded that it would be prepared to review this position to assist in better landscaping outcomes around the transition enclosures if that was ultimately recommended.

Mr Pitt questioned AusNet on the strain tower near the Monash Freeway that was included within the transition enclosure making it significantly larger than that nearer Jacksons Road. AusNet agreed that there does not need to be a fence around the strain tower.

AusNet advised that it was not aware of any other similar underground situation in its network and that less than 0.3% of its 220kV transmission network is underground. Under questioning, AusNet advised that it had not come across a similar permit condition before. When asked if it would ever undertake this task on its own terms, AusNet advised that *“It would not do it on the basis that there is no justification for spending 6 times the amount of money to achieve the same outcome”*.

6.4 Discussion

The Committee accepts the advice of both Mr McCarthy and AusNet that the existing condition relating to the proposed hybrid model of above and underground cabling is unique in Australia.

The Committee accepts that AusNet would not consider this solution in any normal circumstance, because of the higher risks and costs associated with the underground option. Less than 0.3% of the AusNet 220kV transmission network is underground, and the risk of a failure in this line may have a very significant impact on the south east suburbs of Melbourne. The Committee accepts that utilisation of transition enclosures at each end of the underground cable to transition back into the above ground line appear to be the only practical engineering solution if the hybrid option is to be implemented.

There were a number of issues raised throughout the Hearing regarding the two transition enclosures. The large size and scale of the enclosures was identified by Mirvac and others as having a detrimental impact on the amenity improvements targeted by condition 50. It is noted that the size of the transition enclosures are significantly greater than originally thought, and that both enclosures would be on land within the Waverley Park estate, not on land external to the estate.

As outlined earlier, the transition enclosures were first mentioned in 2001 and have been the subject of discussion, analysis, estimating and reporting from a number of engineering firms, and that AusNet have been involved in such discussions from the start. The Committee is satisfied that the transition enclosures as they are currently configured are the most appropriate engineering solution if the underground option is to proceed, and that if any other viable options had been available, they would have been presented by now.

With regard to the proposal to allow the 220kV to be realigned and retained above ground to include new monopoles, the Committee notes the recent estimates and reports prepared and discussions that have occurred involving Mirvac, its consultants, peer reviewers and AusNet regarding the above ground option. The general consensus between these participants around the estimate of costs and other major engineering issues appears to be a sound basis for considering this option.

Mr McCarthy provided evidence on the major benefits and disbenefits of the above ground pole option. The Committee notes that even a slight deviation in alignment is a risk which is

reflected in the costs, for example, a six degree deviation is estimated to double the cost, and the necessary strain towers are triple the cost of suspension towers.

It is noted that, even if existing style lattice towers were to be realigned to follow the public open space corridor, the same risk and cost multipliers would apply. So in effect, if it is agreed that the alignment of the above ground line was to follow the public open space corridor, then there will be a cost associated with the subsequent bend in the transmission line alignment which will translate to larger and costlier strain towers. The only cost difference will be the cost between the steel poles and the steel lattice towers.

It is noted that the proposed steel poles will be taller than the lattice towers by up to six to seven metres depending on location, and the Committee was advised that the majority of this height was required to meet the electrical clearance requirements over the Monash Freeway. Again, if steel lattice towers were to be used instead of steel poles, the height would be less, but not significantly so.

The underground option was detailed and depicted in the drawings tabled by Mirvac during the Hearing, and the evidence provided by Mr McCarthy and Mr Boyle. There was considerable debate at the Hearing regarding whether the technical requirements of the underground option had been optimised, in particular the extent of the transition enclosures and whether these could be reduced. Nevertheless the Committee believes that these differences are at the margins in terms of determining the overall planning impacts and for the purposes of its assessment relies upon the plans tabled and the technical evidence provided. The Committee notes that the underground solution proposed is technically feasible subject to meeting all of AusNet's conditions relating to commercial agreements and EPR mitigation.

The Committee considers that the issue of the cost impacts is pivotal to the question of the engineering feasibility of any option, but in particular the underground option as envisaged by condition 50. Mr Morris advised that Mirvac is not a specialist in the provision of electrical infrastructure, and that it relies heavily on the expert advice of its consultants and AusNet. The Committee, whilst agreeing with this, notes that Mirvac has a responsibility to mitigate its risks in dealing with both consultants and AusNet.

Mirvac used a number of consultants in various roles and capacities and the evidence and submissions show that peer reviews were appropriately undertaken to review advice of either AusNet or its consultants, and engaged AusNet and others to undertake FEED studies on the options at various points.

The Committee notes that the first cost estimate of \$10m was provided by AusNet was in June 2001, and that transition enclosures would be required at each end of the underground cable.

There will likely be a construction period, after permits and approvals, of two to three years. There are unresolved EPR mitigation costs, unresolved commercial arrangements and therefore associated costs relating to a head contractor requirement from AusNet to minimise the level of indemnity coverage sought by AusNet, and unresolved proposed tax liability in the order of \$17m. The Committee therefore notes that the estimate of

\$36.169m in 2013 dollars could be as high as \$60m if these unresolved matters were to be resolved to the worst case scenario.

The evidence and submissions attempted to rationalise some of this discrepancy, but in the Committee's opinion the magnitude of this discrepancy is challenging to explain. It would appear that the indicative estimates and preliminary advice provided early in the project's life were embryonic and ultimately unhelpful in informing the C20 Panel and Mirvac in its economic assessment of the underground option.

In relying upon the advice of AusNet in the early stages of the project as it progressed the development, Mirvac sought advice from various engineering companies to assist in mitigating its risks. Mirvac had ongoing discussions with AusNet to reach agreement on numerous matters that would impact cost. The Committee does not agree with Dr Lourens' assertion that *"Mirvac has done very little to mitigate the cost increase over the 12 year period"*. It is the Committee's opinion based upon the material before it, that Mirvac has more than reasonably attempted to progress the transmission line issue and to mitigate the costs.

AusNet is not responsible for implementing condition 50. The Committee accepts that both options are technically feasible and are acceptable subject to reasonable mitigation measures. The negotiations thus far however, have not been conducive to a mutually beneficial outcome, particularly relating to the underground option.

The Committee considers that the submitted Files and Affidavit indicate attempts by Mirvac to seek commitments from AusNet to various matters including late inclusion of EPR risks, the requirement to provide a six year indemnity on post construction outage costs, and the tax liability costs.

The above ground option contemplated by the permit amendment was estimated by AusNet in July 2014 to be in the order of \$7.5m exclusive of any tax liability. The cost plan provided by Davis Langdon in July 2014 was \$6.8m. The Committee notes the similarity in these figures and has confidence that they are realistic. It is noted that AusNet agreed in July 2014 to use poles in lieu of towers and confirmed that the assumptions made by AECOM for the above ground option were accurate. However, there may be additional costs associated with resolving the commercial arrangements on top of this.

The Committee is aware that if the above ground option is to proceed, the commercial arrangements with AusNet will need to recommence. Given the evidence received and the advice from AusNet, the Committee is confident that the negotiations will be successful with the above ground option.

6.5 Conclusions

Whilst the Committee considers it regrettable that this matter was not resolved more expeditiously, there is no evidence to suggest that Mirvac have not acted in good faith in seeking to implement the current permit requirements to underground the transmission lines. Mirvac has expended considerable resources towards implementing the proposal to underground the transmission lines, and that the original proposals for undergrounding the transmission lines were poorly conceived, based on inadequate costing and technical assumptions.

The Files, Chronology, and the Affidavit provided detailed material and correspondence relating to practical actions undertaken by Mirvac to demonstrate that firstly, it did not support condition 50 being included in the permit in the form it was, secondly that it attempted to meet the condition over many years and was continuously frustrated by AusNet, and thirdly, that ultimately the cost of meeting the condition became prohibitive for what was sought to be achieved.

The C20 Panel recognised the possibility that the proposal to underground the transmission lines may not be feasible, and it contemplated that an amendment may need to be made to the permit and the masterplan. At the time of recommending condition 50, that Panel did not have the benefit of any technical assessment of the undergrounding option, and no significant consideration had been given to the need for transition enclosures, where these might be located, or the impacts that might be associated with them.

The Committee concludes that what was presented to the C20 Panel, and what is now the latest underground solution, are significantly different in terms of cost, scope, construction time and risk.

Mirvac have not progressed the final stages of the Waverley Park development because its final design will be affected by the positioning of the transmission lines. Otherwise the layout of the remainder of the Waverley Park development does not appear to be affected by which option is pursued, and to date, it has been true to the vision expressed through the Neighbourhood Character Overlay and the *Waverley Park Concept Plan 2002*.

The Committee is satisfied that the technical and practical matters in relation to both options have been sufficiently explored to enable an adequate planning assessment to occur. The current underground proposal put before the Committee would meet AusNet's technical requirements, but would be subject to further steps before implementation including the finalisation of detailed commercial agreements and EPR mitigation measures.

The Committee concludes that both the underground and revised above ground options are technically feasible, however the cost of the underground option is in the order of six times the above ground option.

The engineering form of the transmission towers, transition enclosures and other infrastructure comprising each option is reasonable and appropriate for comparing cost, visual impact, health and safety and other impacts of the proposal.

7 Health, Safety and Transmission Line Risks

The purpose of this chapter is to examine any potential risks to health, safety and transmission lines arising from the proposal to retain the transmission lines above ground which have been raised by the parties.

Many objections, particularly those from residents, raised health concerns in the event that the transmission lines were not required to be undergrounded. These risks were addressed by expert evidence presented to the Committee and broken down into the following sources:

- Electric Fields - risks arising from electric fields created by the electric charges on high voltage equipment.
- Magnetic Fields – risks arising from the magnetic fields created by the movement of current in high voltage equipment.
- Electro Magnetic Fields (EMF) – risks arising from a combination of electric and magnetic fields.
- Earth Potential Rise (EPR) – risks arising from a fault in a transmission line causing current to flow into the earthing system on its way back to its source, potentially posing risks to persons (e.g. AusNet staff) and property in close proximity to electrical infrastructure. Whilst these risks are inherent to all high voltage electrical infrastructure and can be appropriately managed, the transition enclosures required for the undergrounding option require different mitigation that can lead to elevated risks.

Separately to these health and safety issues, the Committee was presented with submissions on the implications of the undergrounding option for the maintenance and operation of the electrical network.

7.1 Evidence and Submissions

(i) DTPLI

In relation to health and safety concerns raised by the objectors, DTPLI submitted that there did not appear to be conclusive evidence that one option is safer than the other. It acknowledged that nevertheless, health and safety issues were a major cause of concern to many, particularly residents immediately abutting the transmission lines.

(ii) Council

Council did not rely on any grounds that related to health or safety impacts and made no submissions in this regard.

(iii) Mirvac

Mirvac submitted that there are no health or safety risks associated with the above ground option, and that it was safer than the underground option in terms of EPR. It relied on the evidence of Mr Boyle in this regard, who relied on his own calculations for the EMF aspects of the proposal, and also relied upon the report prepared by Safearth consulting with regard to EPR. In relation to EMF risks, Mr Boyle concluded (at page 14 of his statement):

..... For both options the electric and magnetic field strengths experienced by the public are both well within those recommended by the standard and guidelines.

With regard to EPR, it was Mr Boyle's evidence that the above ground option is to be preferred on basis of safety risk (at page 19 of his statement):

..... For the transition enclosures, it is possible to meet the requirements of the ENA EGO guidelines with mitigation measures but they will continue to pose a higher risk. All other things being equal, I would recommend the pole line option over that of the underground cable option on the basis of safety risk.

Mirvac also relied on the electrical engineering evidence of Mr McCarthy, whose evidence addressed the advantages and disadvantages of each option. Mr McCarthy identified a number of disadvantages associated with the underground option including the introduction of a non-standard and complex arrangement into the electrical network by operating a hybrid line of an intervening underground line of cable which is very rare over such a short distance. In particular Mr McCarthy noted that the underground option would introduce additional points of potential failure, particularly at the sealing ends at the transition enclosures, which could lead to significant increases in outage and repair times in the event of faults.

(iv) Objectors

The Committee notes that a number of objections to the amendment application expressed concerns about the transmission lines remaining above ground and the impact this will potentially have on the health and safety of residents living adjacent to the transmission lines and users of Lake Park. While some of these objections acknowledged that there may not be a scientific basis to this issue, the perception of health and safety risk was real, and it represents a major concern of many objectors within the Waverley Park community.

Dr Lourens acknowledged that the evidence did not prove any adverse health risks arising from EMF and high voltage transmission lines, although he disputed that there was any difference between the underground and above ground option which would weigh in favour of the latter. On the contrary Dr Lourens submitted that the underground option should be preferred on the basis of EMF risks being lower for this option, citing a study commissioned by the Irish Government. Dr Lourens did not accept the significance of the EPR risk as weighing in favour of the above ground option, and submitted that it could be appropriately mitigated. Dr Lourens disputed that AusNet would not already have staff capable of maintaining the underground cabling should the transmission lines be undergrounded. Dr Lourens referred the Committee to the 87 kilometres of underground transmission lines provided to the Wonthaggi desalination plant, which AusNet is required to maintain.

Mr Gould acknowledged that the scientific evidence might suggest that there were no risks associated with the retention of the transmission lines above ground, but submitted that there was nevertheless an implied threat in people's minds or a perceived health and safety concern. It was submitted that these perceptions nevertheless affect people and will have flow on impacts (eg. on property values), even if people know that there were no health or safety concerns.

Mr Hogan asked whether signage could be erected to warn people of the potential minimal risks. AusNet's response was that signage of that nature "*may frighten people*". Mr Hogan queried whether AusNet used signage in other locations to advise of underground assets, to which it responded in the affirmative. Mr Hogan also noted that the transmission line could present as an air safety hazard.

Mr Foo submitted that he did not have concerns about the retention of the transmission lines above ground and noted that further to the west at Mackie Road, a playground had been built and established adjacent to the same transmission lines, and that this community appeared to have no problem living near transmission lines.

(v) AusNet

AusNet in its response to the Committee's questions, noted that both options were "*technically feasible*" and that "*both options were acceptable subject to reasonable mitigation measures being available*". In seeking further insights from AusNet, the Committee noted the advice from AusNet that in normal circumstances, an underground solution would not be considered, that underground cables are a last resort and the highest risks are associated with this option.

At the Hearing, AusNet advised that underground cables are usually a last resort, the highest risks are associated with the underground option, and that the commercial negotiations that had stalled the progress of the underground option had not been progressed or looked at for a few years, so it was difficult to comment on them now.

AusNet responded to whether it could clarify the apparent differences in earlier items of correspondence over the past few years. AusNet's advice was that it did not consider its position had changed and had maintained all along that the underground option is technically feasible, but would require further studies to identify all appropriate mitigation steps to address the safety risks to its satisfaction.

The Committee referred AusNet to the *Safearth Consulting Report* of December 2010 commissioned by AusNet. The report suggested that although the EPR risks associated within the proposed setup are negligible that this "*does not negate the need to undertake reasonably practicable risk reduction measures*" (which may include cost effectiveness). The report went on to suggest measures that would further mitigate risks to an acceptable level.

The Committee questioned whether any further work been undertaken on the suggested mitigation works and/or were there further mitigation works to be considered as suggested in the AusNet response. AusNet advised that, to its knowledge, there had been no further progress on the Safearth consulting report and the abovementioned mitigation works are in addition to those mentioned by Safearth, which would need to be determined by detailed investigation.

The Committee queried whether AusNet was aware of any similar installations of short lengths of cables in a hybrid system. In response AusNet advised in its letter dated 15 December 2014 that it is not aware of any other similar installations of such a short length of underground cable.

The Committee further queried why land immediately above the underground cables was to be 'off-limits' for passive recreation. In its letter to Committee, AusNet responded that although the levels of magnetic field are expected to be well within safety limits, it was considered 'prudent' to avoid using these areas for passive recreation, noting that this was in accordance with Energy Networks Australia industrial guidelines and industry best practice.

The fenced areas surrounding the transition enclosures were the subject of questioning and submission. The western transition enclosure area adjacent to the Monash Freeway is proposed to cover 8,700 square metres, and the eastern area to cover 4,600 square metres. The western enclosure includes a proposed lattice tower which results in the additional area of fencing. AusNet conceded that there was no technical reason for the fenced area to include the proposed lattice tower.

7.2 Discussion

It is apparent from the Chronology, the various correspondence and technical studies that the understanding and significance of EMF and EPR risks for the implementation of the underground option has evolved over the life of the project.

The health and safety concerns of EPR particularly, were one of the four major reasons provided by Mirvac in November 2008 for arriving at the conclusion that that undergrounding option no longer appeared to be feasible, with EMF being the other consideration. The Committee notes that in its letter of June 2001, AusNet made no mention to Mirvac of EMF or EPR as major issues.

In February 2003, AusNet issued Mirvac with a report (*draft*) *Final Report, Issues in Undergrounding 220kV Above ground Transmission line at Waverley Park*, which provided advice on the options and constraints arising from the proposal to underground the 220kV line. The report made comment about various matters, including the concept of four transition enclosures of dimensions 18 metres by 30 metres and three metre setbacks. The report provided information on magnetic fields, but made no mention of EMF or EPR.

In November 2006, Mirvac engaged AusNet and Maunsell for the FEED study for the underground option, including preliminary designs of the transition enclosures. AusNet described the FEED stage as being necessary "to ensure there are no major impediments to the proposed design concept". The executive summary stated:

EMF studies have been produced and our resultant designs have been modified to lower EMF. Our recommended designs are consistent with 'prudent avoidance' criteria used within the industry and are of lower EMF than the existing above ground lines.

Paragraph 7.4 of the report noted:

Where the cables are located close to metallic assets owned by other utilities, it is possible that fault currents on the cable or transition stations may cause hazardous voltages to occur on these assets. Metallic pipes owned by Yarra Valley Water run beneath Jacksons Road. Telstra cables are also located near the Jacksons Road transition station. The location of these assets and the effect of EPR will have to be accommodated with as part of the design of the earthing

arrangements for the cable and transition stations. Preliminary enquiries with Telstra indicate they do not consider the transition stations to cause a hazard.

In April 2009 Mirvac queried why it took AusNet until late 2008 to identify and communicate such a fundamental issue to Mirvac, an issue which Mirvac understood “*is common place in a number of zone substations in Victoria and elsewhere*” that appeared (to AusNet) to be of considerable concern “*so much so that it may compromise the overall viability of the underground scheme*” and at a point “*long after telecommunications infrastructure was installed by Mirvac adjacent to the Monash enclosure*”.

On 3 July 2009, AusNet wrote to Mirvac and provided the following advice:

.....

The recent report on Earth Potential Rise (EPR), which was done as part of the detailed design for the transition stations, identified that the associated voltage contours, due to earth fault current at the proposed transition stations, go far beyond the station boundaries. The Report concludes that risks will increase significantly to existing conditions if the undergrounding proceeds as proposed due to conductive services within both the new Mirvac estate and in established residential areas adjacent to the site (and within the influence of voltage contours).

SP AusNet has an obligation to the community to ensure electricity assets operate reliably and safely. On the basis of the consultant’s work SP AusNet believes the hazards introduced by the project would likely require extensive and potentially onerous mitigation measures to be put in place to meet these obligations ...

.... Given the nature of the mitigation requirements and the enduring nature of the residual risks, although the underground solution is possible SP AusNet does not find it to be desirable.

We understand that Mirvac is eager to explore possible overhead solutions as an alternative to underground. Such alternatives may greatly reduce or eliminate the enduring health and safety risk the underground solution would introduce. On that basis, and subject to reviewing an actual solution, SP AusNet would find this preferable to the underground proposal.

In June 2014, AusNet lodged its statement of grounds with VCAT seeking to clarify its position that it “*neither supports nor opposes the Amendment Application*”. It sought to explain its previous statement that it was not willing to accept the hazard of EPR and clarified “*that it would not accept the risks without further mitigation steps*”. AusNet noted that no further designs or studies have been undertaken since 2012 to identify and finalise the required EPR mitigation measures.

In its 15 December 2014 letter to the Committee, AusNet provided confirmation that both options were technically feasible and were acceptable to AusNet with appropriate risk mitigation measures in place. It clarified that no further work has been undertaken to include the EPR mitigation measures recommended by Safearth for the underground option and that in its opinion, further mitigation measures may be required.

Whilst the Committee acknowledges that the early advice provided to Mirvac was indicative, it has difficulty in understanding why the EPR risk was not identified until late 2008, either by AusNet or Mirvac's engineering consultants. From Mirvac's point of view this issue was seen as a significant change in circumstance.

Negotiations with AusNet and Mirvac over numerous years to deliver an outcome have been frequent and complex, and many issues remain unresolved. AusNet advised the Committee that both options were technically feasible and that both options were acceptable subject to reasonable mitigation of risks. The Committee notes however that AusNet's position reflected in previous correspondence and conduct over the preceding years has indicated a preference for the above ground option.

Ultimately the Committee must be guided by evidence put before it and the latest advice of AusNet, which is that the underground option is technically feasible and manageable subject to appropriate EPR mitigation measures being finalised. However it is clear that the mitigation requirements are technically more complex when compared to the above ground option and will require further detailed investigation and design before AusNet will be satisfied that these risks can be addressed.

With respect to EMF risks, the Committee accepts the evidence provided by Mr Boyle, which was not challenged in any significant regard, that the above ground option will not result in any unacceptable risks to health or safety for residents living near the transmission lines or for users of Lake Park.

The Committee acknowledges that irrespective of the weight of this scientific evidence, health and safety concerns and perceptions of risk may still have an impact on how people use space near or adjacent to the transmission lines. This is evident in the objections lodged against the amendment application and is reflected in the Empirica survey of Waverley Park residents and the responses of people who felt they were affected by the transmission lines (Document 18).

Overall the Committee does not find that the comparative EMF risk as tipping the balance in favour of either option in terms of the Committee's assessment of health or safety risks. It is clearly apparent that EMF risks can be appropriately mitigated and managed under both options, although with different cost implications.

The Committee accepts that there are greater EPR risks associated with the underground option compared to the above ground option. AusNet requires these risks to be appropriately mitigated at reasonable cost prior to approval and the Committee notes that these risks have yet to be resolved through any detailed design. For these reasons there remains significant uncertainty with this option.

The Committee accepts the evidence of Mr McCarthy that the underground option would introduce a more complex and non-standard arrangement into the transmission lines, potentially leading to additional points of failure and outage times. Whilst these risks appear to be manageable and their mitigation has to some extent been designed into the underground option (with the inclusion of spare cables), they go to the sustainability of introducing such a short section of underground cable into transmission lines which serve

thousands of homes in Melbourne's south-east. The safety and reliability of the operation of this transmission line is a paramount consideration for the Committee.

An issue which the Committee had some difficulty understanding was why the easement over the underground cables would be off limits to park users, particularly for passive recreation or even 'picnicking', particularly given that EMF levels, although elevated, were still within acceptable limits. The Committee pointed out the significant increase in available land for public open space should this mitigation requirement be reconsidered, however AusNet maintained that its approach of prudent avoidance was an appropriate response to these risks.

7.3 Conclusions

In terms of health and safety risks associated with EMF, the Committee does not find any significant difference between the two options that tips the balance of its assessment in favour of either option. These risks can be appropriately mitigated and managed under both options and well within the accepted standards and guidelines.

In terms of the health and safety risks associated with EPR, the Committee finds a significant advantage with the above ground option due to the unresolved EPR risks and therefore uncertainty related to the underground option.

While the Committee notes and acknowledges the concern raised by some objectors about health and safety associated with above ground transmission lines, it is clear from the evidence that there is no clear link between above ground transmission lines and risks to health.

The safety and reliability of high voltage transmission lines such as that which crosses the Waverley Park site are paramount considerations for the Committee. The engineering requirements for the underground option will present an additional level of risk and complexity for the maintenance and operation of the transmission line. Whilst these risks appear to be manageable, they are a consideration for the Committee in terms of the sustainability of undergrounding such a short section of significant State infrastructure that serves thousands of homes in Melbourne's south-east.

8 Visual Impacts

The purpose of this chapter is to examine the visual impacts of the amendment application and whether the proposed development (as amended) is acceptable in this regard. This assessment will necessarily have regard to the potential visual impacts and benefits of the underground option, which were the primary driver of the existing requirement for the transmission lines to be undergrounded and the imposition of condition 50.

8.1 Evidence and Submissions

(i) DTPLI

Mr Bergin observed that residents living close to the linear open space and residents living opposite across Jacksons Road would continue to have their visual amenity impacted from both the above ground and underground options. In relation to the underground option, Mr Bergin submitted that (at paragraph 9.3 of his written submission):

It is debateable whether the visual impact of seeing the overhead power lines is any better or worse than viewing the imposing two transmission enclosure structures. The underground proposal comprises two imposing new transition enclosures varying in size between 4,000 and 7,000 square metres that includes six tall concrete poles (the tallest of which are up to 30 metres in height) and a new electricity pylon within the Monash Freeway enclosure. In addition, the substation enclosures consisting of razor wire around the perimeter and stones along the ground, which will detract from the visual amenity of the area.

In closing submissions, DTPLI recommended that the future design of the transition enclosures should incorporate the screening elements as proposed at the Brunswick Terminal Station. DTPLI tabled the incorporated document for this terminal station and noted that if the Committee preferred the underground option it would also support the use of the additional screening to display imagery that reflects the previous AFL use of the site.

(ii) Mirvac

Mirvac submitted that the overall visual impact of the above ground and underground options are similar. However Mirvac submitted that the visual impacts of the transition enclosures in the underground option, when viewed from Jacksons Road and the Monash Freeway, would be much greater and introduce an industrial element into an established residential area, contrary to the Garden City Character sought to be achieved in the Monash Planning Scheme. In relation to visual impacts, Mirvac relied on the expert planning evidence provided by Mr Barlow and Mr Collie, and the photomontages prepared by Mr Haack depicting the underground and the above ground options.

Mr Barlow undertook an extensive viewshed analysis for both the underground and above ground options. These calculated the publicly accessible locations from which 25% and 50% of the electrical infrastructure would be visible under each scenario. It is noted that Mr Barlow's analysis did not assess impacts associated with the wires, as he considered these to have less impact and to be visually discrete. From this analysis Mr Barlow concluded that, notwithstanding the removal of the central tower in the underground scenario, many

residents within Waverley Park and surrounding residential areas would continue to experience views of electrical infrastructure. Mr Barlow acknowledged that the removal of the central tower and wires would provide a sense of visual spaciousness when viewed from the central area of the estate and within the park, but other parts of the estate will retain, or have new views to multiple transmission elements.

It was the evidence of Mr Barlow that the underground option imposes significant visual dis-benefits for residents living near the proposed transition enclosures which would serve to 'externalise' visual impacts to the broader community. Mr Barlow considered that the above ground option will be most visible to residents within the centre of the estate due to the height and central location of the monopole, but the pole itself would present as a slender element with its cross-arms only being fully apparent in views looking east-west. It was Mr Barlow's view that the existing and proposed landscaping would over time attenuate and buffer views to electrical infrastructure under both options. In his oral presentation, Mr Barlow took the Panel to aerial photos of examples of various areas of open space that are traversed by high voltage transmission lines.

(iii) Council

Council's submissions were focussed on the extent to which the transition enclosures had been optimally designed to reduce visual impacts, and it relied on the expert landscape evidence of Mr Wyatt and expert urban design evidence of Mr Biles.

Mr Wyatt's evidence was focussed on opportunities to more effectively visually screen the transition enclosures, and it was his view that they could be screened so that they will not create "*such an eyesore*". In relation to the above ground option, it was Mr Wyatt's view that the conversion of the lattice towers to poles will only have a marginal improvement. Ultimately Mr Wyatt concluded that the open space would be compromised by the presence of the above ground transmission lines, and the character and amenity of the area would be improved without the poles and wires.

Mr Biles conducted a visual analysis of both the underground and the above ground options, and he concluded that the visual consequences of the proposed above ground option would be at least the same as the existing condition. He said it would be more obvious in other areas in terms of the nature and extent of visibility. It was Mr Biles' evidence that the transition enclosures could be redesigned to make their presence "*less visually overt*". In any event it was his conclusion that even if the underground scenario was constructed as proposed it would substantially reduce the visual impact of the transmission infrastructure as a whole.

(iv) Objectors

Dr Lourens acknowledged that some residents living adjacent to the locations for the proposed transition enclosures would prefer the above ground option, but he argued that it is the amenity of the greater Waverley Park community that should have priority over individual amenity. He said that even if some residents find the transition enclosures unacceptable, this would not be a valid concern as they were provided notice in their respective sale contracts about them (from 2008) and were aware of the possibility that they might be built near to their homes.

Mr Gould submitted that between 72 and 90 properties that would have benefitted from the underground option would have direct views of the monopoles and transmission lines if the above ground option was pursued. Mr Gould queried the depiction of transition enclosures in the photomontages relied on by Mirvac, and submitted that these enclosures could be much more effectively screened than had been depicted.

Mr Foo's property is situated approximately 100 metres to the north of where the western transition enclosure would be sited in the underground option. Mr Foo supported the above ground option as it would avoid the need for this large transition enclosure which he does not want to be constructed in his community. He stated that he had no problems with the presence of the existing transmission lines.

8.2 Discussion

The key driver for the existing requirement to underground the transmission lines was the significant visual amenity improvements that it was assumed it would deliver to the residents of Waverley Park, and to a lesser extent the surrounding areas. This is clearly apparent in the Waverley Park Concept Plan which identifies these benefits but predicates them on an assumption that the underground option would avoid the need for electrical infrastructure to be placed on the site. Accordingly, the comparative visual benefits of the underground and above ground scenarios were a key focus of the submissions and evidence put to the Committee.

As highlighted earlier, the C20 Panel was not in a position to undertake a detailed consideration of the technical requirements of the underground option nor its associated visual impacts, as these details were not known at the time. Therefore in order to address the comparative benefits of the proposed above ground option, Mirvac has sought to address the implications of both schemes, in particular, it has addressed the assumptions underpinning the underground option, and the other parties have responded accordingly.

From a visual amenity perspective, the key differences between the above ground and underground options are:

- The underground option would require the construction of two transition enclosures of approximately 13,000 square metres in total area at the Jacksons Road entry to the estate and adjacent to the Monash Freeway. These areas would be fenced (to a height of three metres) and each will have a series of six landing poles ranging in height from 30, 22.1 and 17 metres and associated catenary required to transition the transmission lines from the high voltage towers to the underground lines.
- The underground option would result in the removal of the central tower and the span of transmission lines crossing the central part of the open space.
- The underground option would still require towers at western end of the current easement (within the site adjacent to the Monash Freeway) and its eastern end (adjacent to Jacksons Road) to allow connection to the existing above ground lines.
- The proposed above ground option requires the installation of a central monopole tower to a height of 45 metres approximately 300 metres from Jacksons Road, and two monopoles of 48 metres in height at the western end, approximately 100 metres from the Monash Freeway boundary.

- Both options are capable of being landscaped and the effectiveness of this landscaping would increase over time.
- Irrespective of which option is pursued, the transmission lines are required to be realigned and raised at the western end in order to achieve the necessary clearances over the acoustic wall at the Monash Freeway boundary.

From a visual amenity perspective, a key issue for the Committee to consider is whether the proposed above ground option would provide an acceptable visual amenity outcome, having regard to the relevant objectives and policies of the Monash Planning Scheme as it relates to Waverley Park.

Given the circumstances of this permit amendment application, it is relevant for the Committee to consider the comparative visual benefits of the above ground option having regard to the underground option, as this is the scheme it proposes to replace and is currently required by the existing permit condition.

The question of acceptability must be informed by the reasonable amenity expectations of urban communities in Melbourne, in particular neighbourhoods that are located adjacent or near to high voltage transmission lines. The Committee was taken to examples of places where transmission lines existed in close proximity to residential neighbourhoods and traversing open space. Further examples were provided at Appendix 10 to the planning report submitted in support of the amendment application.

The Committee's observations of open space areas in Melbourne, including prime open space areas along the Yarra River, is that high voltage transmission lines are a common feature, but their visual impacts and level of intrusion vary considerably depending on the extent of surrounding mature vegetation and the orientation and outlook of the open space. The Committee notes that high voltage transmission lines are often situated adjacent to and within residential areas, including neighbourhoods in the 'established leafy inner areas' of Melbourne. Clearly high voltage transmission lines are experienced differently in these contexts and the presence of mature vegetation surrounding the infrastructure can serve to minimise their intrusion and impact on the character of these places and the way they are experienced.

The visual amenity benefits of the underground option are clearly compromised by the relatively short length of transmission lines that are proposed to be placed underground, and the requirement for two transition enclosures to be situated within the development itself at either end of the open space reserve. As the visual and view-shed analyses of Mr Biles and Mr Barlow illustrated, in raw visibility terms, the principal effect of this option is to redistribute visual impacts of electrical infrastructure from the centre of the site to properties at either end of the estate nearer the transition enclosures. This effect is recognised in a number of submissions from residents whose properties are closest to the proposed western transition enclosure, some of whom expressed support for the permit Amendment. The removal of the spans of transmission lines over the open space area will undoubtedly improve the sense of visual openness of the park when experienced from its centre.

The images provide in the 2012 Planning Report by Collie and shown as Figures 6 and 7 demonstrate some visual amenity impacts (noting that the above ground option retains and shows the transmission lines, not the monopole option).

Figure 6 View toward stadium from Jacksons Road – above ground option



Figure 7 View toward stadium from Jacksons Road – below ground option



In this regard, the Committee did not find Dr Lourens' distinction between individual and community visual amenity helpful. Ultimately the community's visual amenity comprises an aggregation of many individual amenity perspectives which must be considered in assessing the overall impact. In any event, the assumption that only those closest or adjacent to the transition enclosures would be adversely affected is perhaps an overly simplistic assessment of the impact of these enclosures.

Both transition enclosures will have visual impacts on the public realm, in particular for users of Lake Park and Jacksons Road, and adjoining residential areas to the east across the Monash Freeway.

Importantly, the eastern transition enclosure would effectively terminate the axial view along Goodison Crescent to the Sir Kenneth Luke Grandstand, a facility which forms a key focal point of the urban design and cultural heritage strategy for Waverley Park. As noted above in Chapter 5, the Waverley Park design sought to respond to key visual and heritage objectives with strategies of maintaining key vistas to and through the site to showcase its landscape form and heritage assets. One such strategy was to maintain the key heritage vista from the Jacksons Road (previously Gate 7) to the key heritage focal points of the site, namely the oval and the Sir Kenneth Luke Stand.

As it currently stands the permit would require the construction of a large transition enclosure at the eastern end of the site at the termination of this important view. This transition enclosure would effectively remove the ability to obtain views to the Sir Kenneth Luke Stand from the Jacksons Road entry, as illustrated in the photomontages prepared by Mr Haack (see VP09 of the Visualisations document, Appendix D to Mr Haack's report). The effect of the transition enclosure is also to establish a significantly greater mass and clutter of electrical infrastructure built form and catenary at a key entry point to the estate. In the Committee's these outcomes would be at odds with the key design strategies of the Waverley Park Concept Plan.

Landscaping and design solutions would undoubtedly assist in mitigating some of the visual impacts of the transition enclosures, and there appear to be further opportunities for these strategies to be explored and improved.

The amended plans filed with VCAT propose to use slimline poles in place of the typical lattice towers. These poles have a significantly smaller footprint, with an approximate diameter base of 1.8 metres compared to between 7 and 9 metres for a lattice tower. As they rise above the ground they have a narrower, tapering and less industrial form when compared to the standard lattice towers that were proposed as part of the original application plans. Visual aesthetics can be a subjective matter, however the Committee considers that these poles would improve the appearance of the electrical infrastructure when viewed from the public realm and residential properties of Waverley Park.

The visual presence of the wires should not be discounted and their continued presence will still impact on the sense of visual openness and space, particularly for users of Lake Park and those residents situated closest to the easement or those who have a direct view of these.

The proposed landscaping masterplan seeks to break down the linearity of the easement within the park into a series of spaces that will result in the transmission lines being experienced differently as residents move through the park. With careful design and intensive landscaping, over time this will assist in reducing the visual intrusion of the transmission lines into this important community space.

Whilst the above ground option would not remove the presence of electrical infrastructure in this location it will avoid the need to establish a transition enclosure and in this way it better supports the design strategies referred to above.

8.3 Conclusions

The Committee considers that by removing the central tower and wires, the existing requirement to underground the transmission lines will improve the sense of openness and visual amenity for residents situated within the central areas of the Waverley Park Estate and users of Lake Park.

The relatively limited nature of the undergrounding required means that many of the visual impacts which are alleviated will be redistributed to those areas nearer to the required transition enclosures. These enclosures will have new and intrusive public realm impacts which are undesirable having regard to the urban design objectives and philosophy for Waverley Park.

The proposal to retain the transmission lines above ground using slimline poles will improve, but essentially maintain the current visual amenity impacts of the transmission lines on residents and users of Lake Park. However these impacts are not unreasonable and are not inconsistent with reasonable community expectations for urban areas adjacent to high voltage transmission lines, nor are they inconsistent with relevant planning policy and objectives for Waverley Park.

Whilst the visual impacts are distributed differently under both scenarios, the overall impacts of both the underground and above ground options are similar when taking into account the transition enclosures and the mitigating effects of landscaping over time.

The above ground option will avoid the need to locate a large transition enclosure and its associated plant and built form at the termination of a key heritage vista at the Jacksons Road entry. In this way the above ground option better supports the design objectives and strategies contained in Monash Planning Scheme.

Having regard to the above, the Committee concludes that the above ground option proposed would produce acceptable visual outcomes for the community, including the residents of Waverley Park and the broader community.

9 Open Space

The key issue in this regard is the implications for the provision of open space and additional community facilities for the residents of Waverley Park of the two options, and whether they are acceptable.

9.1 Evidence and Submissions

(i) DTPLI

Mr Bergin noted in reference to the proposed amendment to retain the transmission lines above ground that:

As part of the application to amend the permit, the applicant is proposing to redistribute funds into a Community Benefit Package. The package includes enhancements to existing and future open spaces within Waverley Park, and ex gratia cash payments to all lot owners in Waverley Park.

If the above amendment is accepted, it is proposed to amend the subdivision masterplan to show the transmission lines above ground, and to realign it slightly to follow the proposed public open space corridor. Further, it is proposed to amend the *Waverley Park Landscape Masterplan* to reflect, amongst other things, the additional open space proposed as part of the Community Benefits Package.

Following the notification process, Mr Bergin advised that Mirvac subsequently committed to providing the additional community benefits as required by the original C20 Panel, including:

- A café or coffee shop adjacent to the Lake Park
- A minor sports and recreation facility and place of assembly.

The Committee was advised that DTPLI prepared a draft notice of decision to amend the planning permit that included a number of conditions are relevant to this issue, and which have been previously outlined in Chapter 2.6 of this report.

Mr Bergin made the following submission relevant to this issue (at page 18 of his written submission):

In view of the substantial savings in cost to Mirvac, should undergrounding not occur, DTPLI are of the view that more could be provided to enhance net community benefits to the residents. Two significant additions outlined in the original panel report (Section 6.3 page 45 and Section 6.6 page 48) have not been incorporated in the proposed package of community benefits. These facilities include:

- *A café or shop adjacent to Lake Park.*
- *A minor sports and recreation facility and place of assembly.*

Mr Bergin questioned several of the expert witnesses on matters relating to open space and the proposed Community Benefits Package, and outlined that the C20 Panel supported the provision of food and drink premises and a place of assembly. Mr Bergin concluded:

What is clear from these proceedings is that Mirvac is coming to the end of what can be developed for housing and major public open space within the estate is yet to be finalised and delivered to the community. It is now critical that a decision be made one way or the other and the development completed.

(ii) Mirvac

Mr Morris reinforced the importance of the Neighbourhood Character Overlay Schedule 1 as “*the legal hook*” to the planning outcomes. He provided a perspective that originally the Waverley Park Concept Plan was allowing for underground cables to traverse the site from Jacksons Road to beyond the Monash Freeway, and in submissions referred the Committee to paragraph 4.3.5 of the Design Response section of the Waverley Park Concept Plan which states:

It is the intent of Mirvac to re-align and underground the overhead high voltage lines which traverse the site from Jacksons Road to beyond the Monash Freeway. In accordance with a commitment to enhance the open space amenity for the community, the proposal to underground will provide the opportunity to utilise the easement as road reserve or open space parkland.

This would suggest that undergrounding the transmission lines was assumed to assist in enhancing the open space and amenity of Waverley Park and that the points of the undergrounding of the transmission lines were envisioned to occur at Jacksons Road and beyond the Monash Freeway so that the transmission lines were undergrounded entirely within the site.

Mr Morris referred to the evidence of Mr Murphy regarding usable open space and the opportunity of significantly larger usable open space areas with the above ground option, particularly in the context “*of a development that currently has significant barriers to existing larger parks, no substantial sized playground within 2km of its centre, and a demographic profile with a higher number of younger families than the metro Melbourne average*”. Mr Morris concluded:

There can be no doubt that the above ground option provides a far superior outcome in terms of usable open space than the underground option, for the residents of Waverley Park and the surrounding area.

Mr Morris sought to highlight the fairness of the Community Benefits Package proposed. Mirvac are proposing a \$15m package to be distributed as follows:

- Ex-gratia payments to eligible home owners.
- Significant upgrade of existing open space within the estate.
- Additional spending on the lake and wetlands corridor, including significantly larger open spaces, walking tracks and sporting facilities.
- Contribution to further public amenity within the Monash City Council subject to agreement with the Council.

Additionally, Mirvac has proposed to make available a space within the Sir Kenneth Luke Stand for a place of assembly for Council to use as it wishes.

Mr Murphy of MDG Landscape Architects provided evidence on the public open space issues to the Committee. He detailed various elements of the open space which was helpful in assessing advantages and disadvantages between the two options, and provided suggestions as to further elements that might be considered. His advice summarised the benefits of the two options:

Underground Option:

- Creates the opportunity for a 4.71 hectare park with lake, wetlands and recreation facilities, with the lake and wetlands area proposed to be 1.94 hectares.
- A significant suite of wetlands, bio retention systems and sediment ponds are required within the site to meet best practice water quality improvement objectives for the overall development.
- The underground transmission line easement defines the southern boundary of the park. AusNet places a number of restrictions on this easement, including the requirement for dense low ground cover landscaping over the non-roadway area to make that remaining strip inaccessible for active use, and trees to be no higher than three metres and planted no closer than 10 metres apart.

Above Ground Option:

- Creates the opportunity for a 6.77 hectare park.
- Much of the open space elements are present in the underground option.
- As there will be no transition enclosures, the opportunity exists for the public open space to cover the full east-west dimension of Waverley Park.

Mr Murphy provided a quantitative comparison of the two options, with his comparison concluding in favour of the above ground option:

- Total park size: difference of 20,565 square metres.
- Usable level area outside transmission line easement: 14,300 square metres.
- Usable grassed batters outside easement: 300 square metres.
- Level area inside easement: 2,900 square metres.
- Non-usable area including drainage batters: 2,165 square metres.
- Lake area and wetland water bodies: 900 square metres.

Mr Morris asserted that the outcomes expected for a larger park with a broad diverse range of recreation opportunities are more valuable than for a smaller park. He contended that the larger park can provide a substantially greater range of recreation opportunities for the community. Mr Murphy summarised the difference between each option in relation to the recreational amenities proposed. This is summarised in Table 2.

Table 2 Comparison of open space outcomes for above and underground options

Recreational Amenity	Underground	Above Ground
Picnic Shelters	1 medium shelter	1 larger shelter 1 medium shelter 3 small shelters
BBQ facilities	2 double BBQ's	7 double BBQ's
Picnic Table Settings	3	11
Play Spaces	standard play space	large scale play space
Junior Play	155 square metres	680 square metres
Senior Play	325 square metres	775 square metres
Teen Oriented area	n/a	1,125 square metres containing: <ul style="list-style-type: none"> - full sized basketball court - netball rings - integrated soccer goals - skate friendly tiered seating, viewing area - climbing wall
Picnic Lawn	1,300 square metres	1,300 square metres
Seating	12	26
Kick about space	Approx 400 square metres	Approx 1,200 square metres
Walking Trails	1.5 kilometres	3.1 kilometres
Fitness Trails	N/A in current design – could include but much smaller	Up to a 2.5 kilometre fitness circuit, 2 outdoor gyms, 6 exercise stations.

Mr Murphy included detail on the proposed upgrades to five existing parks as part of the proposed Community Benefits Package. Some of the items include:

- Stage 1A: Rathdowne Way - pergola structure, picnic table.
- Stage 1C: Lansdowne Circuit - mulched softball area.
- Stage 2B: Lords Avenue - three extra picnic tables.
- Stage 4G: Gertrude Street - informal basketball, combined play unit with slide cubby.
- Stage 7A: St James Park Drive - picnic shelter, toddler/junior play space, soccer goal.

Mr Murphy said: *“These upgrade works are generally targeted at making the range of the existing parks within Waverley Park more useful for residents. They are simple to maintain and will not create any undue maintenance burden on Council”*. Based on his analysis, he concluded *“I believe the above ground Powerline park is fundamentally better placed to serve the purpose and goals intended for this park”*.

He identified additional opportunities and contended the usefulness and attraction to the residents of Waverley Park and the broader community would be enhanced by:

- The inclusion of public toilets near the hub area for picnickers and children using the play spaces.

- Potentially increased car parking availability due to possibility of increased demand which could be incorporated as angle parking along the arcing roadway.
- Inclusion of shade sales over portions of the playgrounds as well as two outdoor gyms.
- Opportunity for a non-permanent facility such as a coffee cart or mobile operation.

While Mr Murphy did not believe a café would be commercially viable, he acknowledged that a non-permanent facility such as a coffee cart or mobile operation could work.

The Committee questioned Mr Murphy over the relative benefits of the significantly lesser dimensions of the easement and buffer zone (27 metre buffer to buffer including a 17.5 metre easement) for the underground option compared to the above ground option (80 metre buffer to buffer including a 60 metre easement). The Committee noted Mr Murphy's response that the area above the underground cables option was not considered usable public open space due to the easement restrictions imposed by AusNet. It was further noted that a proportion of this easement would be unusable for public open space due to it being under the proposed arcing roadway.

The easement restriction imposed by AusNet was subsequently followed up with AusNet during the course of the Hearing. Although the magnetic fields above the cables fall well within safety limits, AusNet applied the principle of prudent avoidance thus removing the opportunity for a substantial tract of land being available for community benefit. When questioned on this matter, AusNet would not move on this requirement.

In his closing, Mr Morris submitted that the expert witness provided by Monash City Council:

Did not carry out a net community benefit assessment of the Application and did not weigh the comparative benefits and disbenefits of the Application against the requirement for undergrounding in relation to the quantity and quality of public open space or the community benefits package.

(iii) Monash City Council

Mr Pitt contended that the Community Benefits Package is an endeavour to offset the existing cost of complying with the planning permit, and while he added that Council accepted the additional funds for existing parks is a benefit, he rejected the ex-gratia payments within the package as being relevant.

Council raised an additional objection against the proposed increase of open space provision on the basis of the additional maintenance liability it would have to assume. In submission Mr Pitt advised that:

Monash has not agreed to be responsible for maintenance of additional open space above that previously contended by Mirvac to be appropriate without a financial offset for ten years or to accept responsibility for a "community space" in the grandstand and it is unconvinced of any need for such a space (at paragraph 2.3.1 of his written submission).

Council rejected outright the proposed 'place of assembly' in the Sir Kenneth Luke Stand.

Mr Pitt in his questioning of Mr Collie, asked whether the undeveloped lots north of the easement near Jackson Road could be available for public open space. Mr Collie responded that any decision of that nature would be taken in the context of Mirvac's expected yields.

(iv) Objectors

The objecting submissions relevant to the issue of public open space and the additional community facilities raised the following matters both for and against the proposal:

- The proposed amendment will provide additional parklands and play areas for children.
- Mirvac will redistribute funds to improve other existing community facilities which will benefit residents.
- The upgrading of open spaces and community facilities will add value to homes in Waverley Park and improve community life.
- The proposed Community Benefits Package is fair to all owners.
- The permit amendment will free up funds to better develop the parklands.
- The additional open space proposed as part of the Community Benefits Package will attract people from outside the area and may potentially lead to violence, destruction, and theft and could create a drug and alcohol problem.
- No additional car parking is proposed to be provided with the additional open space.
- Recreational activities in the open space will be constrained if the transmission lines remain above ground.
- Council may not be able to properly maintain the open space when the responsibility is transferred to Council. Residents will be burdened by the ongoing maintenance of open space through body corporate fees or Council rates.

Dr Lourens made references to the public open space issue, and made the point that:

There exists abundant on-the-public-record evidence (petitions, community events, media interviews) that residents of Waverley Park are not prepared to accept enhancements to existing, or other community spaces if it means foregoing diversion of the powerlines underground.

Also:

The essential question here is why Waverley Park residents should financially subsidise the development of public amenity and public open space elsewhere in the community.

Dr Lourens noted that at a meeting in June 2013, Mirvac revealed that an estimated \$1.5m would be allocated to areas outside the Waverley Park estate.

9.2 Discussion

9.2.1 Previous considerations

The former Minister for Planning as Responsible Authority, in refusing the proposed amendment to condition 50 provided four reasons, two of which stated:

The proposal is contrary to the expectations of the Waverley Park community regarding visual amenity.

The proposal does not provide sufficient community facilities or improvements to Lake Park in accordance with the recommendations of the Panel Report (Monash Planning Scheme Amendment C20) dated August 2002.

Regarding open space matters, the Panel for Amendment C20 had made the observations that:

Mirvac has committed approximately 20% (approx 17ha) of the Waverley Park site to active public open space suitable for landscaping.

....

The variety and hierarchy of open space is fully integrated throughout the development using parks, pedestrian linkages, overland flowpaths, road reserves, and circulation spaces. The open space network is structured within a three tiered hierarchy, which includes wetlands as a first level, neighbourhood parks as a second level and local precinct parks as a third.

The landscape Masterplan when fully implemented will succeed in creating a Garden City character for Waverley Park possibly more successful than is evident in the surrounding residential area.

Even though the C20 Panel endorsed the overall landscape plan and open space provisions, it had highlighted that some improvements could be made, for example through the inclusion of a café located at Lake Park, and said:

Lake Park will be one of the key landscape features of Waverley Park. It is part of the first tier in hierarchy of open space. The lake will serve to retain one of the significant heritage features of the site and will be an important component of the drainage strategy for the site.

Within the estate walking and cycling for exercise and pleasure are likely to be activities engaged by residents which will be promoted by the permeability of the pedestrian and open space networks people appreciate a destination for their outings. They like to gather, meet with friends in attractive locations or indulge in some refreshment at the end of their walk or cycle. The proliferation of cafes is a testament to these tendencies.

...

A café or coffee shop can form the nucleus of community focus and provide a facility that many people living within Waverley Park are likely to want.

The Panel considers this sort of facility should be incorporated in the planning of Lake Park.

9.2.2 Comparison of Options

The Committee acknowledges that both transmission line options will provide quality public open space outcomes that will meet the relevant planning and urban design objectives of the Planning Scheme. It acknowledges that the public open space opportunities associated with the above ground option are significantly greater, without the need to allow for the extensive footprint of the transition enclosures.

The proposed amendment offers opportunities to seek improvements to the existing local parks within the estate, seek time limits on performance so that the community can enjoy the primary open space offering in the estate, and enables some other improvements, to be included. The proposed Community Benefits Package provides the opportunity to fund these activities which do not exist with the underground option.

Mr Murphy detailed the proposed upgrades to five existing parks in his evidence. The Committee believes that these upgrades will provide a higher amenity outcome for the community and should be a requirement of the permit amendment, to be funded by Mirvac either directly or as part of the proposed Community Benefits Package.

The Committee accepts the evidence of Mr Murphy as definitive advice on the issue of public open space and generally concurs with his conclusion that the park resulting from the above ground option is fundamentally better placed to serve the community.

As part of the permit amendment, the Committee believes that these upgrades will provide a higher amenity outcome for the community. While the Committee can understand the position of DTPLI regarding the inclusion of permanent food and drink premises and a place of assembly, it considers these are matters that cannot be mandated and should be subject to further investigation as the estate develops. These provisions are reliant upon a commercial operator willing to take a commercial risk and so long as the permit allows for these opportunities, there is no further need to discuss this. Nevertheless, the Committee does see merit in making provision for services in appropriate locations within the Lake Park to facilitate these outcomes in the future should their viability be confirmed. To this end the Committee supports the inclusion of the proposed additional permit conditions that require these works to be delivered as part of the delivery of the open space.

9.2.3 On-going maintenance of open space

The Committee acknowledges that the increased open space provision under the above ground option, whilst providing additional amenity to residents, will impose an additional financial liability on Council to maintain and ultimately replace the assets compared to those that would have been provided in the underground option.

The quantum of this compensation was discussed in several submissions but there was minimal quantitative substance to the estimates suggested. It is difficult to estimate a compensation amount without being presented with more detailed analysis and the Committee is not in a position to recommend an appropriate amount of money which should be dedicated to maintaining the additional open space following completion of the

subdivision. Nevertheless the Committee believes that this matter would benefit from further discussion between the parties and perhaps an independent study to determine an appropriate amount that fairly reflects the additional financial liability for Council over a reasonable period following completion of the subdivision of housing lots.

It is noted that condition 54 of the permit required Mirvac to enter into a section 173 agreement with Council to address the future management and maintenance of public open space within Waverley Park. During the Hearing an agreement was tabled (Document 39) by Council. Although the agreement was not a section 173 agreement and is not registered, its purposes was to satisfy condition 54 of the permit. Mirvac, Council and the previous Minister for Planning, as Responsible Authority, are all parties to the agreement. The agreement requires (inter alia) Mirvac to bear the cost of maintaining all public open space within Waverley Park for a period of 12 months following registration of the last plan of subdivision of housing lots and hence would still apply to the remaining stages of subdivision. The Committee notes that such agreements are typically negotiated for the maintenance of public infrastructure through the subdivision process administered under the *Subdivision Act 1988*.

Relevantly, this agreement requires Mirvac to obtain the written consent of Council prior to placing any infrastructure (including recreational facilities) on all public open space within Waverley Park. Public open space and infrastructure are defined broadly and would presumably include all of the open space works and facilities proposed as part of the Community Benefits Package.

The Committee understands that this agreement remains enforceable and will apply to all of the public open space areas, including the Lake Park, for the period required under the agreement. Given that Mirvac will require Council's consent for the additional works, these discussions will provide Council with an opportunity to perhaps revisit any additional maintenance liabilities, such as those discussed above, that were not foreseen at the time of executing this agreement.

9.2.4 Proposed Community Benefits Package

As part of the proposed permit amendment, Mirvac has proposed to deliver a Community Benefits Package comprising a \$15m package of payments, open space and amenity improvements which directly benefit Waverley Park residents and applied across four areas:

- Ex-gratia amounts to all eligible homeowners to the maximum value of \$8.5m (previously discussed in Chapter 4).
- Upgrades to existing community space.
- Additional spending on the proposed lake and wetlands corridor due to larger public open spaces, walking tracks and sporting facilities.
- Contribution to further public amenity within the City of Monash.

The Committee has noted in previous chapters that, whilst some elements of this package may go some way to addressing private grievances and general issues of equity, they go above and beyond what would normally be considered reasonably required or necessary as a result of the proposed permit amendment. It is unlikely that such requirements would be sustained if unilaterally imposed by a responsible authority as permit conditions. Nevertheless given the circumstances, Mirvac proposes to make these contributions

voluntarily and this package includes additional open space provision and works that will deliver direct amenity benefits to those residents affected by the proposed amendment and are relevant for the Committee to consider.

It was Mr Collie's evidence that the 2002 AusNet estimate of \$12m would be \$17m in current dollars if this amount were to be indexed in a manner that is typically applied to the indexation of development contributions (at page 12 of his statement). In assessing the package and overall costs to Mirvac, Mr Collie has included the costs required to replace the lattice towers (ie. the construction costs for the above ground option) to arrive at a figure of \$22m, which he concludes is well above what the original cost estimate would have been in today's dollars. Mr Pitt suggested that the starting point for this calculation should be \$18m (not \$12m) and the current day dollars should be proportionally increased. Dr Lourens utilised the relevant CPI indicators to estimate the current day dollar equivalent of \$12m as \$16.67m.

The Committee understands that the general principle which has guided the formulation of Mirvac's Community Benefits Package was to set aside an amount of money that would have been equivalent to constructing the underground option, as originally costed or assumed by Mirvac in today's dollars, then deduct an estimated \$7m for the construction of the proposed above ground option and apply the balance of the money to amenity and public open space improvements that benefit the Waverley Park community. As a matter of equity and at a general level, the Committee supports this principle and has considered at length the extent to which this amount properly reflects a fair and reasonable outcome in this regard. However it is important to note that the detail of its application is not influenced the Committee's assessment of the planning merits of the amenity and open space components of the Community Benefits Package.

The Committee does however observe that if the present day value of cost estimate for the underground option assumed at the time of the C20 Panel is approximately \$17m, deducting an amount of \$7m from this estimate would leave a balance of \$10m that could potentially be applied by Mirvac to open space and amenity enhancements that benefit Waverley Park residents. In light of this, it is not clear why the total package amounts to \$15m and not the \$17m or indeed whether the \$15m amount was used a starting point or cap in formulating the components of the package. At a general equity level and not in planning terms, one's view of this package will perhaps depend on whether the ex-gratia payments are taken into consideration in assessing the overall costs to Mirvac.

In any event, perhaps what the package demonstrates is that a significant amount of private resources can be freed up and applied to open space and amenity improvements if the underground option is not pursued. The Committee regards these benefits as weighing heavily in favour of the above ground option, particularly given the overall limited, and perhaps marginal amenity benefits which would otherwise be realised through the underground option.

9.2.5 Other observations

Dr Lourens made the point that evidence exists that the residents of Waverley Park are not prepared to accept open space enhancements if it means foregoing the underground option. Perhaps the more relevant question is whether the residents would accept the enhancements if the underground option is no longer an option, and whether the residents (especially those at the Jacksons Road and Monash Freeway end) are fully aware of the visual amenity implications of the transition enclosures as a result of the underground option.

He questioned why the Waverley Park residents should subsidise the development of public amenity and public open space elsewhere in the broader Monash community external to the estate. The Committee believes this argument has some merit and if the above ground option is ultimately supported, then the accompanying amendment package, whether a suggested Community Benefits Package or otherwise, should be favourable to the Waverley Park residents in terms of open space enhancements and/or dollars. However the Committee notes that Waverley Park residents, both existing and future, will use and benefit from a range of existing community facilities that are not situated within the Waverley Park site. Therefore it is not unreasonable to expect that some voluntary contribution is made by Mirvac towards the enhancement of other community facilities external to the site of an amount which reflects the proportion that the Waverley Park residents might use and benefit from these facilities.

Mr Morris made a fundamental observation about the public open space discussion. Originally it was perceived that the underground cables would traverse the entire site from Jacksons Road to the Monash Freeway, and on this basis the underground option was assumed to be an opportunity to enhance the open space outcomes compared to the existing or original above ground option. This is now known not to be the case.

9.3 Conclusions

The Committee's consideration of the relative public open space merits of the two options on the Waverley Park Estate leads it to conclude that the above ground option provides significantly greater public open space opportunities than the underground option. This is due to the additional area of open space delivered primarily by not having to accommodate the two transition enclosures and the opportunity to provide funding for open space improvements available under the permit amendment.

The superior open space outcome, together with the amenity and open space improvements proposed as part of the Community Benefits Package, will deliver additional benefits to Waverley Park residents and visitors to the site.

The Committee accordingly supports the imposition of the proposed additional permit conditions that would implement these important amenity and open space improvements.

PART C - CONCLUSIONS AND PERMIT CONDITIONS

10 Conclusions

The Act and the VPPs establish a framework within which planning and responsible authorities are to endeavour to balance and integrate competing policy objectives in favour of 'net community benefit' and 'sustainable development' (at clause 10.04 of the Planning Scheme):

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations (Committee emphasis).

By their very nature, planning decisions such as that required for the proposed permit amendment, involve competing considerations and an assessment of whether net community benefit would result necessarily assumes that there will generally be some disbenefits to be weighed against the positive features. At the same time, the Committee needs to address whether spending in the order of \$50 to \$60m to place a 530 metre section of transmission lines underground is sustainable.

10.1 Will the Revised Permit Deliver Sustainable Development?

The Act and the Monash Planning Scheme require the Responsible Authority to balance competing policy considerations in favour of sustainable development. Broadly conceived the concept of sustainable development requires planning decisions to bring about an effective and efficient use of resources, including public, private, environmental and economic resources to achieve a safe and pleasant living environment for Victorians.

This concept is of particular relevance in the present case given the substantial economic differentials between the options that must be weighed against their purported amenity outcomes to determine whether these options represent a sustainable use of resources into the future.

The Committee has had the benefit of lengthy and technical submissions and evidence of the practical and economic issues that are associated with the undergrounding of high voltage transmission lines. The Committee is grateful for being presented with the detailed history of the efforts which Mirvac have made in seeking to bring about this outcome over the preceding years.

What the submissions and evidence have demonstrated to the Committee is that it is simply not sustainable to contemplate the undergrounding of high voltage transmission lines in circumstances such as those of Waverley Park, where limited environmental benefits would be achieved at considerable costs and delay to delivery of new residential communities. The proposed permit amendment has illustrated that undergrounding in this context does not represent an efficient use of economic resources, which could be better applied to a deliver broader amenity benefits in a timelier manner.

Similarly, the Committee finds that the complexity and risk that undergrounding such a short section of cable of such a critical piece of State significant electrical infrastructure is just not

sustainable. The broader community will have to ultimately bear these additional risks and costs, which are simply not justified by the limited and localised visual amenity benefits that the underground option would deliver.

10.2 Will the Revised Permit Deliver a Net Community Benefit?

The circumstances of the present application are somewhat unusual in that the benefits and disbenefits of the above ground proposal are being compared to those of a planning requirement which is yet to be implemented and the benefits of which are also hypothetical. Nevertheless this planning requirement represents the status quo and is what will be required to be implemented should the amendment application be refused.

Council and Mirvac made submissions specifically addressing the concept of net community benefit.

In assessing net community benefit Mirvac sought to confirm that the Committee have regard to a broad class of people, including future residents of Waverley Park and visitors to the park and those whose properties are serviced by the transmission lines, and said at paragraph 6 of its written submission:

In balancing competing objectives in favour of net community benefit, the relevant community includes present and future residents of Waverley Park. It includes residents in adjacent areas, including those whose properties are serviced by the powerlines. It includes those who experience Waverley Park as visitors and users of its facilities. In terms of visual impact, it includes those passing by on Jacksons Road.

Mirvac submitted that the amendment application not only produces an acceptable planning outcome but also a 'net community benefit'.

In giving his planning evidence, Mr Barlow concluded that the proposal will realise a net community benefit for the local community. However Mr Barlow acknowledged that he had not quantified or summarised his view by outlining benefits and disbenefits. Mirvac subsequently tabled a document prepared by Norton Rose that highlighted the benefits and disbenefits of both options as identified in Mr Barlow's evidence (Document 19). This document highlights the disbenefits of the underground option as being principally associated with the need for transition enclosures, which he considers serve to externalise the visual impacts to surrounding areas and interrupt important vistas at key locations such as the Jacksons Road entry.

Mr Pitt submitted that net community benefit is the relevant test but sought to clarify that it did not encompass any assessment of disadvantages to Mirvac. He said:

Net community benefit is the test in choosing between the options Mirvac has put before the Committee which in this case is to be assessed as the advantages to the community weighed against the disadvantages to that community not the net impact on the landowner.

...

It follows that what must be assessed is the acceptability of the amendment and the consequences for the Permit and the Planning Scheme requires that assessment to be by reference to the net community benefit.

The Committee agrees with the submissions put by Council and Mirvac on how the concept of net community benefit should be applied to the present circumstances. The Committee agrees that it should have regard to the 'community' in the broadest and most relevant sense and that any financial disbenefits to Mirvac are not directly relevant to this balancing process.

The proposal to retain the transmission lines above ground will have some negative consequences for residents, particularly those situated more centrally within Waverley Park with views of the central tower and wires. However the above ground option would avoid the negative visual impacts associated with the transition enclosures, particularly for those nearest to these enclosures and users of the public realm, including Jacksons Road and the Lake Park. Over time the Committee accepts that the visual impacts of both options can be mitigated and will be reduced. In this way Committee sees the net impact of the proposed above ground option as more or less neutral in terms of visual impacts.

The above ground option would provide a larger and more usable open space area for the Lake Park with enhanced recreational facilities, as well, improvements are proposed to smaller parks throughout the Waverley Park estate. It is perhaps debatable whether this is a natural planning consequence of the above ground option or whether it is simply facilitated by the significant amount of resources that are freed up by not pursuing the underground option and reduced pressure for securing higher lot yields at the eastern end of the park. Either way it perhaps illustrates the significant and disproportionate amount of resources which would need to be devoted to achieving the underground option. Assessing the net impact of these open space enhancements to the open space necessarily involves placing a value on these benefits relative to the amenity benefits that would be achieved by the undergrounding option. Overall the Committee regards these open space improvements as a clear benefit and that the net impact of the proposed permit amendment with regard to open space is positive.

There are other benefits which the above ground option would provide for that Committee believes serve to tip the balance in its favour. These include the likely time that will be saved in finalising the Waverley Park estate, in particular its key open space area, if Mirvac is not required to underground the transmission lines. From the submissions and evidence put to the Committee it is clear the works required to underground the transmission lines are significantly more complex in both a practical and legal sense, with the timeframes for finalising contractual agreements and delivery likely to be significantly longer. The Committee cannot emphasise enough the importance of Mirvac finalising this project so that the residents of Waverley Park and visitors can enjoy its key open space area and fully appreciate the civic vision for the Waverley Park estate.

Whilst the Committee accepts that the undergrounding option is technically feasible it would introduce some additional complexity and additional risk into the management of this critical piece of urban infrastructure which supplies power to several hundreds of thousands of people in Melbourne's south eastern suburbs.

10.3 Overall Conclusions

The Panel for Amendment C20 recommended that the transmission lines be placed underground, but did not elaborate on how this might occur. It contemplated that the undergrounding of the transmission lines may not be viable and that in this event, condition 50 and the masterplan would need to be amended.

The Committee considers that Mirvac has acted in good faith in seeking to implement the current permit requirements and has expended significant time and resources in this regard. However it is regrettable that this matter was not resolved sooner and within the five years contemplated by the C20 Panel. The financial and technical assumptions that had driven Mirvac's initial proposal during the Panel process were not well conceived, and the current cost estimates have significantly escalated since its conception.

At this point in time, it is not reasonable for the community to expect a developer to undertake such a project in these circumstances i.e. to underground approximately 530 metres of State significant high voltage transmission lines to achieve amenity benefits alone. This requirement would be unprecedented, and has the potential to jeopardise or at the very least seriously delay the completion of the Waverley Park development.

The Committee is satisfied that the underground option is technically possible and that it could be refined further to reduce its visual impacts. Even with further improvements, the relatively limited nature of the undergrounding required means that many of the visual impacts which are alleviated will be redistributed to those areas closer to the required transition enclosures. These enclosures will result in public realm impacts which are undesirable having regard to the urban design objectives and philosophy for Waverley Park.

The proposal to retain the transmission lines above ground using slimline poles will improve, but essentially maintain the current visual amenity impacts of the transmission lines on residents and users of Lake Park. However these impacts are not unreasonable, and are not inconsistent with reasonable community expectations for urban areas adjacent to high voltage transmission lines, nor are they inconsistent with relevant planning policy and objectives for Waverley Park. The retention of the transmission lines above ground can be implemented without health or safety impacts, and it will not compromise the operational requirements of AusNet.

The amendment application will deliver improved amenity and open space outcomes for the residents of Waverley Park with a much larger and diverse Lake Park, better recreation facilities and enhancements to other open space areas throughout the estate.

The proposal to retain the transmission lines above ground would facilitate the more timely completion of the Waverly Park Estate, enabling its residents and visitors to enjoy its principal open space area and fully appreciate the civic vision for the site. It represents an acceptable planning outcome and together with the open space proposals, will deliver a net community benefit.

The Committee recommends that the planning permit should be amended accordingly.

11 Revised Permit Conditions

In light of the Committee's overall conclusions, it is appropriate to give consideration to the permit conditions in relation to the proposed amendment.

Relevantly section 73(2) & (3) of the Act states:

- (2) *If the responsible authority decides to grant an amendment to a permit subject to conditions, the conditions must relate to the amendment to the permit; and*
- (3) *Any conditions to which an amendment to a permit is subject form part of the permit when it is issued.*

On 17 April 2014, DTPLI initially recommended that the former Minister of Planning issue a Notice of Decision to amend a planning permit and additional conditions that be imposed. Ultimately this recommendation was not accepted by the Minister, however it is relevant to note that conditions were proposed to address the following (in summary):

- The submission and approval of plans prior to the removal of the existing transmission lines.
- A requirement that the replacement transmission lines be constructed within two years of the date of any agreement being reached with AusNet.
- The construction of a place of assembly for a community facility, to be designed and located in consultation with Council, prior to the issue of a statement of compliance for the final stage of subdivision.
- The provision of an appropriate kiosk facility adjacent to the Lake Park precinct prior to the issue of a statement of compliance for the final stage of subdivision.
- A section 173 agreement was also required to establish a maintenance fund for the place of assembly and kiosk facility.

During the Hearing, these DTPLI proposed conditions formed the basis of discussions regarding the need for additional permit conditions should approval of the permit amendment be recommended by the Committee.

Mirvac tabled an amended set of additional permit conditions which were based on the conditions originally proposed by DTPLI (Document 35). This document proposed further changes to the permit and the preamble to clarify any uncertainty regarding the construction and realignment of the transmission lines above ground. It included a new condition 50, as well as new conditions 51, 52, and 53 to support the primary change of allowing the alignment of the transmission lines to be varied.

Submissions were made by other parties in relation to the appropriate form of these conditions, and the Committee has taken these into consideration in finalising its recommended conditions set out below. The Committee has used Document 35 as its basis for discussion and findings about the conditions.

The following discussion addresses the issues raised by the permit conditions proposed. The Committee's consolidated amended draft permit conditions are provided in Appendix D.

11.1 Permit Preamble

There was discussion regarding what may or may not have been authorised by the permit and whether it was contemplated that the transmission lines may be placed above ground using new towers.

Whilst the C20 Panel contemplated the prospect that the transmission lines may not be placed undergrounded, it is not clear from the Panel Report or from reading the permit as a whole whether it was understood that the transmission lines would need to be realigned and reconstructed as a new higher towers, should the undergrounding not proceed. Nor was it clear that there would need to be new transition enclosures to accommodate the undergrounding, either within or external to the Waverley Park site.

For the avoidance of doubt, the Committee supports the modification to the preamble to clarify that the permit authorises buildings and works necessary to realign the transmission lines.

11.2 Revised Conditions

It follows from the Committee's primary findings and conclusions that condition 50 in its current form should be replaced with a new condition that addresses the realignment of the existing transmission line easement above ground.

Mirvac proposed that this condition be replaced with a new condition which states that the easement may be varied to the satisfaction of the Responsible Authority. However the Committee is unclear of the purpose such a condition would serve given that the permit preamble already allows for the variation of an electricity easement. This condition does not appear to add anything and set out any mechanism by which the variation is implemented. Notwithstanding, the Committee supports the revised condition 50 as provided in Document 35.

As it appears that the above ground easement realignment and new tower were not contemplated at the time of the issue of the permit, a condition is required to formalise plans detailing these works.

In this regard the Committee accepts the condition proposed by Mirvac, which requires the submission and endorsement of plans generally in accordance with those that formed part of the amendment application.

DTPLI had proposed a condition which required these works to be completed within two years of the date Mirvac reaches agreement with AusNet regarding the new works and not later than three years from the date the permit is amended. The Committee agrees there should be no further unnecessary delays in completing these works and Mirvac should be required to complete these works within a reasonable time. The Committee accepts the condition as originally proposed by DTPLI, with minor modifications suggested by Mirvac that is now a new condition 51.

The Committee considers that how to resolve the open space and Community Benefits Package is more problematic. A new condition 53 was proposed which essentially included works to provide and complete the new public open space opportunities for the easement and to upgrade existing public open space elsewhere in the estate. The condition provided

the opportunity for provision of a community centre space and funds for additional public open space works external to Waverley Park. Funds were also provided for maintenance. The revised condition 53 proposed by Mirvac is provided in full:

53. *Before a statement of compliance is issued for the final stage of subdivision at Waverley Park, the following must be completed to the satisfaction of the responsible authority:*
- (a) Works to provide new public open space within Waverley Park generally in accordance with the landscape masterplan at pages 14-15 of the expert witness report of Barry Murphy dated August 2014 but amended to include space for and the provision of services to a potential future kiosk, and public toilets, all to the value of \$4,200,000.00;*
 - (b) Works to upgrade existing public open space within Waverley Park generally in accordance with the recommendations on page 35 and in Appendix B of the expert witness report of Barry Murphy dated August 2014 to the value of \$612,000.00;*
 - (c) Subject to agreement with Monash City Council within one year from the date that this permit is amended, provision of a community centre space within the Stadium precinct to the value of \$690,000.00; and*
 - (d) Subject to agreement with Monash City Council within one year from the date that this permit is amended, payments must be made to Monash City Council or works undertaken to the value of \$1,000,000.00 for any additional works on public open space within or external to Waverley Park and serving Waverley Park residents. Such works must be works provided or paid for wholly by the applicant or works where the cost is shared with Monash City Council. If no agreement can be reached with Monash City Council, the applicant must maintain public open space within Waverley Park to the value of \$1,000,000.00.*

All values are inclusive of GST. The value of any payments or works not completed at the time of compliance may be bonded to the satisfaction of the responsible authority. Any funds surplus to the requirements, but within the monetary limits, set out in sub-paragraphs (a) to (d) above must be used by the applicant to fund the cost of maintaining public open space within Waverley Park to the satisfaction of the responsible authority.

Initially, Mirvac provided provision for the community ex-gratia payments in the conditions, but the Committee made it clear that it did not consider this to be a planning matter. All reference to these payments has been removed from the original revised conditions and the Committee has not undertaken any consideration of how such payments might be expended, although the Committee notes that at the Hearing, Mirvac confirmed that these payments would be made regardless of their inclusion as a condition.

The Committee questioned whether condition 53 might be better expressed as a section 173 Agreement, and while there are merits to this approach, Mirvac and Monash City Council seemed comfortable with it being set out in full as a revised condition, generally in the form proposed through Document 35.

Monash City Council however, did not support the provision of a community centre space, either within the Stadium precinct or elsewhere on the site. Mr Pitt said that Council did not need this facility, there had been no study to ascertain how it might be used, it served no useful purpose and that it was superfluous to Council's community space requirements. While Mirvac proposed the condition, it did not seem overly wedded to it. Additionally, Dr Lourens and others did not consider that any funds provided by Mirvac should be expended external to the Waverley Park estate.

The Committee can understand this perspective, but it is important to note that not all open space and recreation facilities are provided for the residents of the estate within its own boundaries. Just as other residents external to the estate may use the Waverley Park facilities, so do the Waverley Park residents use facilities elsewhere in the municipality and beyond. It is not unreasonable that some funds be expended external to the estate, in the same way that external apportionment is provided for in development contributions agreements for developing communities.

The Committee agrees with the Council suggestion that the preamble to condition 53 part (c) and (d) be at least modified to say "*subject to the approval of Monash City Council ...*". This modification provides the opportunity for Council to have the key input into how the additional funds are to be used.

For these reasons, the Committee adopts condition 53 as proposed in Document 35, but modified accordingly as provided in Appendix D.

The Committee notes that one of key benefits offered by the above ground option is the more timely delivery and completion of the Waverley Park estate, in particular its principal open space area around the lake. The Committee wishes to ensure that this benefit is realised to the fullest extent possible.

During its site inspections the Committee noted the particularly unsightly state which the open space area is currently being kept. This is no doubt in part due to the inability to resolve the transmission line issue, however the Committee fails to see any logical reason why effort has not been made to improve its appearance or to provide for at least partial completion or preparation of the open space for its final use. The Committee surmises that one of the reasons there is an inherent negativity by some residents to Mirvac is due to the fact that Mirvac have not been keeping their 'own house in order', while at the same time, sending letters notifying of potential breaches to residents who do not comply with covenants relating to garden and property maintenance. This was evident through the comments in many of the submissions opposing the proposed permit amendment.

The Committee believes that this matter should be addressed immediately by Mirvac and that further steps should be explored and, if practical, implemented to provide for the early staging and completion of sections of this open space corridor. While it is acknowledged that this condition was not discussed by the Committee at the Hearing, matters relating to

the condition of the easement were raised and the Committee considers that this additional condition may go some way to alleviating resident concerns that the easement has been effectively abandoned by Mirvac due to the unsatisfactory resolution of the transmission line issue.

To this end, the Committee recommends that the following additional condition be included:

54. *Within 90 days of the date of the amendment of this permit, an Open Space Delivery Plan must be submitted to satisfaction of, and approved by, the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must address:*

(a) *A schedule of maintenance works for areas of the open space area within the easement to improve its amenity and appearance. These works should include:*

(i) *Litter and debris removal*

(ii) *Vegetation and Weed control*

(b) *To the extent practical and consistent with occupation health and safety, a schedule for the staged and early completion of sections of the open space area (including early tree and vegetation planting) and staged opening to the public prior to the completion of transmission lines works and residential lot subdivision.*

The works must be undertaken in accordance with the Open Space Delivery Plan to the satisfaction of the responsible authority in accordance with the timing and schedule specified.

These works are in addition to those works required by condition 53(a).

11.3 Recommendation

The Committee recommends:

- 1. That leave be granted to Mirvac to amend the application in accordance with the plans filed with the Tribunal on 14 July 2014 by substituting the application plans with the following:**
 - a) Waverley Park Subdivision Master Plan, Drawing No SD MP 01 [TL5] dated 14 June 2013.**
 - b) Waverley Park Proposed Power Line Plan, Drawing No TL-TP1100a, Revision D, dated 11 July 2014.**
 - c) 220kV Waverley Park Development, Drawing No 45M 270KNU, Revision A, dated 8 July 2014.**
 - d) 220kV Waverley Park Development, Drawing No 48M 160KNU, Revision A, dated 8 July 2014.**
 - e) Waverley Park Development 220kV Transmission Line Strain Twin Pole-Double Circuit, Drawing No 60327503-SHT-00-EL-1101, Revision A, dated 11 July 2014.**

- f) Waverley Park Development 220kV Transmission Line Strain Twin Pole-Double Circuit, Drawing No 60327503-SHT-00-EL-1102, Revision A, dated 11 July 2014.**
- 2. That the permit amendment application be approved and Planning Permit No STA/2001/000714 be amended by substituting condition 50 with conditions 50, 51, 52, 53 and 54, as provided in Appendix D.**

Appendix A Terms of Reference

Terms of Reference

Waverley Park Transmission Lines Advisory Committee

Waverley Park Transmission Lines Advisory Committee

Version: 1 (September 2014)

Advisory Committee appointed pursuant to Part 7, Section 151 of the *Planning and Environment Act 1987* (the Act) to report on the application to amend condition 50 of Planning Permit STA/2001/000714 to enable retention of the electricity transmission lines to remain above the ground at Waverley Park in the City of Monash.

Name

1. The Advisory Committee is to be known as the 'Waverley Park Transmission Lines Advisory Committee'.
2. The Advisory Committee is to have members with the following skills:
 - a. Planning,
 - b. Legal,
 - c. Engineering and infrastructure,
 - d. Urban design.

Purpose

3. The purpose of the Advisory Committee is to consider matters raised in the Victorian Civil and Administrative Tribunal (VCAT) proceeding of *Mirvac Victoria Pty Ltd v Minister for Planning and others* (VCAT reference P768/2014) and to provide advice to the Minister for Planning on all relevant matters associated with Mirvac's application to amend Condition 50 of Planning Permit STA/2001/000714 to enable retention of the electricity transmission lines above ground at Waverley Park.

Background

4. Waverley Park is essentially a 1250 residential dwelling development site for which the Minister for Planning is the responsible authority. Nearly 1100 dwellings have been constructed to date.
5. The site comprises dwellings, a large public open space network (including the Waverley Park Oval) and headquarters of the Hawthorn Football Club located in a small neighbourhood centre based within part of the former Victorian Football League Park grandstand.
6. On 7 March 2002, Amendment C30 to the Monash Planning Scheme made the Minister for Planning the Responsible Authority for the land known as Waverley Park.
7. On 14 August 2002, the then Minister for Planning approved Amendment C20 to the Monash Planning Scheme and issued Planning Permit No. STA/2001/000714 for the subdivision and development of Waverley Park.
8. Condition 50 of Planning Permit No. STA/2001/000714 requires that:
 - *The existing powerline easement through the land must be removed and the high voltage electricity transmission lines must be placed underground in a location and via a route which is to the satisfaction of SPI Powernet or the relevant electricity authority.*

9. On 8 June 2011, Mirvac lodged an application, pursuant to section 72 of the Act, to amend the requirement to underground the transmission lines as required in condition 50 and to amend the subdivision masterplan to show the transmission lines remaining overhead.
10. Public notification of the application to amend condition 50 of the permit was carried out between 20 August and 4 September 2013.
11. A total of 160 submissions were received, a majority opposing the application.
12. On 28 April 2014 the Minister for Planning issued a Refusal to Grant an Amendment to a Permit, with reasons for the refusal, in regard to Planning Permit Application No. STA/2001/000714B.
13. On 14 May 2014, Mirvac lodged an application for review at VCAT of the Minister for Planning's decision.
14. The Minister for Planning called in the VCAT proceeding on 14 August 2014, under clause 58 of schedule 1 to the *Victorian Civil and Administrative Tribunal Act 1998*.

Method

15. The Advisory Committee may apply to the Minister to vary these Terms of Reference prior to submission of its report.
16. The Advisory Committee may inform itself in any way it sees fit, and must consider all relevant matters, including but not limited to:
 - a. relevant provisions of the *Planning and Environment Act 1987* and the Monash Planning Scheme;
 - b. All relevant material prepared by or for the applicant; and
 - c. All material filed in VCAT in the proceeding P768/2014; and
 - d. The views of Mirvac and Monash City Council; and
 - e. The views of SP AusNet or any relevant electricity authority.
17. The Advisory Committee is bound by the rules of natural justice.
18. The Advisory Committee may regulate its own proceedings, including:
 - a. conducting a hearing and inviting parties to present or make submissions to it;
 - b. conducting workshops or forums to explore design issues or other matters. Any workshops or forums must be public;
 - c. limiting the time of parties appearing before it;
 - d. prohibit or regulating cross-examination.

Submissions are public documents

19. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it until a decision has been made on its report or five years has passed from the time of its appointment.
20. Any written submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain 'in camera'.

Outcomes

21. The Advisory Committee must produce a written report, and submit it to the Minister for Planning, which includes the following:
 - a. An assessment of submissions made to the Advisory Committee.
 - b. An assessment of all relevant matters concerning the application to amend the permit.
 - c. A recommendation as to whether the permit should be amended and, if so, a recommended draft amended permit, including relevant conditions.
 - d. Any other relevant matters raised in the course of the Advisory Committee hearing.
 - e. A list of persons who made submissions to the Advisory Committee.
 - f. A list of persons consulted or heard.

Timing

22. The Advisory Committee must complete its hearings no later than 40 business days from the date of its appointment.
23. The Advisory Committee must submit its report in writing as soon as practicable but no later than 40 business days from the completion of its hearings.

Fee

24. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.
25. The costs of the Advisory Committee will be met by Department of Transport, Planning and Local Infrastructure.

Project Manager

26. Day to day liaison for the advisory committee will be through Jessica Cutting, Senior Project Manager, of the Department of Transport, Planning and Local Infrastructure on ph. 8392 6383 or by email at Jessica.cutting@dtpli.vic.gov.au.
27. Day to day liaison for other matters about the proposed amendment will be through Lorenz Periera, Senior Planning Officer, of the Department of Transport, Planning and Local Infrastructure on ph. 9098 8934 or by email at lorenz.periera@dtpli.vic.gov.au.

Matthew Guy MLC
Minister for Planning

Date:

6.10.14

Appendix B Parties to the VCAT Proceedings

No	Submitter
1	Dr Chen Tan
2	Helen Mangion
3	Clive Gould
4	Jayantha Seneviratne
5	Hong Foo
6	Ian and Margarida Hogan
7	Satheesan Thangarajah
8	John and Molly Lourens
9	Tiong-Kie Lim
10	Ka Lung Cheng and Yi Chun Lu
11	Adam Davis
12	Fiona and Scott Annett
13	Ricardo and Judith Cusolito
14	Emma Davis
15	F C Prete
16	AusNet Transmission Group
17	Ken Lai
18	Penelope Helen and Ara Berdj Garabedian
19	Graham Twigg
20	Rafael Alesandro Mayoral Varela
21	Jason Charles Shaw
22	Xiaoyi Zhang
23	Lijun Fan
24	Giovanna Mercuri
25	Rhett Richardson
26	Suzanne Shaw
27	Lenora Richardson
28	Mark Edwards
29	Lai Foo Siong
30	Yi-Khin Chiew

31	Tian Bo Huang
32	Aldrin and Samantha De Silva
33	Colin and Robyn Perkins
34	Monash City Council
35	Minister for Planning
36	SP AusNet

Appendix C Document List

No	Document	Date	Party
1.1	Issues paper prepared by Advisory Committee	18/11/14	AC
2.	Proposed walking route for site inspection	18/11/14	Mirvac
3.	Appeal Book (10 tabs)	8/12/14	Mirvac
4.	Written submission on behalf of DTPLI	8/12/14	DTPLI
5.	Brochures and Photos tabled by Hong K Foo	8/12/14	H Foo
6.	Table of cost estimates 2001 - 2012	8/12/14	Mirvac
7.	Letter from DPCD to Mirvac dated 23 October 2009	8/12/14	Mirvac
8.	Ministerial Briefing dated 17 April 2014	8/12/14	Mirvac
9.	Issues Paper	8/12/14	Mirvac
10.	Presentation handout by M Barlow	9/12/14	Mirvac
11.	Presentation handout by B Murphy	9/12/14	Mirvac
12.	AusNet Services – issues overview	11/12/14	DTPLI
13.	Written submissions on behalf of Mirvac	11/12/14	Mirvac
14.	Planning Scheme Provision relating to utility installations	11/12/14	Mirvac
15.	Extracts from the <i>Planning and Environment Act 1987</i>	11/12/14	Mirvac
16.	Clauses 30 and 65 of Monash Planning Scheme	11/12/14	Mirvac
17.	<i>Rozen & Anor v Macedon Ranges Shire Council & Anor</i> [2010] VSC 583 (14 December 2010)	11/12/14	Mirvac
18.	Research Report prepared for Haystac and Mirvac - Empirica Research (May 2013)	11/12/14	Mirvac
19.	Summary of Michael Barlow evidence regarding net community benefit	11/12/14	Mirvac
20.	Master Plan overlays	12/12/14	Mirvac
21.	Written submission	12/12/14	I Hogan
22.	Written submission	12/12/14	C Gould
23.	Written submission	12/12/14	J Lourens
24.	Letter to AusNet from Advisory Committee	15/12/14	AC
25.	Petition to the Hon. Matthew Guy, Minister for Planning	15/12/14	J Lourens
26.	Speaking Notes for submission	15/12/14	J Lourens
27.	Corrected pages to the evidence of Tim Biles	15/12/14	Monash

No	Document	Date	Party
28.	Aerial photo of Brunswick electricity terminal station - 29 November 2014	15/12/14	Mirvac
29.	Brunswick Terminal Station – Landscape Plan prepared by Urbis	15/12/14	Mirvac
30.	Memorandum from ERM to Norton Rose Fulbright	15/12/14	Mirvac
31.	Written submission on behalf of Monash City Council	15/12/14	Monash
32.	<i>Sorrento Apartments Pty Ltd v Mornington Peninsula Shire Council</i> [2001] VSC 302 (24 August 2001)	15/12/14	Monash
33.	Electricity easement searches for the subject land	15/12/14	Monash
34.	Excerpts of <i>Electricity Safety (Electric Line Clearance) Regulations</i> 2010	15/12/14	Monash
35.	Draft revised permit conditions	15/12/14	Mirvac
36.	Brunswick Terminal Station – Incorporated Document	17/12/14	DTPLI
37.	Photomontages – Brunswick Terminal Station	17/12/14	DTPLI
38.	Letter from AusNet Transmission Group Pty Ltd dated 15 December 2014	17/12/14	AusNet
39.	Section 173 Agreement for the subject land	17/12/14	Monash
40.	Closing Submission on behalf of DTPLI	17/12/14	DTPLI
41.	Map of community facilities – Monash City Council website	17/12/14	DTPLI
42.	Closing submission on behalf of Mirvac	17/12/14	Mirvac

Appendix D Recommended Permit Conditions

Waverley Park Transmission Lines Advisory Committee

Proposed replacement permit conditions

Permit No STA/2001/000714

(Document 35, with Advisory Committee recommendations marked up)

The Permit Allows:

Subdivision (up to 1500 lots), construction of up to 1250 dwellings, creation and alteration of access to a road in a Road Zone Category 1, variation of an electricity easement, buildings and works to realign high voltage transmission lines, removal of vegetation, and construction and carrying out of buildings and works generally in accordance with:

- The Waverley Park Preferred Neighbourhood Character Report (March 2002), but modified in accordance with the recommendations in the report of the Panel on the redevelopment of the Waverley Park Site (August 2002); and
- Other plans to be endorsed in accordance with the conditions applying to this permit.

50. The alignment of the existing high voltage [transmission lines](#) and associated easement may be varied to the satisfaction of the responsible authority and the relevant electricity authority.
51. Before removal of the existing [transmission lines](#) and construction of the replacement powerline and supporting structures, plans to the satisfaction of the responsible authority and the relevant electricity authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with drawings SD MP 01 [TL5] dated 14 June 2013; TL-TP1100a Rev D dated 11 July 2014; 45M 270KNU Rev A dated 8 July 2014; 48M 160KNU Rev A dated 8 July 2014; 60327503-SHT-00-EL-

1101 Rev A dated 11 July 2014; and 60327503-SHT-00-EL-1102 Rev A dated 11 July 2014 (but amended to show the central monopole at a height of 45m).

52. The removal of the existing [transmission lines](#) and construction of the replacement aboveground [transmission lines](#) and supporting structures in accordance with condition 51 must be completed within 2 years of the date agreement is reached with the relevant electricity authority and by no later than 3 years from the date this permit is amended to include this condition or such later date to the satisfaction of and approval in writing by the responsible authority.
53. Before a statement of compliance is issued for the final stage of subdivision at Waverley Park, the following must be completed to the satisfaction of the responsible authority:
 - (a) Works to provide new public open space within Waverley Park generally in accordance with the landscape masterplan at pages 14-15 of the expert witness report of Barry Murphy dated August 2014 but amended to include space for and the provision of services to a potential future kiosk, and public toilets, all to the value of \$4,200,000.00;
 - (b) Works to upgrade existing public open space within Waverley Park generally in accordance with the recommendations on page 35 and in Appendix B of the expert witness report of Barry Murphy dated August 2014 to the value of \$612,000.00;
 - (c) Subject to [the approval of](#) ~~agreement with~~ Monash City Council within one year from the date that this permit is amended, provision of a community centre space within the Stadium precinct to the value of \$690,000.00; and
 - (d) Subject to [the approval of](#) ~~agreement with~~ Monash City Council within one year from the date that this permit is amended, payments must be made to Monash City Council or works undertaken to the value of \$1,000,000.00 for any additional works on public open space within or external to Waverley Park and serving Waverley Park residents. Such works must be works provided or paid for wholly by the applicant or works where the cost is shared with Monash City Council. If

no agreement can be reached with Monash City Council, the applicant must maintain public open space within Waverley Park to the value of \$1,000,000.00.

All values are inclusive of GST. The value of any payments or works not completed at the time of compliance may be bonded to the satisfaction of the responsible authority. Any funds surplus to the requirements, but within the monetary limits, set out in subparagraphs (a) to (d) above must be used by the applicant to fund the cost of maintaining public open space within Waverley Park to the satisfaction of the responsible authority.

54. Within 90 days of the date of the amendment of this permit, an Open Space Delivery Plan to the satisfaction of the responsible authority must be submitted to and approved by the authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must address:

(a) A schedule of maintenance works for areas of the open space area within the easement to improve its amenity and appearance. These works may include:

(i) Litter and debris removal

(ii) Vegetation and weed control

(b) To the extent practical and consistent with occupation health and safety, a schedule for the staged and early completion of sections of the open space area and opening to the public prior to the completion of transmission line works and residential lot subdivision.

The works must be undertaken in accordance with the Open Space Delivery Plan to the satisfaction of the responsible authority in accordance with the timing and schedule specified.

These works are in addition to those works required by condition 53(a).