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Great Western Highway Upgrade Program
Medlow Bath Upgrade REF & Concept Design
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Dear Sir/Madam,

**SUBJECT Medlow Bath Upgrade – Review of Environmental Factors –
 July 2021**

Blue Mountains City Council (Council) welcomes the opportunity to provide the attached provisional submission in relation to this project as part of the Review of Environmental Factors (REF) process.

Transport for NSW (TNSW) proposes a four and five lane regional highway to be constructed through centre of Medlow Bath. This is a village perched on an escarpment, having developed from the late 19th Century with the establishment of a state significant railway station and the iconic Hydro Majestic Hotel, framed by a contained settlement within a sensitive environmental setting. The proposed transformation of the village by the highway forms part of a regional duplication from Katoomba to Lithgow that will have significant impacts.

The information contained in this submission relates to the review of the following document and meetings:

1. *Medlow Bath Upgrade - Review of Environmental Factors – July 2021; and*
2. *Meetings with TNSW 26th and 31st August 2021.*

The Council's submission is based on the REF, concept designs and discussions with TNSW and provides more detailed analysis of potential impacts on the built heritage and environment of Medlow Bath, as well as community consultation matters that need addressing.

Of particular concern to the Council is the planning approval pathway that TNSW has adopted for this project and the eastern section from Katoomba to Blackheath, including Medlow Bath.

The Council accepts that the Great Western Highway (GWH) is a nationally important transport corridor. However, this corridor also links the villages of the Blue Mountains. The impact of the duplication of the GWH as a regional corridor needs to

be assessed in the context of both its national significance and its vital local role. TNSW's attempt to assess the environmental impact of only a 1.2km section of the GWH upgrade, in isolation from the remainder of the proposal, inevitably leads TNSW into error and allows an inadequate assessment to be presented.

The REF concludes that the limited proposal identified is not likely to significantly affect the environment. In the Council's submission, that conclusion is plainly wrong, for the reasons identified in this submission. In accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979*, TNSW is bound to obtain, examine and consider an Environmental Impact Statement (EIS) in relation to both the proposal in its limited form and the entire upgrade of the GWH between Katoomba and Blackheath.

The required EIS must address a proposal extending from the strategic centre of Katoomba, through Medlow Bath to Blackheath to enable all corridor impacts to be assessed and allow the cumulative environmental impacts of the entire proposal to be identified and regional level remedies applied.

Council's Position:

- The Council submits that TNSW is bound by s5.7(1) of the EPA Act to prepare an EIS for the GWH upgrade works between Katoomba and Blackheath. An EIS must be prepared because those works are likely to have a significant impact on the environment. That action is required even if TNSW maintains its position that the 'proposal' can be limited to the 1.2km upgrade of the GWH through the village of Medlow Bath.
- The Council does not support the four and five lane surface corridor proposal at Medlow Bath and the material impacts on the form and function of this Blue Mountains village that would result from the implementation of the proposal.
- An EIS is required between Katoomba and Blackheath to address significant and identified environmental impacts arising at a regional level between and surrounding those townships, but, more particularly, on the village of Medlow Bath.

The attached submission provides further details addressing the above matters.

As discussed and agreed with TNSW, the Council provides this provisional submission to satisfy its requirement to provide a response within the statutory timeframes to the REF. However, as agreed, this submission requires the formal adoption of the Council at its 28 September 2021 meeting.

If you require further information, please contact Will Langevad, Director – Environment and Planning Services (0414 195 759) or Jeff Roorda, Director – Economy, Place and Infrastructure (0436 649 591).

Yours faithfully



ROSEMARY DILLION
Chief Executive Officer



Submission on the Great Western Highway, Medlow Bath
Review of Environmental Factors
Transport for NSW - July 2021

Submission prepared by:

Blue Mountains City Council

3 September 2021



1. Introduction

Transport for NSW (TNSW) proposes a four and five lane regional highway to be constructed through the centre of Medlow Bath. This is a village perched on an escarpment, having developed from the late 19th Century with the establishment of a state significant railway station and the iconic Hydro Majestic Hotel, framed by a contained settlement within a sensitive environmental setting. The proposed transformation of the village by the highway forms part of a regional duplication from Katoomba to Lithgow that will have significant environmental impacts.

Through its “Future Transport Strategy 2056”, TNSW aspires to reinforce:

... the vital role that successful places play in supporting healthy lives and strong communities, attracting talent and delighting visitors. Transport influences the experience of all those who live in, visit and work in a place, as well as people travelling through.

Transport shapes the physical environment, such as our streetscapes, and influences local activity. The design of transport infrastructure supports the environmental outcomes of places.

(2018: 10)

There is a disconnect between TNSW’s aspiration to contribute to the achievement of ‘successful places’, through the design of transport infrastructure, and TNSW’s proposal for Medlow Bath, as now exhibited. That proposal is likely to significantly adversely affect the environment and have a detrimental impact on the Medlow Bath village and on the Upper Blue Mountains, rather than achieving a “successful place”.

The ‘proposal’, as nominated by TNSW, relates to a 1.2 kilometre section of the Great Western Highway (GWH) through Medlow Bath. This is an important village in the Blue Mountains, centred on the iconic and significant Hydro Majestic Hotel, with a small community of 600 people reasonably expecting the amenity of its place will be enhanced by any activity undertaken by TNSW. Medlow Bath village and its community are not simply a problem to be overcome and minimised in the rollout of the GWH regional highway upgrade program.

The proposal is part of the upgrade program for the GWH between the end of the dual carriageway at Katoomba and the town of Blackheath. The attempted segmentation of the Katoomba to Blackheath section of the GWH upgrade leads to the incorrect identification of the proposal and an approach that leads to an inadequate assessment of the environmental impact of the proposal. TNSW should be assessing the likely environmental impact of the works proposed to upgrade the GWH between Katoomba and Blackheath from a holistic, integrated perspective.

The Council accepts that the GWH is a nationally important transport corridor. However, this corridor also links the villages of the Blue Mountains. The impact of the duplication of the GWH as a regional corridor needs to be assessed in the context of both its national significance and its vital local role. TNSW’s attempt to assess the environmental impact of only a 1.2km section of the GWH upgrade, in isolation from the remainder of the proposal, inevitably leads TNSW into error and allows an inadequate assessment to be presented.

The REF concludes that the limited proposal identified is not likely to significantly affect the environment. In the Council's submission, that conclusion is plainly wrong, for the reasons identified in this submission. In accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* (EPA Act), TNSW is bound to obtain, examine and consider an Environmental Impact Statement (EIS) in relation to both the proposal in its limited form and the entire upgrade of the GWH between Katoomba and Blackheath.

The required EIS must address a proposal extending from the strategic centre of Katoomba, through Medlow Bath to Blackheath to enable all corridor impacts to be assessed and allow the cumulative environmental impacts of the entire proposal to be identified and regional level remedies applied.

In light of the information that will be disclosed through an EIS, TNSW, the NSW Government and the community (including the Blue Mountains community) will be equipped to assess whether alternative options for the GWH upgrade should be considered, having regard to the State significance of the proposed works.

The preparation of a full EIS for the total proposal, involving an integrated assessment of all environmental impacts, will also provide the opportunity to consider the staged construction of particular segments of the proposal. However, the construction of those segments will then occur as part of an integrated whole rather than in a piecemeal fashion in locations such as the village of Medlow Bath.

Blue Mountains City Council (Council) has worked with TNSW and its predecessor agencies (hereafter 'TNSW') over many years to ensure the place values of the Blue Mountains are respected during the duplication and upgrade of the Great Western Highway. Places like Lawson and the award winning scheme at Leura have been characterised by a deep exploration of place values, with high levels of engagement with community, albeit giving rise to divided views. The NSW Government has responded in those cases with highway options to minimise impacts and ensure improved regional highway function.

Nothing short of this is expected for the historic village of Medlow Bath.

Council's position:

- The Council submits that TNSW is bound by s5.7(1) of the EPA Act to prepare an EIS for the GWH upgrade works between Katoomba and Blackheath. An EIS must be prepared because those works are likely to have a significant impact on the environment. That action is required even if TNSW maintains its position that the 'proposal' can be limited to the 1.2km upgrade of the GWH through the village of Medlow Bath.
- The Council does not support the four and five lane surface corridor proposal at Medlow Bath and the material impacts on the form and function of this Blue Mountains village that would result from the implementation of the proposal.
- An EIS is required between Katoomba and Blackheath to address significant and identified environmental impacts arising at a regional level between and surrounding those townships, but, more particularly, on the village of Medlow Bath.

2. REF consultation and submissions

The Objects of the *Environmental Planning and Assessment Act 1979* (the Act) include, amongst others:

- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The REF was on public exhibition for a period from 26 July 2021 to 25 August 2021 (TNSW REF, xiv). The Act prescribes a “minimum” exhibition period. TNSW should have made allowance in its planning for the elected Council to consider, at a Council meeting, its submissions on a project that will have a significant impact on the Blue Mountains local government area and that is described by TNSW as being of national importance.

Unlike State-level plans, EISs or REFs of the upgrade program are centrally concerned with a locality, in this case a locality in the Blue Mountains. As such, the program should enable, not hinder, the Council’s formal review of the potential benefits and impacts on a Blue Mountains village on behalf of its community.

The restricted public exhibition period provides an inadequate opportunity for public engagement, with TNSW also receiving calls from the local community for an extended period of review. Significantly, the exhibition period also coincides with State government lockdown restrictions in response to the COVID 19 pandemic, further limiting community access to information and opportunities for community forums for engagement.

In response to the Council’s concerns, TNSW has agreed to accept submissions until 5 September, but has stated it could not delay this process for a further two (2) weeks to enable consideration at the 28 September Council meeting, seeming to prioritise the 2022 construction program over engagement.

Indicative perhaps, but it is concerning to note in relation to the objective of sharing of responsibility for environmental planning and assessment between levels of government, that TNSW identifies this as “not relevant to the proposal” (REF, 2021: 228).

The consultation period should enable consideration by the elected representatives and account for the public interest in the upgrade program, thus promoting the shared responsibility of Council and TNSW in environmental assessment and engagement with its community.

3. Environmental impact assessment

As a proponent, TNSW is aware of its obligations under Part 5 (Infrastructure and environmental assessment) of the EPA Act.

TNSW is aware of its duty prescribed by s. 5.5(1) of the Act to consider environmental impact, to “examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity”. One of the functions of the REF is to ascertain whether

an EIS is required for an activity that is likely to significantly affect the environment. The REF concludes at section 8.3.1 that:

There would be no significant impact on any other aspect of the environment. Therefore it is not necessary for an environmental impact statement to be prepared and approval sought from the Minister for Planning and Public Spaces under Division 5.2 of the EP&A Act.

TNSW, 2021: 229

As noted in the REF, cl. 228 of the *Environmental Planning and Assessment Regulation 2000* (EPAR) prescribes factors (which are not exhaustive) that must be taken into account when consideration is being given to the likely impact of an activity on the environment.

Within that non-exhaustive list of factors, the following are of particular relevance to the proposal (as identified by TNSW), noting both the TNSW conclusion in relation to each matter and the Council's disagreement with those conclusions):

(a) *any environmental impact on a community,*

TNSW assessment: long term minor positive impact

(b) *any transformation of a locality,*

TNSW assessment: long term minor positive impact

(c) *any environmental impact on the ecosystems of the locality,*

TNSW assessment: short and long term minor negative impact

(d) *any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,*

TNSW assessment: long term neutral

(e) *any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generation...*

TNSW assessment short and long term minor negative impact

(g) *any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,*

TNSW assessment short and long term minor negative impact

(h) *any long-term effects on the environment,*

TNSW assessment long term minor negative impact

- (i) *any degradation of the quality of the environment,*

TNSW assessment long term major positive impact

- (j) *any risk to the safety of the environment,...*

TNSW assessment long term major positive impact

- (o) *any cumulative environmental effect with other existing or likely future activities,*

TNSW assessment long term major positive impact

This submission, responding to the REF, reviews a number of these conclusions. As a preliminary point, the Council submits that the TNSW assessment appears to invoke identified regional benefits to justify adverse impacts on a local community and on a place, being the Medlow Bath village. The assessment fails to account for the cumulative impacts of the upgrade within the Katoomba to Blackheath GWH corridor.

The first five factors prescribed by Clause 228 require the proponent of an activity to identify and address the impacts of the proposal concerned on ‘a community’ and on a ‘locality’ when reaching a determination concerning the requirement for an EIS. A full EIS for the project will allow TNSW as proponent and the community within the Upper Blue Mountains to identify whether the significant adverse impacts on the environment that will be generated by the proposal are warranted. The conclusions reached on that issue may encourage all relevant parties to consider alternative options, given the regional benefits that TNSW seeks to achieve through the GWH upgrade.

The Land and Environment Court has on a number of occasions considered the obligations imposed by s5.7(1) of the EPA Act and by its predecessor provision, s112. At paragraph [261] of his judgment in *Palm Beach Protection Group Incorporated v Northern Beaches Council [2020] NSWLEC 156*, Preston CJ concluded as follows:

261. *A number of points can also be made about the duty under s 5.7(1) of the EPA Act:*

- (a) *The duty on the determining authority under s 5.7(1) serves two important legislative purposes. First, it ensures that the determining authority will be well equipped with the necessary information on the environmental impact of the activity in order to make a fully informed and well-considered decision of whether it should carry out the activity or grant approval to carry out the activity. Second, it ensures that the relevant information with respect to the environmental impact of the activity will be made available to the public at large so that the public, conformably with the objects of the EPA Act, may participate in the decision-making process: Warren v Electricity Commission of NSW (1990) 130 LGERA 565 at 570 ...*
- (e) *Whilst a proponent has the privilege of selecting what it proposes to be the activity, the activity cannot be a sham or a cover for a quite different type of activity: Prineas v Forestry Commission of NSW (Court of Appeal) at 164. A*

proponent also cannot segment a large or cumulative activity into smaller components, sometimes termed “salami slicing”, in order to establish that each smaller component is not likely to significantly affect the environment and thereby bypass the obligation to prepare an EIS.

- (f) *The determining authority can also select the activity it proposes to assess for the purposes of s 5.7(1). However, the determining authority is not permitted to misdescribe the activity for the purposes of avoiding the duty imposed on it by s 5.7(1) and cl 228 of the EPA Regulation and thereafter use that misdescription to provide the parameters of the assessment required by s 5.7(1) and cl 228 of the EPA Regulation: Liverpool City Council v Roads and Traffic Authority & Interlink Roads at 273.*
- (g) *The word “likely” means only a “real chance or possibility” and not “more probably than not”: Jarasius v Forestry Commission of NSW at 94; Drummoyne Municipal Council v Roads and Traffic Authority of NSW at 163; Bailey v Forestry Commission of NSW at 211.*
- (h) *The word “significantly” means “important” or “more than ordinary” (Jarasius v Forestry Commission of NSW at 93-94) and “a significant effect must be an important or notable effect on the environment, as compared with an effect which is something less than that, that is, non-significant or non-notable”: Drummoyne Municipal Council v Roads and Traffic Authority of NSW at 163; see also Bailey v Forestry Commission of NSW at 211 where Hemmings J summarised the test to determine whether an activity is likely to “significantly” affect the environment as being “whether it is ‘important’, ‘notable’, ‘weighty’ or ‘more than ordinary’”.*
- (i) *Determining whether the activity is likely to “significantly” affect the environment requires consideration of both the potentially affected environment and the degree of the effects of the activity. In identifying the potentially affected environment, the affected area, whether local, regional, State, national or global, and its resources and biological components, including listed threatened species, populations and ecological communities and their habitats, need to be considered ...*
- (k) *The word “affect” refers to “having an effect on”. Effects involve changes to the environment caused by the activity. Effects include both direct, indirect and cumulative effects ...*
- (l) *The “environment” includes not only those areas that are likely to be directly affected by the activity but also those areas that are likely to be indirectly affected. To this end, the environment includes not only the area in which the activity is proposed but also the geographical locality of which the area is physically a part: Kivi v Forestry Commission of NSW at 47.”*

As will be demonstrated, the impacts on Medlow Bath are important, notable, weighty and more than ordinary.

4. Any environmental impact on a community

Clause 228(a) any environmental impact on a community
TNSW assessment: long term minor positive impact
Summary Council response: The REF does not adequately consider the significant adverse impacts of noise, amenity, and place quality likely to result with the implementation of the single option proposed. The assessment becomes self-serving, suggesting that there will be an enhancement of local amenity and character in Medlow Bath, without providing any evidence to support this claim, and places disproportionate weight on regional level benefits (of freight movements and reduced road congestion) at the expense of the local community. The TNSW assessment of a minor positive impact over the long term is not agreed.

As the NSW Government identifies in *Transport Strategy 2056* as a State-wide guiding principle:

Successful places: *The liveability, amenity and economic success of communities and places should be enhanced by transport.*

(TNSW, 2018: 8, emphasis added)

Certainly this ‘enhancement’ has not occurred from a local community perspective and it is necessary to differentiate between the communities of concern for the Medlow Bath REF.

The Medlow Bath community is impacted if this guiding principle is not realised, and is subject to one dimensional engagement, with no co-design process and no consideration of alternative options. As will be demonstrated, the proposal will result in impacts on the liveability and amenity of the village, its cultural assets and its environment. The proposal will result in diminished place quality for the Medlow Bath village, to such an extent that consideration of possible alternatives to the project as currently proposed, is warranted. In short the value proposition of the proposal for the local community is negligible.

There is no reasonable basis for the conclusion reached in the REF that a community suffering noise impacts, increased traffic flows from the duplication and the division of the village by a four and five lane highway will experience ‘minor positive impacts’ as described by TNSW. In environmental impact terms, the effect of the proposal on the people of Medlow Bath should be a matter of major concern to the community and to TNSW.

The REF suggests that the outcome of the proposal will be the “maintenance and enhancement of the local amenity and character of Medlow Bath” (TNSW, REF: 238). The REF does not explain the basis upon which that conclusion is reached.

No alternatives are proposed beyond intensification of the existing corridor and this pre-determination of outcomes necessarily limits community engagement, which should never be perfunctory. In place of co-design and exploration of options, the community is provided with only one option.

The only opportunity offered to the community, within the exhibition, is to suggest minor cosmetic changes to the functional impacts of the project. Any suggested changes, even if taken up by TNSW, will not mitigate the impact of the proposal on Medlow Bath village. This opportunity does not and cannot achieve TNSW's expressed goal of conducting projects which generate 'successful places'.

Freight, logistics and the community from Central West NSW

A primary objective of the regional upgrade is to design a corridor that facilitates the introduction of a heavier class of freight vehicles from Lapstone to Lithgow. Although the introduction of this class of heavy vehicles and intensification is likely, this not canvassed in the REF. The REF identifies the relatively high proportion of heavy vehicles currently using the corridor and the need "to drive regional economic development and freight productivity" (REF, 2021: vi). This is a national and NSW Government objective, but one difficult to achieve when set against the last objective of the proposal, which is to:

- *Maintain and enhance local amenity and character, and protected environmental and cultural assets*

(REF, 2021: vi)

These regional stakeholders will benefit from the upgrade, but are not subject to the environmental impacts of the Medlow Bath community and local businesses. These regional level benefits appear to carry disproportionate weight in the assessment, and adverse impacts like the documented increase in noise, increased traffic volumes and division of the village that may be experienced by a local community are diminished.

This is in contrast to the framework of EPAR which specifically calls for the identification of a 'community' and the potential impacts experienced by them in their 'locality'.

From a regional perspective, it is the case that the highway design will permit posted speeds of 80 or 100 km/h from Katoomba to Lithgow, with one exception. There will be one slow point in the network: Medlow Bath. Consequently, the decision to use the existing corridor will compromise highway performance during peak periods as capacity is reached. The proposed introduction of a signalised intersection will compound this problem.

This is an impact on regional communities that the assessment does not identify. All users will experience a slow point of 60km/h and suboptimal highway function at Medlow Bath because of reduced speed through the existing constrained corridor of this village, which is not fit for purpose. Regional level objectives and local place outcomes warrant a fuller consideration of alternatives.

The REF identifies at 2021: 201/202 the increased road-related infrastructure within the corridor, but then concludes that the project will generate minimal negative impacts on the environment, including the Medlow Bath village and community. The tenor of the REF, and its conclusions in this regard, strongly point to TNSW having concluded that negative impacts (which are conveniently identified as 'minor') are significantly outweighed by the reduction of congestion on most parts of the GWH in the Katoomba to Blackheath corridor.

What the REF does not do, as an EIS would do, is to fully identify and address the negative impacts of the project on the village and community of Medlow Bath. The approach of the REF is to downplay

those impacts and to proceed on the assumption that the community will absorb the negative impacts of the proposal in light of the overall regional benefits that the proposal may generate.

5. Any transformation of the locality

Clause 22 8(b) any transformation of the locality
TNSW assessment: long term minor positive impact
Summary Council response: the regional highway duplication through the centre of the village would be the most significant transformation of Medlow Bath since its foundation, which on balance represents a significant negative impact and transformation of this locality. The TNSW assessment of a minor positive impact over the long term is not agreed.

The proposal will transform Medlow Bath. As the REF acknowledges:

The proposal would result in the long term transformation of the locality through the upgrade and duplication of the existing surface road corridor, intersection improvements and a new pedestrian bridge in Medlow Bath resulting in long term improvements to traffic, safety and access.

TNSW, REF: 238, emphasis added

While some mitigation measures are positive, the overall transformation will generate significant and adverse impacts. The transformation will be the most significant in the history of the village.

Medlow Bath was founded following the construction of the railway line, with the concurrent development of the Hydro Majestic along the escarpment and residential development in the 1900s. In fact the basic anatomy of the place remains and can still be discerned:



Figure 1: Medlow Bath - elements of place

The limits and form of the highway corridor were set by that initial development. A central proposition of the REF as presented to the community is that TNSW, both physically or conceptually, cannot move beyond an option restricted to the surface corridor that bisects the village.

That corridor, for all intents and purposes, is fixed between the historic sandstone fence of the Hydro Majestic Hotel and the rail line as shown from the early 1900s:



Figure 2: 1920s view south toward Hydro

The following fundamental elements of the place have remained for over a century:

- the Hydro Majestic, including the landmark casino building shown in both images,
- the sandstone wall (on the right),
- the (reinstated) corridor of conifers reflecting the Mark Foy plantings from the early 1900s
- the rail corridor (on the left)),
- a two lane carriageway that is the spine of the village.

All of these elements are at human scale, part of the rich texture, form and function of the village. Each needs to be identified to understand the extent of transformation. Further discussion of the heritage impacts upon the Hydro Majestic and its setting are included later in this submission.



Figure 3: present view south toward Hydro and Katoomba

In anticipation of highway works, there has been no initiative in decades to improve the urban amenity of the two lane highway through the village of Medlow Bath by TNSW. For its part, the Council negotiated in 2012 with the then RMS and NSW State Rail to reinstate a corridor of Western Red Cedar conifers between the highway and the rail line which at maturity can exceed 20 metres in height. That corridor of Mark Foy conifers, which is a local heritage item, was replanted and will be largely eliminated if the proposal in its current form proceeds. The corridor of cedars will be replaced by road infrastructure across the full width of the corridor.



Figure 4: proposed view north toward Blackheath (REF)

It is instructive, in assessing the merits of the transformation of the locality proposed by TNSW, that the visual representations (montages) within the REF, depicting the proposed four and five lane ‘upgrades’ and pedestrian bridge, are not set against the backdrop of the Hydro Majestic.

The Hydro Majestic has been photographed for over a century but not in the REF. This omission is glaring in the context of the heritage assessment within the REF which identifies:

The proposal would have a minor to moderate adverse physical impact and would have a moderate to major adverse visual impact on this heritage item.

(TNSW, REF: 162, emphasis added)

The result of the proposal will be that this iconic hotel, rather than presenting as the point of arrival and landmark building within Medlow Bath, will be foregrounded and bypassed by a corridor of lanes. When viewed from the north, it will be obscured and visually dominated by a “Hazelbrook” style bridge, adversely affecting the setting and curtilage of the Hydro Majestic.

The present baseline in Medlow Bath has been a two lane, low speed highway with on-street parking spaces, allowing movement both within and through the town.

In contrast, the TNSW proposal of four and five lane regional highway redefines and transforms the village, with highly consequential impacts. By any analysis these are more than a ‘minor positive impact’ as suggested by TNSW.

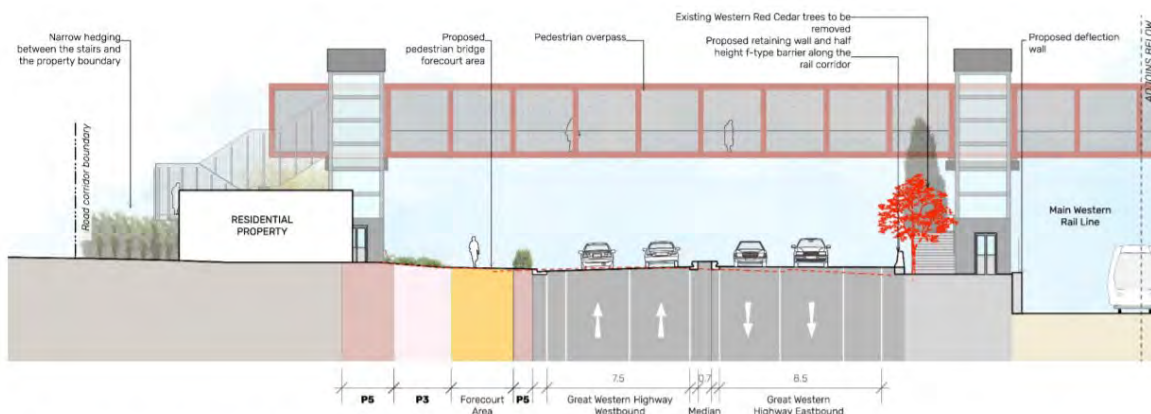


Figure 3-6: Typical cross section of proposal area adjacent to the station – showing pedestrian bridge (SMM, 2021)

Figure 5: cross section of proposal at pedestrian bridge

Why is such a significant transformation proposed? A central proposition of the REF as presented to the community is that TNSW is limited to a single surface corridor option through the centre of the village to provide the necessary increase in capacity of the Great Western Highway. The premise of this limitation to a surface corridor solution must be questioned.

6. Assessment of options

In assessing corridor upgrade options at 2.5, the REF identifies that during the 1950s, options were considered to bypass the town to the east but were constrained by impacts on residential areas (TNSW, REF: 34). Why in the 1950s did road authorities consider it necessary and desirable to bypass the town rather than widen the existing corridor? Simply, because they perceived the unacceptable negative impacts.

Although desiring an alternative, the strategic options at that time could only revert to a surface corridor as there was no other technical alternative along a constrained ridgeline and established residential development to the east of the village. With current tunnelling technology, we are able to move beyond these early limitations, to prevent the adverse impacts that gave rise to seeking the bypass option initially.

The decision to tunnel in Blackheath was not constrained by 1950s path dependency, and nor should Medlow Bath be constrained by that legacy:

Since the 1950s, corridor options have been considered through Medlow Bath and beyond. All corridor options at Medlow Bath have focused on using the existing corridor which was set aside for future widening.

(TNSW, 2021: vi, emphasis added)

With its focus on utilising the existing corridor, the REF fails to identify the impact of intensification.

This notion of ‘future widening’ and the level of road infrastructure proposed within that existing corridor has changed markedly since the 1950s, whereas the dimensions of the corridor remain fixed:

- widening scenarios through the 1990s and (publicly at least) in the early 2000s were to be limited to three (3) lanes west of Katoomba to Lithgow, thus permitting one lane in one direction and two in the other, and allowing space for on-street parking and deep soil zones and planting, and
- in 2002 a new bridge was constructed over the rail line, with four lane capacity, and
- then in the last decade, there was the need to incorporate a turning lane in relation to the redevelopment of the Hydro Majestic as approved by the Joint Regional Planning Panel, and
- presently, through the Katoomba to Lithgow duplication in 2021, seeking to accommodate four (4) lanes, with the addition of a turning lane along part of the corridor, and removal of on-street parking.

All scenarios are confined to the same corridor.

It necessarily follows that the impacts from a '3 lane highway option', the '3 plus 1 option' and the current '4 plus 1' option within the same corridor are not equivalent. The level of transformation is not the same. The imposition of regional highway widening has direct impacts on:

- the quality of the place and its amenity,
- reinstating historic planting corridors,
- pedestrian refuges,
- on-street parking,
- active transport for pedestrians and cyclists,
- best practice and conforming lane dimensions, and
- the function of the town.

All of these outcomes, self-evidently, are diminished or removed with increased lanes in the same corridor. It is also the case that there must be a point beyond which further intensification is not acceptable.

The transformation proposed by TNSW is, from a functional and form perspective, a 'bypass' but through the centre of the historic village disrupting core elements of place.

The corridor preservation since the 1950s was not prefaced on the current intensification of highway infrastructure in the limited area proposed, with the resulting impacts of four and five lanes imposed on Medlow Bath. This is the product of the Katoomba to Lithgow upgrade program, requiring 'wall to wall' road infrastructure, and removal of a planting corridor.

Based on this fallacy, the REF at 2.8 effectively proposes a single option of the four and five lane highway wedged within the existing corridor to meet project objectives.

Its environmental assessment becomes self-serving, based on the pre-determination of an existing corridor, never historically intended to accommodate five lanes between the Hydro Majestic and the rail corridor. In particular, this thinking is reflected in the REF:

The bridge over the railway was completed in 2002, confirming the four-lane highway alignment would cross the rail at Medlow Bath.

(TNSW, 2021: 34)

A bridge designed and built two decades previously does not confirm the alignment of a highway intensification through Medlow Bath; a measured and thorough environmental impact assessment is required to do this. In its absence, adverse consequences on community follow.

A point is reached at which these adverse impacts become so significant, across the range of considerations, that alternatives to using the existing corridor must be contemplated. There are multiple consequences of retrofitting this corridor, but ultimately it is an impactful transformation of Medlow Bath. It is one deserving of a measured assessment of impacts through an EIS and informed by alternative bypass options.

Given the state and national objective for an enhanced link to regional NSW, and the geographic constraints of Medlow Bath and its settlement pattern, there are only two strategic solutions – surface corridor and a tunnel.

The tunnel option has been considered by TNSW but not evaluated and communicated to the community as part of the public REF process on the basis that Medlow Bath will be positively transformed by the current surface proposal. While the REF has no reference to a tunnel option, the 2020 TNSW website for the Blackheath co-design process noted:

The impact and cost of tunnelling under Medlow bath would far outweigh any benefits that a tunnel would provide.

(TNSW, 2020)

A balanced impact assessment through a public process, which necessarily includes a consideration of trade-offs, would consider both options and assess:

- Traffic function and design speed of either solution
- Amenity of town of either solution
- Heritage impacts of either solution
- Environmental impacts of either solution
- Constraints and the expected traffic use of a tunnel in sections, or as a full connection
- In the case of a tunnel, an assessment should include the ongoing use of the existing highway as a local and tourist road and public domain improvements including planting, on-street parking, relationship to heritage items and as an alternative link road.
- Constraints and expected traffic use of at grade sections
- Project drivers of time and cost are valid, if these outweigh the cost of the above impacts then this should be clearly communicated.

The community of Medlow Bath has not been afforded this balanced assessment, with the central proposition of the REF being a single surface corridor option which will adversely transform the village and with no alternatives considered.

This contrasts with Mt Victoria and Blackheath where 1950s thinking was set aside and a 4.5km tunnel is proposed based on a co-design process which examined four (4) options, three of which are bypasses. This will be supported in Blackheath by an EIS to follow, which is confirmed to the extent that Council has submitted comments on the SEARs.

In contrast Medlow Bath is a small community and township of 600, compared to Blackheath of 4000, but with no less capacity to voice concerns.

7 Any environmental impact on the ecosystems of the locality

<i>Clause 22 8(c) any environmental impact on the ecosystems of the locality,</i>
TNSW assessment: short and long term minor negative impact
Summary Council response: The REF has not adequately assessed or understood the potential long term adverse impacts on the ecosystems of the locality. This includes detrimental adverse impacts to threatened ecological communities and their associated threatened species such as the Blue Mountains Swamps, Blue Mountains Water Skink and Giant Dragonfly. The key threatening processes of increased stormwater run-off and decreased water quality have not been adequately considered. The TNSW assessment of a minor negative impact over the short and long term is not agreed.

In the biodiversity section of the REF, only the direct impacts on biodiversity within the construction curtilage are addressed in any detail. However, as required under cl.228(c), assessment of *any environmental impact on the ecosystems of the locality*, must be undertaken. The potential indirect impacts on biodiversity values outside of the construction curtilage must also be addressed.

The 'proposal' is not confined to the red area identified below in Figure 6, but should include the receiving environment in terms of environmental assessment. In particular, the presence of downstream areas of Blue Mountains Swamp EEC/ TEC in the Blue Mountains National Park, which are part of the federally listed Temperate Peat Swamps on Sandstone TEC and which are known habitat of the endangered Blue Mountains Water Skink and Giant Dragonfly should be addressed.

As evidenced by the recent catastrophic collapse of the Boronia Road Swamp in Bullaburra in response to highway stormwater discharges, these Threatened Ecological Communities and their associated threatened species are highly susceptible to the impacts of increased stormwater discharges into their headwaters, which can result in impacts ranging from channelisation through to catastrophic collapse.

Council acknowledges the partnership with TNSW in the establishment of the Water Quality Working Group. To date, this group has undertaken the review of pre-existing water management devices constructed as part of previous highway upgrades and safety works. By undertaking this review, it has allowed for an honest appraisal of previous successes and where poor practices have led to significant failures, as identified above.

In order to avoid further examples of irreparable environmental damage, a thorough and detailed assessment of potential adverse impacts and key threatening processes is required. Unfortunately the REF does not provide such an assessment.

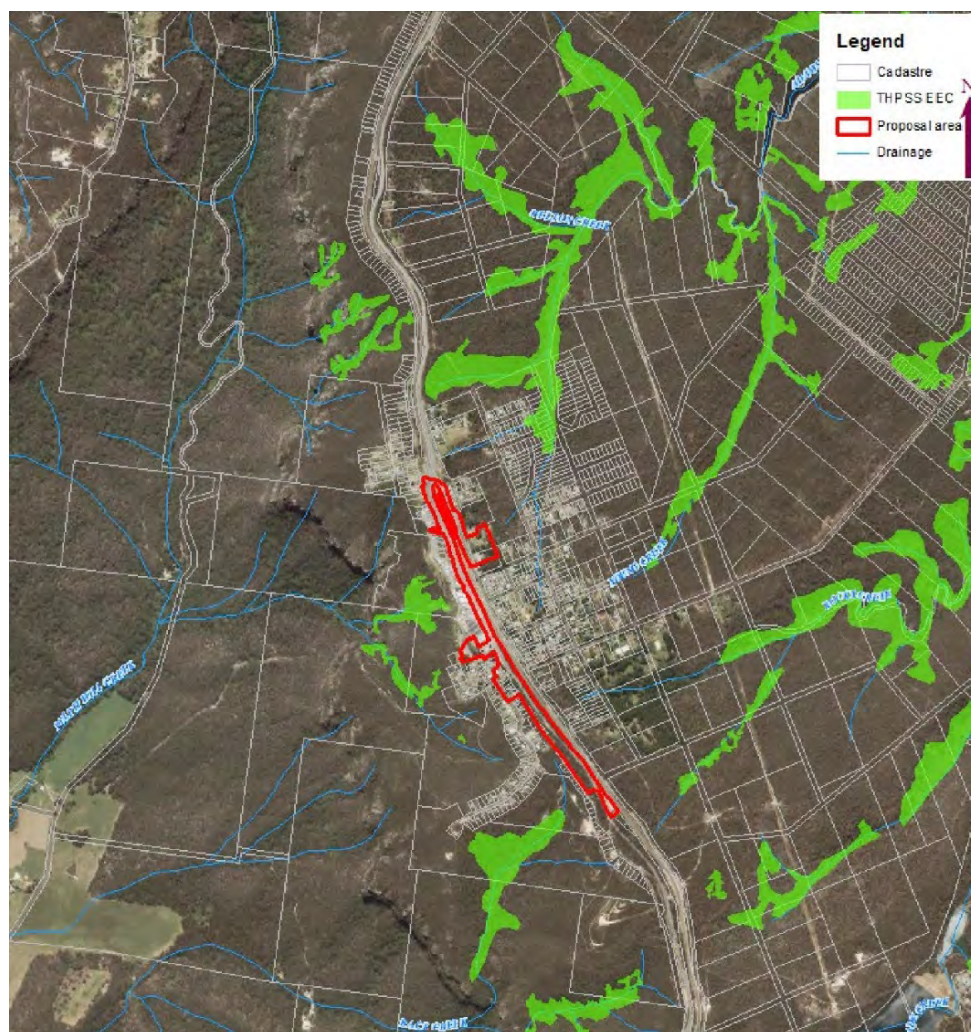


Figure 6: REF identification of threatened swamp communities and red 'proposal area'

The REF does not provide a detailed assessment of these swamps, their associated threatened species, any potential impacts from stormwater discharges or proposed mitigation measures to address these impacts. Stormwater impacts should be represented visually by showing stormwater discharge locations in reference to the swamp locations identified above.

The following deficiencies are identified in the environmental assessment undertaken in the REF:

- Section 6.2: does not identify or address potential increased flooding risk to downstream residential areas adjacent to overflow paths to Adams Creek below the Medlow Park Basin.
- Section 6.3: does not include explicit design specifications for the Stormwater detention and bio-retention basins.
- Design specifications must not only be guided by the consideration of achieving NORBE for the water catchment area, but also be designed to fully protect the downstream Blue Mountains Swamp Threatened Ecological Community (TEC) /Temperate Peat Swamps on Sandstone TEC in the Blue Mountains National Park.

- As stated in the Office of Environment and Heritage *Blue Mountains Swamps in the Sydney Basin Bioregion* profile, associated threatened species of these TECs, including the Blue Mountains Water Skink and the Giant Dragonfly, must be protected from the key threatening processes of ‘Increased stormwater run-off and reduced water quality from impermeable road surfaces entering swamp headwaters, leading to erosion and habitat degradation’.

The potential impacts on the downstream Blue Mountains Swamp TEC /Temperate Peat Swamps on Sandstone TEC should be further explained under the subheading of changes to hydrology and impact on groundwater dependent ecosystems (REF, 2021: 94 & 95). It must be demonstrated that these impacts are fully understood and will be addressed by the adequate sizing, functionality and ongoing maintenance of the stormwater mitigation devices to address this key threatening process.

Concern is raised in relation to the potential for alterations of pH associated with the widespread use of certain types of concrete, containing fly ash and concrete aggregates as well as the deleterious impacts of alkalinisation on aquatic habitats and downstream swamps. These have not been identified or considered in the REF. In the context of the highly sensitive receiving environment of the Blue Mountains World Heritage National Park, this is a significant omission. We provide the following current research by Dr Ian Wright of WSU and others:

- Ian A. Wright, Rhiannon Khoury, Michelle M. Ryan, Nakia Belmer & Jason K. Reynolds (2018) *Laboratory study of impacts of concrete fragment sizes on wetland water chemistry*, Urban Water Journal, 15:1, 61-67, DOI: 10.1080/1573062X.2017.1395897
- K. PurdyA, J. K. Reynold and I. A. Wright, *Potential water pollution from recycled concrete aggregate material*, School of Science, Western Sydney University, Locked Bag 1797, Penrith, NSW 2751, Australia. Corresponding author. Email: i.wright@westernsydney.edu.au
- R Carroll *et al* (2019), *Geochemical impact of urban development on fragile freshwater wetlands*, IOP Conf. Ser.: Earth Environ. Sci. **344** 012004
- C. Grella, I.A. Wright, S.J. Findlay & O.J. Jonasson (2016) *Geochemical contamination of urban water by concrete stormwater infrastructure: applying an epoxy resin coating as a control treatment*, Urban Water Journal, 13:2, 212-219, DOI:10.1080/1573062X.2014.951660. To link to this article: <https://doi.org/10.1080/1573062X.2014.951660>

In the absence of this detailed analysis and demonstration of mitigation measures, it is not credible that the stormwater impacts on swamps to be classified as “not significant”. The TNSW conclusion of short and long term ‘minor short and long term’ environmental impact is not founded on adequate assessment of the environment and relevant threatening processes.

Given the significance of these endangered communities, located within a World Heritage National Park, and the substantial nature of the proposed works and potential for hydrological disruption, by any measure, such impacts should be considered potentially significant, and should be addressed in an EIS.

8 Environmental quality and value of a locality

Clause 228(d) any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,

TNSW assessment: long term neutral

Summary Council response: The REF has not appropriately responded to or considered the Urban Design Framework (2019) or other key documents to inform the proposal as presented. This result is an ill-considered design which eliminates key landscape outcomes fundamental to Medlow Bath. From a place-making perspective, the case for the pedestrian bridge is not made in the REF, with no catchment data presented to support the likely future use of this structure and thereby failing to justify its significant visual impact on the heritage and character of Medlow Bath and on the heritage items identified in this submission. The long term neutral impact assessment by TNSW is not agreed.

Village Setting of Medlow Bath

The proposed Highway widening to four and five lanes has the following outcome:

- The proposed changes to Medlow Bath degrades village character and is in opposition to Council's recent Local Character Statement, which supports Council's Local Strategic Planning Statement: Living Sustainably 2040.
- The Highway widening will split the village into two, degrading its character and heritage value.
- Extra carriageway width to accommodate larger heavy vehicles will increase separation between people and vehicles further undermining Medlow Bath as a people-centric place.
- Medlow Bath will become a place to drive through, rather than a place to experience.

Urban Design and Landscaping

Planting themes in the villages and towns of the Blue Mountains provide strong locational cues along the highway. This is a long-term landscaping and planning approach adopted by Council (Street Tree Master Plan for the Blue Mountains in March 2012), which also strongly informed the development of the Urban Design Framework (2019) for the Katoomba to Mt Victoria duplication (UDF, 2019). The use of exotic tree plantings in the upper mountains towns in particular is regarded as an important part of the towns' "Hill Station" character, providing historical continuity, and also providing a clear distinction between the village settings and their native surrounds.

This pattern of discrete villages separated by natural bushland along the Highway creates a repeated sequence, referred to as 'pearls on a string'. This concept was fundamental to the development of both UDF 2019 and the previous Urban Design Framework for Lapstone to Katoomba.



Figure 3.25 Excerpt from the original Great Western Highway Urban Design Framework, illustrating the principle of 'Pearls on a string'. The interplay between villages and bushland is an important part of the journey experience and helps to reinforce the individuality and identity of each township.

Figure 7: Excerpt from the Urban Design Framework, 2019

The value of the landscape setting at Medlow Bath was expressly considered in UDF 2019 which identified a range of key considerations for Medlow Bath:

- Avoiding or minimising impacts to the “Protected area-escarpment”
- Minimising impacts to the Hydro Majestic site
- Reinforcing the sense of arrival into the village to improve the village identity
- Promoting slower speeds
- Introducing large scale tree planting along the road verges to provide a visual buffer and to settle the road in its setting
- Considering access issues to private properties
- Mitigate the dominance of the highway

The following Strategic Urban Design Principles were given for Medlow Bath:

- Carefully consider property accesses, as these may have additional impacts on the environment
- Consolidate the road and rail corridor as much as possible to maximise landscape buffer zones
- Exploit views towards the Hydro Majestic to reinforce the historic and unique cultural identity of Medlow Bath
- Use cultural trees (as nominated in the BMCC Streetscape Masterplan) to create an avenue to reinforce the Medlow Bath historic landscape setting and to express the ‘pearls on a string’ principle set out in the 2006 Great Western Highway Urban Design Framework
- Consider reducing speed in this area to produce a stronger landscape outcome e.g. introduction of kerbs or barriers to minimise clearances to planting
- Use materials consistent with existing retaining structures. Walls facing the highway should be finished in sandstone. Walls facing away from the highway should be sympathetic to the surrounding setting and limit their visual presence
- Avoid or minimise impacts to heritage properties along Station Street

- Evaluate pedestrian movements and design accordingly, in particular for safe movements between the train station and the Hydro Majestic
- Consider tree plantings in private frontages to enhance streetscape

The REF does not include the necessary detailed assessment against the key considerations identified in the Urban Design Framework as part of Appendix K of the REF (Urban Design, Landscape Character and Visual Impact Assessment). As the principal document in relation to urban and landscape design, the proposed upgrade option should reference design choices and their compatibility with UDF 2019. Contrary to this however, many of the elements proposed, run counter to these endorsed principles.

The locally listed heritage item - 'Avenue of Trees' MB015 – Mark Foy's corridor of trees, is central to the setting and heritage context of Medlow Bath (see also Figure 2). This row of *Pinus radiata* trees is an item of environmental heritage with historic, associational, aesthetic, social, technical significance as well as rarity and representative values, listed under Blue Mountains LEP 2015. Beyond the village setting as a whole, the avenue remains an integral part of the cultural landscape setting of the Hydro Majestic Hotel and the Medlow Bath Railway Station.

While this avenue was previously *Pinus radiata*, over mature specimens were replaced by Western Red Cedar trees in 2012. This detailed succession planning was informed by a range of specialists and discussed with state agencies, including the Urban Design directorate of TNSW, State Rail, and the community.

The selection of Western Red Cedar as a replacement species was purposeful, in order to maintain the scale and character of the planting while avoiding the invasiveness and structural problems inherent in *Pinus radiata*:

Using a replacement tree smaller than Pinus radiata or Thuja plicata at maturity is not acceptable in terms of maintaining the scale and significance of the heritage planting and would have a negative impact on the significance of the place. (MUSEscape 2012).

The REF dismisses the landscape and heritage value of this planting corridor, and appears to disregard the principles established in the UDF 2019, both in terms of the landmark qualities of the trees, marking the arrival point in Medlow Bath, and their role as a visual buffer to mitigate the dominance of the road corridor.

Specifically, the REF does not:

- Reference the Western Red Cedar as a proposed species for planting, and limits reference to their current presence as the dominant exotic tree planting along the highway. The only reference is to the removal of these trees.
- Appropriately consider the heritage value of the proposed median strip plantings. This is in direct contrast to the previous detailed work done by Council, in collaboration with TNSW.

- Accurately describe the key themes and setting of Medlow Bath, but rather a bushland character is referenced on landscape plans, in direct contradiction to UDF 2019 and the Council's Street Tree Master Plan.

The proposed landscape solution for Medlow Bath does nothing to address the significant loss of heritage and landscape value as a result of the removal of the heritage listed planting. Conversely, the proposal for a median planting goes against the adopted principle for an avenue of trees (UDF 2019).

Further, the selection of a deciduous species (*Acer platanoides* 'Crimson King' Norway Maple) as the median tree planting (and therefore the future dominant exotic tree species) is not consistent with the heritage and landscape setting qualities of the previous and current avenue, which is required to comprise evergreen species, with specific colour selection and silhouette, to adhere to the established framework.

The landscape outcomes proposed in the REF must be re-evaluated to respond to the Urban Design Framework (2019) and retain the heritage and landscape values of the Medlow Bath village centre.

Impact of a pedestrian bridge within Medlow Bath.

One of the six purported positive impacts within the Executive Summary of the REF states:
"minimising potential for pedestrian/vehicle conflicts through the installation of a new pedestrian bridge, stairs and lifts that would provide an accessible path of travel across the highway and to public transport facilities."

In the REF - Appendix K, the Urban Design analysis articulates the significant place-making attributes. Chapter 3.3 highlights *"Great Western Highway and the Main Western Railway line forms a central spine around which the village is situated."* It highlights the heritage significance, the small scale housing, the local and tourist activities. It also states the significance of having a railway station. The 'Practitioner's Guide to Movement and Place' identifies strong place attributes with 'meaning, activity and physical form' (Figure 8 below). Strong movement attributes are balanced by movement 'through, to/from and within' (Figure 8 below). These place-making attributes are significant in Medlow Bath, and at present, the road functions for the village and tourists, while regional traffic moves through. Casual parking and crossing are possible and traffic is naturally slowed down when required. The proposed design outcome would remove many of these attributes by prioritising movement through the place, rather than an experience of it.

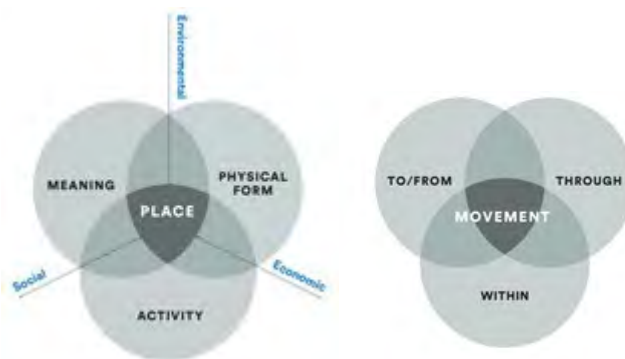


Figure 8 : Place and movement

The balance between local placemaking and the movement of people is a continuous planning priority (BMCC Local Strategic Planning Statement, Planning Priority 1, 3, 5, 9), and the eastern upgrade of the GWH was carefully designed to ensure villages can still perform their place-making function.

The singular option proposed for Medlow Bath has not adequately assessed the loss of these key place making elements against the purported improvements to accessibility and connectivity via the proposed pedestrian bridge.

The relatively minor improvements to accessibility and safety through the introduction of the pedestrian bridge and various other minor circulation improvements, do not offset the substantial adverse heritage, character and amenity impacts from the widening of the Highway and its visual, noise, pollution and other impacts.

This submission presents the case for why alternative options must be adequately investigated within an EIS. Even beyond these considerations, the pedestrian connection and proposed design should also re-evaluated.

The REF provides no data or supporting information to make the case for the pedestrian bridge. While it is acknowledged that improved connectivity and accessibility is a stated aim of this infrastructure, the village of Medlow Bath has a population of approximately 600 people. TNSW and Sydney Trains have recently proposed the demolition of a pedestrian bridge at Woodford (a locally listed heritage item), on the basis of under-utilisation. Woodford has a population of 800 people.

If the primary purpose of the pedestrian bridge proposed for Medlow Bath is connection to the Hydro Majestic and improved accessibility for tourists, this must be clearly stated and data provided to support this suggestion, such as the likelihood of tourists to visit by train.

An integrated solution, which carefully considers an improved footpath and trails network and a pedestrian bridge option which is less intrusive and sympathetic to the heritage values of the village must be explored.

With specific reference to the design of the pedestrian bridge:

- The REF includes statements that the bridge will provide alternate views of the Hydro Majestic and the Megalong Valley. This is questioned, as views will be mostly prevented by existing trees and limited by the proposed height of the bridge.
- The proposed scale of the bridge is overwhelming and the form such that it will occupy a key position within the landscape, dominating the view of the iconic Hydro Majestic.
- While it is understood the materials (including weathered steel) have been chosen in an attempt to respond to the heritage context, the Council submits that darker colours would have more recessive qualities and therefore be less visually intrusive.
- The bulk of the multiple lift wells adds to the visual intrusion of the structure and materials and finishes of these elements should be reconsidered.
- Lighting and how this can be managed / dimmed must also be considered.
- The bridge is presented as unroofed. While this is proposed as a design solution to limit further bulk, it is queried in relation to public amenity in extreme weather and high winds, typical of the upper mountains.

The REF does not provide an evidence based argument to support what is ultimately a highly intrusive structure which will have an adverse impact on the Hydro Majestic and the village setting. The pedestrian ridge should be reconsidered in the context of other options as outlined in this submission.

9 Any effect on a locality, place or building having aesthetic,...cultural, historical...or social significance or other special value for present or future generations

Clause 22 8(e) any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,

TNSW assessment: short and long term minor negative impact

Summary Council response: The REF has not adequately considered the significant adverse impact on the Hydro Majestic Hotel (listed heritage item MB002), the 'Avenue of Trees' (listed heritage item MB015) or Medlow Bath Railway Station (listed heritage item MB003) or the particular cultural, aesthetic and historical values of the village of Medlow Bath as identified in LEP 2015 (LEP 2015). The REF identifies the impact on the Hydro Majestic as a result of the proposal to be "moderate to major" but then concludes under clause 228(e) that the results of the project will be a short and long term minor negative impact. This is not agreed.

Medlow Bath village

The township of Medlow Bath and the Hydro Majestic has, for over a century, exemplified a "locality, place or building having aesthetic,...cultural, historical...or social significance or other special value for present or future generations". The proposal has the potential for significant adverse impacts on the unique values of the town's heritage and character, causing irreversible long-term negative impacts through degradation of the setting and experience of the place.

The REF states correctly that:

[3.2.2 - Urban amenity and heritage, p.43]: *“the Great Western Highway is one of Australia’s most historic roads and the route has largely remained unchanged since its construction in the 1830s. The area has several heritage items within close proximity which notably include the locally listed Hydro Majestic Hotel (located on the western side of the highway) and the State heritage registered Medlow Bath Station Group (located east of the highway). Medlow Bath is the first built-up area east of Katoomba and **needs to retain its village feel** as part of an upgraded highway.”*

(TNSW, REF: 43, emphasis added)

The proposal does not achieve this and makes no attempt to consider or understand the cumulative impact of each of the works components and the subsequent erosion of the heritage setting and village character of Medlow Bath.

Beyond the general guidance of cl. 228, the Blue Mountains LEP 2015 Clause 7.9 clearly identifies the following matters considered by Council and community of importance to protect and enhance the values of the Medlow Bath Precinct. Note these considerations are based on heritage, character and environmental values:

7.9 Medlow Bath Precinct

The objectives for development on land identified as “Medlow Bath Precinct SP3-MB01” on the Built Character Map are as follows—

- (a) to encourage development that complements and is sympathetic to the heritage significance of the Hydro Majestic,*
- (b) to encourage development that maintains the Hydro Majestic as the predominant feature in the precinct,*
- (c) to minimise the impact of development on escarpment areas,*
- (d) to minimise and mitigate the impact of development on land in Zone E2 Environmental Conservation,*
- (e) to enhance the traditional streetscape character and gardens that contribute to the attraction of the area for residents and visitors,*
- (f) to provide for low-impact development adjacent to residential areas and areas with special ecological, scientific or aesthetic values.*

These precinct objectives are pertinent to exploring the qualities of Medlow Bath and understanding expectations around the protection of heritage, traditional streetscape character and ecological, scientific or aesthetic values; coincidentally the exact language referenced in clause 228 of EPAR.

The REF makes a rudimentary assessment under Clause 7.9 of Blue Mountains LEP 2015, by stating:

The proposal aims to reduce congestion and provide more efficient and reliable journeys for those travelling in, around and through the Blue Mountains. The proposal would also address known safety and accessibility concerns within the Medlow Bath local area, benefiting local

traffic and pedestrians while also benefiting those passing through Medlow Bath. Additionally, the proposal has been designed to be contained within the existing road corridor as much as possible to result in minimal property, environmental and heritage impacts.

By any measure, this does not consider the clear intent of the precinct objectives. Reduced congestion and reliable journeys for those travelling through, does not in any way respond to this statutory guidance under LEP 2015.

Section 3.2.2 of the REF clearly acknowledges not only the significance of these individual heritage items but also the importance of the village setting in which they are located and need for this to be retained. However, Council does not agree that this has been achieved with this proposal. Against this context, TNSW has assessed the short and long term impacts on the value of the place as minor negative impact:

Measures to avoid, minimise or offset potential environmental impacts have been considered during the options process and development of the concept design, (REF: xiii),

[and]

“on balance, the proposal would deliver long term benefits to the Medlow Bath community” (REF: viii).

As included in the above sections of this submission, a transparent consideration of options has not been provided in the REF. A below surface or tunnel option would all but eliminate impacts to the heritage and landscape setting of Medlow Bath, including the significant impacts currently identified to the Hydro Majestic Hotel and its setting, as well as to the Medlow Bath Railway Station. In order to fully understand these impacts in the broader context of the environmental impacts of the project, an EIS is required.

The Statement of Heritage Impact is Appendix J to the REF. This states that it has been prepared on a 20% design package and includes a report summary and number of recommendations at the beginning of the document. The key points in the summary (page iii of the RPS Statement of Heritage Impact) are as follows:

- The proposal would have a **major adverse impact** on Medlow Bath Railway Station Group (SHR No.01190, Blue Mountains LEP MB003)
- The proposal may have a **minor to moderate adverse physical impact** and would have a **moderate to major adverse visual impact** on Hydro Majestic (Blue Mountains LEP MB002). The proposed alternate design for Belleview Crescent would have an additional **minor adverse impact** on this heritage item through the reduction of its heritage curtilage.
- The proposal would have a **major adverse impact** on Avenue of Trees (Blue Mountains LEP MB015).

The extent and severity of heritage impact across these three heritage items as assessed by TNSW's own heritage consultant, is sufficient to warrant comprehensive assessment under an EIS. That this Statement of Heritage Impact has been prepared on the basis of a 20% design calls into question the veracity of the assessment. The recommendations of the SOHI make clear that a heritage architect must be engaged and a detailed design which “should aim to further minimise the impact of the

proposal, with particular reference to the pedestrian bridge through the use of appropriate form, proportion and materials.”

Hydro Majestic Hotel – heritage setting and curtilage

The Hydro Majestic is an iconic hotel of exceptional significance and has put Medlow Bath on the map for well over a century. Its open setting and distance from the carriageway of the Great Western Highway forms a respectful viewing space around this remarkable chain of interconnected buildings, through which one can view the dramatic drop beyond into the Megalong Valley. The Hydro Majestic is listed as a local heritage item (MB002) in LEP 2015, and has been assessed as being of State significance. The proposal has the potential for significant adverse impacts on those remarkable values, causing adverse long-term impacts through degradation of the setting and experience of the place.

The REF correctly identifies the local and state significance of the Hydro Majestic from the current heritage inventory sheet as follows [REF p.155]:

*“The grandest of the grand hotels in the mountains, **the Hydro has state significance as a pioneering spa resort with advanced facilities for the health and pleasure of guests.** The century and more of use as a hotel, capitalising on one of the finest situations in the mountains, is also of state significance.*

The Hydro Majestic Hotel is a unique overlay of hotel building styles including the pre-fabricated Casino and Federation free-style Reception buildings and the art deco Hargravia, Belgravia and main wings and the federation free classical south wing. The hotel also includes a number of freestanding buildings with a unity of styling and detailing such as the north bunkhouse, toilet block and rear of the Road Bar.

The arrangement of buildings along the ridge parallel to the Great Western Highway with the distinctive street fencing and row of mature radiata pinus trees quickly became, and remains, a significant landmark on the road through the Blue Mountains.

Some individual elements including the Casino and Reception buildings are fine examples of Federation free style architecture.

The tennis courts have a rare quality with their rustic stone walling and location on the edge of the ridge.

The unusual feature of a prefabricated imported casino which became a showpiece for some of the greatest singers of the Edwardian period, the art collection and the cuisine further enhance the social significance of the Hydro.

Technical interest attaches to the remains of the flying fox into the Megalong and the symbiosis between the hotel and valley below has remained a significant element in the Hydro’s success.”

The REF then goes on to agree with the assessment by stating: **“Historical research and review of site conditions confirms this is an accurate assessment of the heritage significance of this item.”**

(TNSW, REF, 2021: 155, emphasis added)

As identified previously in this submission, the assessment in the REF (TNSW: 162) is that there will be a “*moderate to major visual impacts upon the Hydro Majestic*” as a result of the proposal. The Council would argue that this impact is major, permanently marring the curtilage and setting of this locally listed heritage item assessed as being of state significance.

The following specific concerns are identified:

- The proposed pedestrian bridge is large and visually prominent due to scale, forms, details, materials and length, and will become a major intrusive element in the centre of this important historic cultural landscape.
- Notwithstanding the Council’s submission that alternative options must be explored, any pedestrian bridge should be designed with minimal visual intrusion as a central principle and such design options presented to the community.
- The REF does not articulate why the existing railway footbridge cannot be re-purposed. Working from an integral heritage principle of ‘as much as necessary and as little as possible’, such considerations should be explored and transparently discussed.
- We understand that Heritage NSW is preparing a submission that will also question the need for the new footbridge. Correspondence with this State agency should be made public and it is requested that further consideration be given to the reuse of the existing footbridge in collaboration with Heritage NSW and Council’s heritage team.

Hydro Majestic – Living heritage and ongoing use

The perspective images that are included in the exhibition material do not illustrate traffic and heavy vehicles, sterilising the image of the expanded corridor. Any consideration of not only the physical intrusion of the four lane highway on the Hydro Majestic and its curtilage, but also the living heritage values, is absent from the REF.

The Hydro Majestic was established more than 100 years ago as a place of respite and therapy; a place where tourists could escape the City, for recreation and recovery. The ability for this heritage place to continue to be used for this purpose will be irreparably compromised by the expanded carriageway, potentially eroding its iconic status and heritage significance at the State level.



Figure 9: place of retreat and escape since the early 1920s

For the avoidance of doubt, in the past decade both the Council and TNSW have concurred that the highway corridor should not be extended beyond the sandstone fence into the front curtilage of the Hydro Majestic Hotel in both Figures 9 and 10. Such a proposition would have an unacceptable impact on this iconic heritage complex.



Figure 10: sandstone wall of the Hydro Majestic, containing physical impact but not visual impact

Loss of tree landmarking

As referenced in section 8 of this submission, the important heritage item ‘Avenue of Trees’ MB015 – Mark Foy’s corridor of trees, is a key component of the Medlow Bath cultural landscape, and needs to be retained. As the REF identifies:

To emphasise the Hydro and provide a distinct point of reference for all travellers by both road and rail, Foy planted Avenue of Trees (Blue Mountains LEP Item No. MB015) around 1904.

(TNSW, REF, 2021: 150)

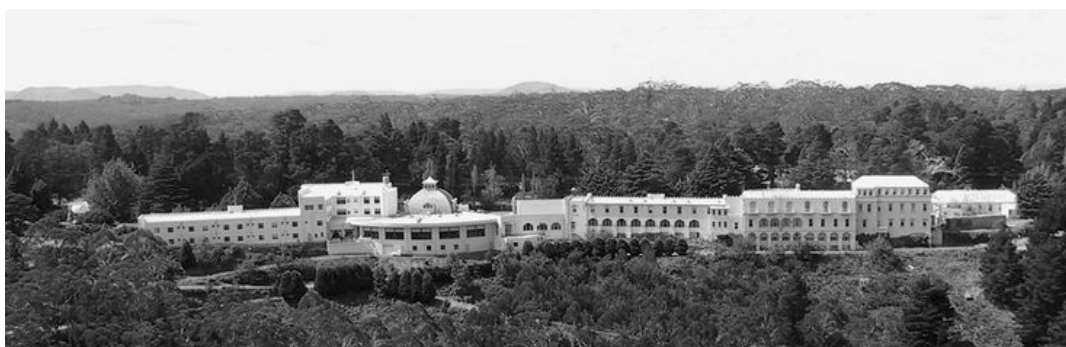


Figure 11: A place in its landscape

The assessment by TNSW in the REF that there would be ‘*moderate to major*’ impact upon this item cannot be accepted. The proposal includes the complete removal of this heritage item. Beyond the trees themselves, the corridor design also removes the space and soil volumes to accommodate large mature trees that complement the Hydro Majestic’s long built form and landscape setting. This is unacceptable.

The REF argues that the proposed new trees, to be located in the carriageway median are an appropriate solution. The proposed species (Norway Maples) are deciduous, will be restricted from achieving mature height (TNSW advising the expected height is 5 metres) due to limited soil volumes, and persistent impacts from passing vehicles at high speed. As referenced above, this outcome does not respond to the UDF 2019 or the Council’s Street Tree Master Plan and in no way compensates for the loss of a locally listed heritage item (MB015).

10. Any risk to the safety of the environment

Clause 228(j) any risk to the safety of the environment,...
TNSW assessment: long term major positive impact
Summary Council response: The REF overstates the positive impact for a proposal that introduces potential safety impacts through introduction of four and five lanes and potential introduction of larger classes of heavy vehicles within the corridor that are not adequately acknowledged in the assessment. Some of the mitigation measures required by the proposal, such as the pedestrian bridge, compromise place values. The TNSW assessment of a major positive impact over the long term is not agreed.

TNSW identifies a “major positive long term impact” as addressing safety by dividing the carriage way in the 60km/h slow point of the upgrade (2021: 239). Yet the impetus to divide the road arises from the introduction of the additional lanes as part of the duplication project. The REF does not assess the potential risks associated with the introduction of increasingly larger heavy vehicles through Medlow Bath and the corridor generally, although the design of the highway duplication facilitates introduction of such vehicles.

Introducing the four lanes through this locality creates a hostile pedestrian environment, so much so that it necessitates pedestrians crossing the highway via a suspended and enclosed pedestrian bridge.

As discussed above, the resulting imposition of this bridge to meet safety needs is a foreign infrastructure element with adverse landscape impacts, and only necessary because of the adverse safety impacts of introducing a duplicated highway through the centre of a village.

Again, this ‘benefit’ is overstated in terms of safety, and is only achieved through the imposition of a visually adverse structure.



Figure 12: Cropped extract of REF image of proposed pedestrian bridge and highway development

The accessibility improvements in respect to access to the railway station are less a product of the TNSW proposal than an obligation under the *Disability Discrimination Act*, required to be implemented by the NSW Government irrespective of the proposal.

The upgrade should also be considered in the context of the safety outcomes sought in the Council’s adopted Links Road Strategy in 1999 as called up in its *Community Strategic Plan*:

- *Strategic Objective 4.21:*
Sustainable transport links are developed between villages as an alternative to the Great Western Highway.
- *Priority Action Area 4.2.1:*
Design and complete an alternative link to the Highway which increases sustainable transport options.

The Link Road Strategy seeks to:

- Improve safety for local residents and highway users;
- Improve convenience by making areas more accessible;
- Improve bushfire access; and
- Reduce the local traffic conflict with the highway.

With respect to the section of highway between Katoomba and Mount Victoria, 3 priority locations remain outstanding, these being:

1. Station Street, Blackheath;
2. Station Street, Medlow Bath; and
3. Railway Parade, Katoomba

An important factor to consider when assessing the need for alternative access, the likelihood of accidents and natural disasters resulting in the blockage of the highway and the subsequent management of highway and local traffic. Where four (4) lanes have been constructed east of Katoomba this has allowed, on occasions, for the temporary establishment of a contra flow to manage traffic in the event of incidents.

However, contra flow arrangements are constrained when central barriers (being a key component of recent highway upgrades to prevent head-on crashes) at some locations prevent the arrangement being implemented. An example being Bodington Hill, Wentworth Falls. If there is an incident along that section of the highway, then traffic may be required to use Railway Parade between Wentworth Falls and Lawson, which is an alternate link funded under the Local Link Road Strategy.

TNSW should have considered the context of delivery for these components of the Local Link Road Strategy, which go directly to delivering TNSW priorities of providing alternate access to the highway, promoting and encouraging sustainable transport options, improving traffic flow and enhancing connections with existing trails. A consideration of options at Medlow Bath should be informed by that strategy.

11. Any cumulative environmental effect with other existing or likely future activities

Clause 228(o) Any cumulative environmental effect with other existing or likely future activities
TNSW assessment: long term major positive impact
Summary Council response: The REF fails to appropriately identify the activity and, in the case of Medlow Bath works, the REF fails to consider the cumulative environmental impacts of the upgrade works in association with the proposed upgrades between Katoomba and Medlow Bath and between Medlow Bath and Blackheath.

“Transport for NSW (TfNSW) is proposing to upgrade a 1.2 kilometre section of the Great Western Highway at Medlow Bath, between Railway Parade and around 330 metres south of Bellevue Crescent (the proposal). The upgrade will provide a safer, more efficient link between Central West NSW and the Sydney Motorway network.”

(TNSW REF, July 2021, v)

The REF passage quoted above is the opening paragraph in the Executive summary of the TNSW REF. The quoted passage is both correct and incorrect.

It is the fact that TNSW is proposing to upgrade a section of the highway through Medlow Bath. However, the works to be undertaken through Medlow Bath are only part of a much larger project initiated by TNSW. That project involves the upgrade of the highway between Katoomba and Lithgow, with the relevant subset being the proposed works between Katoomba and Blackheath.

The quoted paragraph, and the approach taken by TNSW to the Medlow Bath REF, identifies a principal concern for the Council in relation to the proposed upgrade works and the assessment of the environmental impact of those works. While TNSW has identified the "activity", assessed through the REF as being the limited highway upgrade through Medlow Bath, that identification is clearly incorrect.

The activity to be undertaken by TNSW is either the upgrade of the highway between Katoomba and Blackheath, with the Medlow Bath section of the works being only one component of that overall project, or the entire highway upgrade between Katoomba and Lithgow. At the very least, TNSW must undertake an environmental assessment, complying with the relevant provisions of the EPA Act, in relation to the Katoomba to Blackheath highway upgrade works. TNSW has not done so.

Instead, having defined the relevant "activity" as a small component of a much larger project, TNSW has then presented to the Council and to the community an REF which confines the assessment of environmental impacts to the Medlow Bath section of the highway upgrade works. That approach allows a very narrow assessment of all environmental impacts of the project, based on the narrow and inadequate identification of the activity. This narrow approach is reflected in the purported assessment of the cumulative impacts of the activity, responding to clause 228(2)(o).

The REF states (Section 1.2, third paragraph, page 25) that the TNSW description of the proposed works, and the assessment of associated environmental impacts, has been undertaken in the context of clause 228 and in accordance with the other guidelines and legislation cited in that paragraph. The Council notes that clause 228(1) nominates factors to be taken into account when consideration is being given to the likely impact of an activity. The applicable factors are identified on an inclusive rather than an exhaustive basis. In relation to the proposed highway upgrade works between Katoomba and Blackheath, relevant factors include the matters nominated in clauses 228(2)(a) to (p). The consideration of those factors, amongst other matters, is mandatory.

Clause 228(2) recognises that some impacts generated by an activity are appropriately considered in isolation from other impacts. However, clause 228(2)(o) requires TNSW to consider the cumulative impacts of a proposed activity, with other likely or future activities, when determining whether an EIS for the activity is required. In the case of the Medlow Bath works the REF fails to consider the cumulative environmental impacts of the upgrade works in association with the proposed upgrades between Katoomba and Medlow Bath and between Medlow Bath and Blackheath.

The Council notes, as an example of this failure, the acknowledgments on page 93 of the REF of the impacts of the Medlow Bath proposal on wildlife connectivity and habitat fragmentation. The REF acknowledges that the Medlow Bath component of the proposal has been identified as having cumulative impacts on wildlife corridors and wildlife movement. However, having acknowledged that outcome, the following conclusion is then reached:

"The proposal is mostly restricted to the existing urban parts of Medlow Bath and consequently would have no discernible impact on wildlife connectivity within the local area. Additional contributions to habitat fragmentation are minor and inconsequential ..."

That conclusion could only be reached if the cumulative impacts of the works between Katoomba and Medlow Bath, the works within the Medlow Bath corridor, and the works between Medlow Bath and Blackheath are addressed in isolation from one another.

The Council is unable to identify within the REF any comprehensive consideration of the cumulative impacts that will be generated by the conduct of all of the proposed works between Katoomba and Blackheath. In the Council's submission, the proposed highway upgrade through Medlow Bath is not an isolated activity. Those works are part of a total project and the impacts of that total project must be assessed. TNSW has not done so and the omission of that assessment constitutes a non-compliance with the requirements of clause 228. That omission, in itself, points to the inadequacy of the REF as a mechanism for determining the likely impacts of the proposed works on the environment.

As noted previously, in *Palm Beach Protection Group Incorporated v Northern Beaches Council [2020] NSWLEC 156*, at [261], Preston CJ concluded:

- (e) *Whilst a proponent has the privilege of selecting what it proposes to be the activity, the activity cannot be a sham or a cover for a quite different type of activity: Prineas v Forestry Commission of NSW (Court of Appeal) at 164. A proponent also cannot segment a large or cumulative activity into smaller components, sometimes termed "salami slicing", in order to establish that each smaller component is not likely to significantly affect the environment and thereby bypass the obligation to prepare an EIS.*

Ascertaining the cumulative impacts of a proposed activity is central to the environmental impact assessment task through the use of an REF or an EIS. At Section 6.11 in the REF the assessment fails to account for the "cumulative environmental effect" of TNSW's proposed activities beyond generalisations.

TNSW, through the REF, has failed to answer a fundamental question in relation to the proposed works between Katoomba and Blackheath. What is the sum of the environmental impacts throughout the corridor, resulting from both the construction of the proposed works and the subsequent operation of the widened and reconstructed highway? The environmental assessment carried out to date by TNSW fails to identify the transformation in the highway corridor that will result from all of the works to be undertaken between Katoomba and Blackheath.

In the Council's submission, given the likely significant effects of the proposed Katoomba to Blackheath works on the environment, TNSW must prepare an EIS, in accordance with the applicable legislation and guidelines. The preparation of a full EIS, in accordance with the applicable legislation and guidelines, will allow all impacts of the proposed works to be identified and will allow the community, and TNSW, to determine whether the impacts are so great that alternatives to the proposed works must be considered.

As a contextual matter, the Council notes with concern the following statement made by the then Roads & Maritime Services, at page 9, within Section 1.6.1 of the document titled *Environmental Assessment and Decision-Making By NSW Roads And Maritime Services*, May 2015, relating to

strategic assessments under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth):

For activities for which Roads and Maritime is the proponent, and that require assessment under Part 5 of the EP&A Act, the assessment of environmental impacts is documented in a Review of Environmental Factors (REF). As a minimum, the REF must address the matters set out in clause 228 of the EP&A Regulation.

While that statement was made in the context of the agreement referred to in the document, between the then RMS and the then Australian Government Department of the Environment, the statement is nonetheless indicative of the approach taken by TNSW, and by its predecessor RMS, in relation to environmental assessment. There is no acknowledgement that in certain circumstances, where works to be undertaken by TNSW/RMS are likely to significantly affect the environment, TNSW is required by the EPA Act to prepare an EIS.

Remarkably, given the works now proposed by TNSW, both within the Medlow Bath highway upgrade section, and within the Katoomba to Blackheath corridor as a whole, the REF concludes that the “proposal is not anticipated to generate any major environmental impacts” (REF, 2021: 240). The REF appears to suggest only positive cumulative long-term *outcomes* due to combined traffic and safety benefits, with such an assessment proffered before the environmental assessment for the remaining corridor has been completed.

In the Council's submission, that conclusion is untenable, whether it is reached in relation to the Medlow Bath component of the corridor works or in relation to the entire corridor between Katoomba and Blackheath. It is a conclusion reached because the REF, with its inadequate consideration of environmental impacts, including cumulative impacts, has been prepared and exhibited in respect of one small part of a much larger project.

The immediate context of the proposed Katoomba to Medlow Bath works and the works from Medlow Bath to Blackheath is absent from TNSW's assessment of cumulative impacts although these components are spatially aligned to the Medlow Bath REF, and will be publicly exhibited within months of one another. Combined with the transformation of, and the impacts on, Medlow Bath, the environmental and heritage impacts of the Medlow Bath works are of such significance as to warrant an EIS. By restricting assessment to the proposed works through Medlow Bath, TNSW is undertaking the unacceptable "salami slicing" identified by Preston CJ at paragraph [261] in *Palm Beach* and apparently seeks to avoid the need to secure an EIS for the full activity that is proposed to be undertaken.

12 Traffic and Transport

Council has a number of concerns relating to Section 6.5 (Traffic and transport) as follows:

Operation assessment: The REF states that potential traffic impacts of the proposal were assessed by comparing the performance of the road network with and without the proposal and future traffic on the Great Western Highway was derived from the Strategic Traffic Forecast Model and then ‘SIDRA’ intersection modelling software.

There is an acknowledgement of COVID impacts on the collected traffic volumes but has an assessment been done to factor in these changes with the data? If the traffic volumes were pre-COVID times, would the Level of Service still be operating between A-C across the peak periods? (REF, Section 6.5.2).

It does not appear that the weekend peak hour was assessed, which is relevant in the upper Blue Mountains given tourist traffic. Once the intersection is modified and operational, there will be increased usage at Bellevue Crescent / GWH intersection, especially post COVID. Also, in Section 3.2.5, it states that construction work is proposed from Saturday 8am-1pm and this needs to be informed by weekend traffic demands, given this intersection is likely to be impacted to a degree during construction. (REF Section 6.5.2).

It is recommend to avoid peak hours and school zones when scheduling truck movements during construction due to safety reasons and spread the movements across the day (REF, Section 6.5.3).

Freight and heavy vehicles: Whilst the Great Western Highway through Medlow Bath corridor forms part of the freight and heavy vehicles network, the highway itself is equally important as part of the local road network for residents as there is no alternative.

As noted previously in this submission, the importance and impacts of the freight corridor needs further assessment and the opportunity for the delivery of the local link road strategy should be considered.

Crash data: Caution should always be shown on the use of crash data as the current reporting criteria does not capture near-misses, minor and non-injury crashes.

Parking provisions: The loss of on-street parking as result of the highway widening has not been adequately addressed. To suggest that this parking for the village of Medlow Bath can be accommodated in the future development of the Hydro Majestic is not supported. Equally, TNSW should not be relying on a private business to provide accessible parking spaces for use of highway traffic or visitors to this village.

TNSW need to provide a more thorough and detailed assessment for the replacement of parking for the village as a whole.

This approach of removing parking along the highway to improve its function is something that Council has consistently argued against during previous highway upgrades. The most recent being as part of the Blackheath Safety Upgrade, which saw the loss of parking west of Govetts Leap Road. Whilst TNSW gave initial commitments to replace these spaces, this has not occurred.

Walking and cycling: The Council has raised its concerns over many years about the limited, and in some cases, unsafe walking and cycling linkages north and south of Medlow Bath. Many of these facilities could have been previously upgraded as part of the current highway. It is acknowledged that the proposed improvement for walking and cycling within the village and the connections beyond the village could equally have been achieved without the upgrade. Council seeks confirmation that on-road cycling pathways conform to best practice standards. Comments on the proposed pedestrian/cycle overbridge have already been captured in this submission.

The materialisation of the shared path should be prioritised as a continuous path across all driveways, shared zones and crossings to provide this safety. Visuals and plans continue to prioritise different materials for driveways which is undesirable as it does not reflect the road rules and does not recognise the priority of walking or cycling. The cycling comfort of bitumen over concrete is another important factor that needs to be considered when implementing the shared path.

Council is particularly encouraged by the commitment to delivery of the Great Blue Mountains Trail (Katoomba to Mt Victoria), of which this section of Medlow Bath is a high priority.

Traffic and network impacts: It is stated that the proposal would improve the existing performance of the highway including accommodating future increases to traffic volumes through to 2036. Alterations to the existing alignment, particularly the signalised control system and U-turn bay at Bellevue Crescent – Proposed Option, would improve safety and access for vehicles and venerable road users.

What are the impacts of the U-turn bay on the intersection performance? From the schematic drawings, it looks like the U-turn bay will be located in close proximity to the intersection (REF Section 6.5.3).

However, the impact on local residents and amenity needs to be considered in more detail as this configuration requires the acquisition of private property and road reserve to be achieved. It creates more ‘highway traffic’ movements in the local network.

With respect to the alternate Bellevue Crescent, this also present a serious negative impact to the local road network and residential amenity. The community has already strongly rejected any change to access which would see increased traffic movements into their neighbourhood.

Whilst it is acknowledged this option would provide safer and more efficient traffic movement options, such as fewer vehicles making a U-turn at the Station Street/Railway Parade intersection, access to the petrol station and the Hydro itself, with additional ability for traffic to more easily turn left and right onto the highway, it would introduce a significant change to the current local road networks.

There needs to be an assessment on the current road infrastructure of Bellevue Crescent to support the increase in traffic as residents would now be using the current cul-de-sac section of the road to access the new signalised intersection near the petrol station (e.g. road upgrades, ancillary work such as kerb and gutter, line marking). (REF, Section 6.5.3).

This alternate option would again require acquisition of land and would have an adverse impact on future development of the Hydro Majestic and the implementation of a development application assessed as regional development.

Road and station user impacts: It is acknowledged that the delivery of the Transport Access Program (TAP) as detailed in the proposal will improve station access, parking and safety, but the Council considers this will be delivered in meeting DDA obligations rather than as an outcome of the duplication project.

Concerns around the visual and amenity impacts of the proposed design and structure have been addressed in previous sections of this submission.

Conclusion

At a community level, the TNSW proposal for highway upgrade works between Katoomba and Lithgow continues to cause significant concern. In relation to the Medlow Bath component of those works, residents and business owners are particularly concerned about the environmental and community impacts of the proposed four and five lane highway widening.

The community benefits of the works proposed at Medlow Bath are not evident. Given the level of community concern, and the likelihood that the works will significantly affect the environment, a full environmental assessment, through an EIS, is required. The EIS process must allow the views and concerns of the local community, and the Council as a community leader, to be identified and expressed to TNSW. That expression must be followed by a full and appropriate consideration of the matters identified.

Members of the Medlow Bath community, in particular, are responding actively to the proposal for their section of the highway. For its part, the Council does not support the four and five lane surface corridor proposal at Medlow Bath and the material impacts that the proposed works will impose on the form and function of this Blue Mountains village.

This submission reflects the Council's strategic planning framework, which has been adopted and is being implemented following lengthy and detailed consultation with the Blue Mountains community. The following Council commitments, recorded in the Council's 2020 *Blue Mountains Local Strategic Planning Statement – Living Sustainably 2040*, are relevant to this submission and to the works proposed by TNSW between Katoomba and Blackheath:

9.3 Council will work with Transport for NSW to advocate for the Blue Mountains on any upgrade of the Great Western Highway to ensure local values and amenity are preserved, through design solutions which are suitable to the World Heritage setting and maintain views to this landscape

9.4 Council will continue to work with Transport for NSW on any upgrade of the Great Western Highway to ensure transport decisions promote the best outcomes for Blue Mountains towns and villages, including improved local connections (particularly pedestrian) across the highway to key community facilities such as schools, and improved safety and accessibility

Section 11 of this submission notes the clear statement by RMS (as predecessor to TNSW) that it will undertake the assessment of the environmental impacts through an REF. In the Council's submission, it is not open to TNSW to adopt such a blanket policy position, which excludes the possibility that the assessment of the impact of some projects will require the preparation of an EIS. The Katoomba to Lithgow highway upgrade is such a project.

Having regard to the nature and extent of the works proposed between Katoomba and Blackheath, and the likelihood that those works will significantly affect the environment, in Council's submission TNSW must commission and secure a full EIS for the proposed works. That EIS must be directed to the project as a whole. This is the only way in which an accurate assessment of the impacts of the proposed works can be secured.

The obligations of TNSW in this regard are clearly indicated by the decision of Preston CJ in the *Palm Beach* proceedings. The passages quoted on pages 6 and 7 of this submission are directly applicable to the works proposed by TNSW between Lithgow and Katoomba. Justice Preston's determination also points to the inadequacy of the environmental assessment undertaken by TNSW to date and the inappropriateness of endeavouring to assess the environmental impacts of work within the Medlow Bath section of the highway upgrade, in isolation from any consideration of the impacts of works through the full corridor between Katoomba and Blackheath.

The Council makes these representations to the NSW State Government on behalf of the community of the Blue Mountains to ensure that a full and appropriate assessment is undertaken in relation to the likely impacts of the proposed works on the environment in the corridor between Katoomba and Blackheath. The Council invites TNSW to carefully consider its legal obligations under the EPA Act and the EPA Regulation, when determining whether it will commission and secure an EIS for the proposed Katoomba to Blackheath highway upgrade works.