

# BALLARAT WEST EMPLOYMENT ZONE

Ballarat Intermodal Freight Hub Terminal  
Developer and Operator

FEBRUARY 2020

REQUEST FOR EXPRESSION OF INTEREST

INDUSTRIAL/COMMERCIAL DEVELOPMENT & EMPLOYMENT PROJECT



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# ABOUT DEVELOPMENT VICTORIA

Development Victoria was established in April 2017 to help make Victoria a great place to live. Development Victoria is a valued partner delivering government policy through property development and urban renewal to achieve social and economic outcomes for Victorians.

## DEVELOPMENT VICTORIA UNDERTAKES

- property development
- civic, social and economic projects for government entities on a fee for service basis
- management of project transactions, including the EOI of joint venture partners
- provision of technical and commercial advice to government, departments and agencies
- provision of technical and commercial advice to Land Use Victoria.

## POLICY PILLARS

Development Victoria’s approach is underpinned by five policy pillars.

1

Housing



Promoting and delivering housing diversity and affordable housing

2

Economic development



Delivering projects to drive economic development

3

Urban renewal



Planning and developing strategic urban renewal precincts

4

Value creation and capture



Pursuing value capture and creation opportunities

5

Social and economic infrastructure



Delivering social and economic infrastructure

## CORPORATE GOVERNANCE

Development Victoria is a State-owned enterprise governed by an independent board of directors. It is subject to the direction and control of the Minister for Priority precincts.

Development Victoria is currently delivering projects of state significance, including Ballarat Gov Hub and Revitalising of Central Dandenong developments.





# DEFINITIONS



**BWEZ** - Ballarat West Employment Zone.

**DV** - Development Victoria.

**EOI** - means this Expression of Interest document in relation to the development and operation of the Facility.

**EOI PHASE** - means Development Victoria's process of inviting, receiving, evaluating and short-listing submissions to this EOI.

**FTE** - Full time equivalent [jobs].

**Facility** - the Ballarat Intermodal Freight Hub Terminal.

**RESPONDENT** - a party that received this EOI Document and provides an EOI submission.

**RESPONDENT'S PARTICIPANTS** - means the officers, employees, consultants and advisers of a Respondent, any named participant in the Respondent's submission and the officers and employees of those consultants and advisers and participants.

**RFP** - Request for proposal.

**RFP PHASE** - means Development Victoria's process of short-listing EOI respondents and through evaluation of further detail appoint the preferred respondent.

**RETURNABLE SCHEDULES** - means the documents set out in Part B which are to be completed by the Respondent and included in their Submission.

**STATE** - means the Crown in right of the State of Victoria.

**SUBMISSION** - means a document lodged with DV by or on behalf of a Respondent in response to this EOI which contains a submission and any information provided on behalf of a Respondent to DV arising from connection with the EOI Phase.



# OPPORTUNITY

The BWEZ Development Plan identifies an intermodal (rail and road transfer capable) freight hub (Facility) on the Ballarat to Ararat railway line which runs through the BWEZ land. Approximately six hectares of land is set aside for the Facility, the development and operation of which is the subject of this EOI. Approximately 18 hectares surrounding the terminal is allocated for industrial subdivision which is being sold in freehold title by DV to appropriate businesses.

In this location freight and logistics enterprises will have exceptional access to road, rail and aviation infrastructure, at a strategic location within the freight network linking Melbourne, regional and rural Victoria, Adelaide and the ports of Melbourne, Geelong and Portland.

BWEZ is one of only a few sites in the State which has been designed to cater for High Productivity Freight Vehicles (HPVs) with appropriate direct connections to the State freeway and rail networks. HPVs reduce road freight costs and improve overall road freight efficiency through increased freight payloads and reduced truck operating costs.

To realise the opportunities for freight movement to and from this location, DV is seeking submissions from respondents interested in contributing to the construction and development of the Facility. Operational arrangements are likely to be affected through a lease agreement with VicTrack, and to assist respondents in understanding this structure, VicTrack's template intermodal freight hub lease and common user protocols are provided for information only.

Respondents should note that no response is expected in respect of the VicTrack lease arrangements during the EOI phase; any departures or alternative arrangements will be

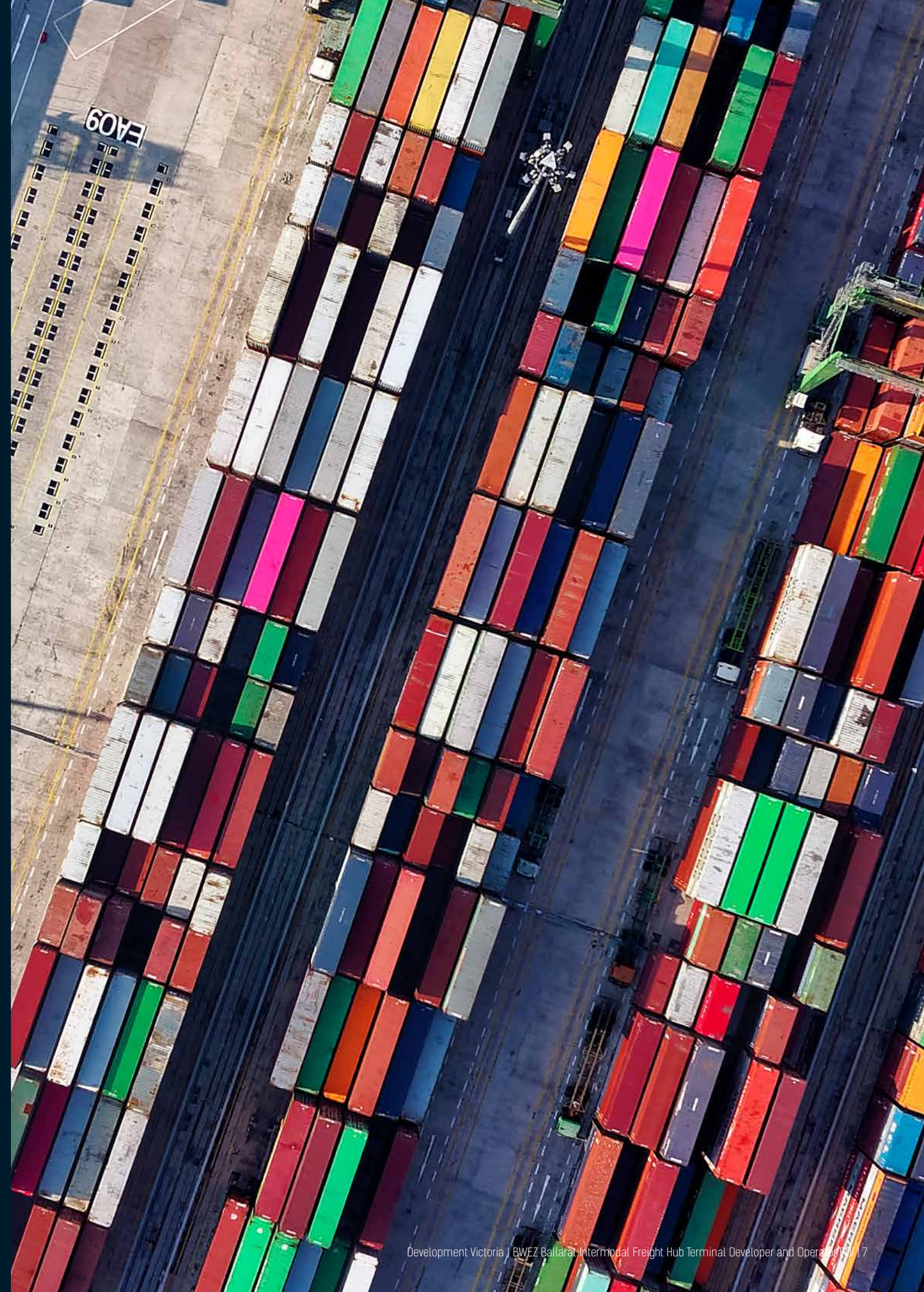
considered as part of the overall commercial offer during the RFP phase. Respondents must have a proven track record in developing and operating this type of Facility, a willingness to make a significant capital contribution upfront, potentially with further capital commitment through the lease agreement period, and a willingness to accommodate potential existing demand in terms of functional design.

The successful Respondent will be required to enter into a Development Agreement detailing the agreed extent and timing of development works, and a lease agreement to operate the Facility. Details of the proposed lease terms are contained in Appendix E.

Federal Government funding of \$9.1 million was provided in the 2014 Federal Budget for the development of the Facility. Potential additional funding from the State via DV will be made available if required and following a Request for Proposal (RFP) process in which respondents set out their proposed scope, risk allocation and financial arrangements with the successful respondent.

It is proposed that the successful respondent will take on design and delivery risk, demand and operational cost risk, manage the commercial return based on these risks and the services provided.

Following evaluation of submissions in relation to this EOI, short-listed respondents will be required to respond to an RFP process. The RFP will set out a more detailed scope of deliverables and will require respondents to provide detailed design concepts, costings, proposed financial commitments and timing around delivery and operation.





# LAND ALLOCATION AND DESIGN CONSTRAINTS

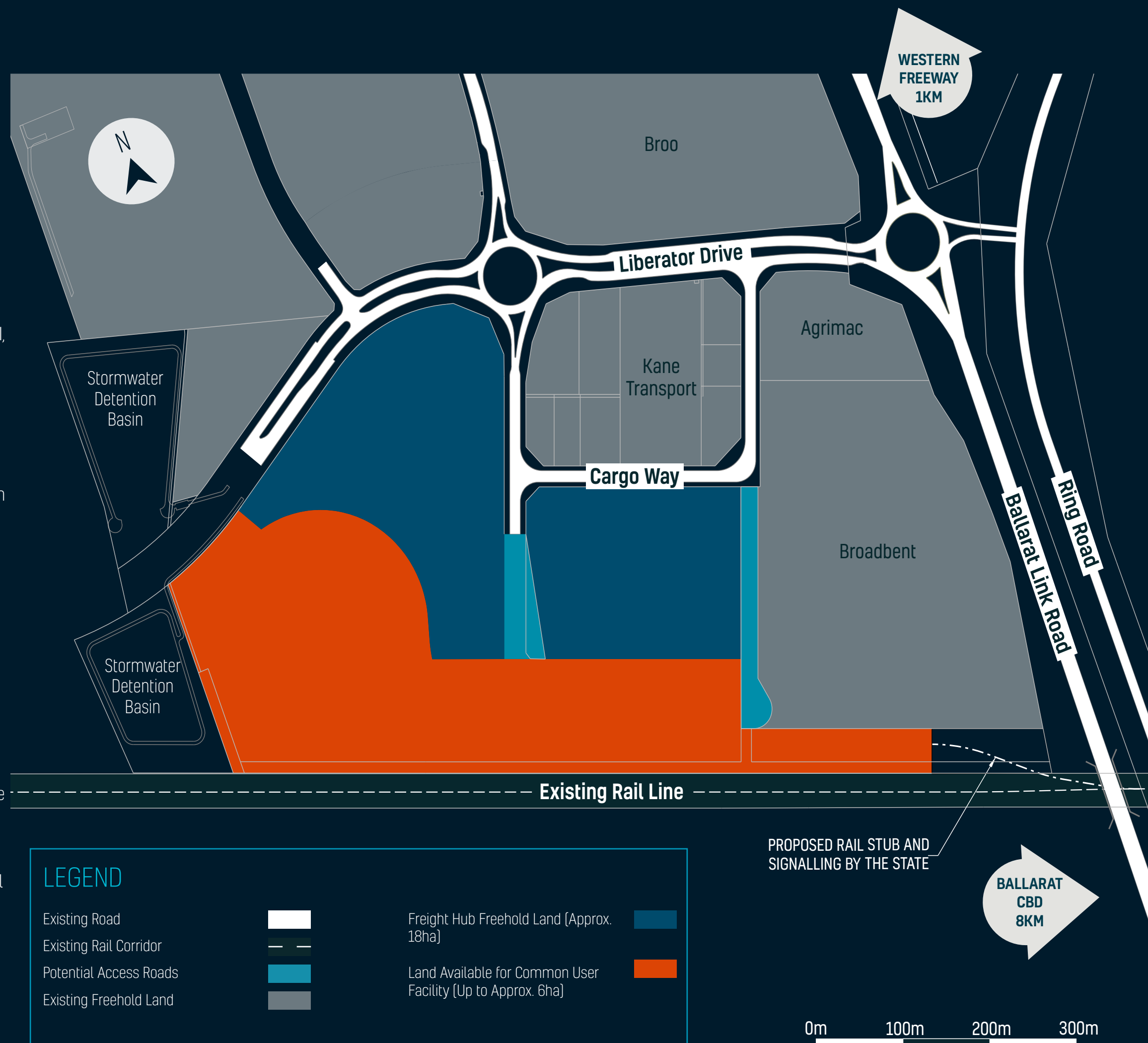
The extent of the Freight Hub land is approximately 24 hectares. Of this land approximately 18 hectares has been offered to the market for sale as freehold land (which is not offered as part of this EOI). As part of this EOI, approximately 6 hectares is available for construction and development of the Facility. The successful respondent is required to provide a conceptual drawing indicating preference for an approximate 6 ha site within the land available for the Facility. The freehold land does not form part of this EOI.

There is some flexibility around the physical configuration of the Facility to allow for rail siding (either linear or loop), however, it must be accommodated within the area marked orange on the drawing. The maximum area available for the Facility should not exceed 6 hectares. Respondents are required to provide a conceptual drawing setting out their preference for the shape, extent and function of the Facility.

It is expected that the successful respondent will have operational access to the connected rail stub and associated signalling which will be delivered by the State up to the eastern boundary of the Facility connecting from the main-line.

The State will also be delivering subdivision infrastructure works including roads and services to the industrial land surrounding and including the Facility. Servicing of existing freehold properties may be required to be located within easements within the Facility area and will be delivered by the State.

Capacity to construct a grain pit and associated infrastructure within the Facility would be considered an advantage and will be evaluated accordingly.





# OBJECTIVES

The Facility aims to improve the connectivity, efficiency and productivity of freight supply chains in this region to enhance the viability of local industry, support and retain local businesses, attract new manufacturing and freight businesses to the region and support local innovation.

DV, Regional Development Victoria, the City of Ballarat, Freight Victoria and VicTrack have been working in partnership to realise the project, identifying that the primary objectives of the Facility are to:

- Minimise freight costs and improve the competitiveness of the region;
- Provide direct rail access from BWEZ to the Port of Melbourne and export markets;
- Reduce product handling costs, transport costs and time to market;
- Centralise/co-locate freight related services to maximise efficiencies and reduce supply chain cost;
- Support access to global supply chains and markets;
- Encourage investment in the region; and
- Leverage investment in road and rail freight infrastructure (Western Highway upgrades, Western Link Road, Murray Basin Rail Project, Regional Rail Revival).





# BALLARAT WEST EMPLOYMENT ZONE

BWEZ is a declared project under the Development Victoria Act 2003 and is being delivered by DV on behalf of its clients, Regional Development Victoria and the City of Ballarat.

BWEZ involves the development of approximately 400 hectares of surplus Crown land adjacent to the Ballarat Airport into a high quality, high profile industrial and residential precinct to support economic growth of Ballarat and the wider region of Western Victoria.

Regional Development Victoria, the City of Ballarat and DV have been working in partnership to facilitate these opportunities.

The civil works for Stages 1 and 1B of BWEZ are complete with a large percentage of land having been sold. DV will explore a further stage of up to 60 hectares of industrial land to take to the market, likely to occur in 2020.

The 18 hectares of freehold land within the Freight Hub stage and adjacent to the Facility is currently subject to negotiations with prospective purchasers. Finalisation of these negotiations is dependent on the final configuration of the Facility.





# EOI SUBMISSIONS

DV is seeking Submissions from Respondents interested in being the developer and operator of the Facility.

Respondents are required to complete the five Returnable Schedules contained in this document.

These schedules will be used to address the evaluation criteria:

- Returnable Schedule 1 – Declaration
- Returnable Schedule 2 – Respondent company information
- Returnable Schedule 3 – Mandatory criteria checklist
- Returnable Schedule 4 – Organisational experience, capability and expertise, employment creation commitment, local content commitment
- Respondents may include in their Submissions any other information considered relevant.

To register as a Respondent, interested parties should provide a completed Returnable Schedule 2 by 3 March 2020 via: [BWEZenquiry@development.vic.gov.au](mailto:BWEZenquiry@development.vic.gov.au) This will ensure the Respondent receives any further information that is provided as an Addendum.

If making a submission as part of a consortium, Respondents must ensure each member of the consortium completes the Declaration in the Returnable Schedules, and in doing so agrees to be bound by the evaluation process.

All information fields in the Returnable Schedules should be completed and provide the information requested. DV may in its absolute discretion reject or accept a submission that does not include the information requested.

Submissions that fail to meet mandatory criteria are at risk of not progressing further to the evaluation process. The indicative timetable for the EOI process is as follows:

The indicative timetable for the Divestment Process will be as follows:

STEP	DATES
Release of EOI	4 February 2020
Respondent registration close date	3 March 2020
Enquiries from Respondents close date	6 March 2020
<b>EOI Close Date</b>	<b>13 March 2020</b>
Evaluate EOIs	March 2020
Short-list EOIs to be invited to participate in a RFP	April 2020

Submissions must be made by 13 March 2020 and will close at 3pm.

# EVALUATION CRITERIA

MANDATORY	
1	Respondents must complete and sign the declaration in Returnable Schedule 1.
WEIGHTED CRITERIA	
2	Capability & Capacity 50%. <ul style="list-style-type: none"><li>• Experience of the respondent in developing, constructing and operating a common-user Intermodal Freight Terminal.</li></ul>
3	Job Creation 10%. <ul style="list-style-type: none"><li>• FTE's created to operate the Facility</li></ul>
4	Design Concept 40%. <ul style="list-style-type: none"><li>• Extent to which the Facility accommodates DV land usage requirements, existing physical constraints and meets the needs of potential users.</li></ul>



# PART B

## RETURNABLE SCHEDULES

## APPENDICES

- A – SITE DETAILS
- B – TECHNICAL/SITE  
INFORMATION
- C – PROCESS
- D – GENERAL TERMS  
AND CONDITIONS
- E – DRAFT LEASE TERMS,  
ACCESS AGREEMENT  
AND ACCESS  
PROTOCOLS





# RETURNABLE SCHEDULE 1

## DECLARATION

Note to Respondents: The Victorian State Government’s Supplier Code of Conduct (as amended from time to time) is available at the Victorian Government Purchasing Board website: [www.EOI.vic.gov.au/Suppliers/Supplier-Code-of-Conduct](http://www.EOI.vic.gov.au/Suppliers/Supplier-Code-of-Conduct).

The Commitment from Tender Participants is available from Section 4.1.5 of the Instructions for Public Construction EOI in Victoria available from [www.dtf.vic.gov.au/public-construction-policy-and-resources/ministerial-directions-and-instructions-public-construction-EOI](http://www.dtf.vic.gov.au/public-construction-policy-and-resources/ministerial-directions-and-instructions-public-construction-EOI)

**Instructions for completing a statutory declaration**

Please complete the following form using the notes in the left hand margin for guidance. More guidance on making statutory declarations can be found at [www.justice.vic.gov.au](http://www.justice.vic.gov.au).

When making the statutory declaration the person making the declaration must say aloud:

*I, [full name of person making declaration] of [address], declare that the contents of this statutory declaration are true and correct.*

## STATUTORY DECLARATION

I \_\_\_\_\_

[Insert full name]

of \_\_\_\_\_

[Insert address]

\_\_\_\_\_  
[Insert occupation]

**Definitions**

In this declaration:

“Respondent” means: [insert name of company, other body corporate, firm, or individual];

“Code” means Victorian State Government’s Supplier Code of Conduct;

“Commitment” means the Commitment from Tender Participants to the Code;

“Development Victoria” means Development Victoria of Level 9, 8 Exhibition Street, Melbourne, Victoria 3000;

“Project” means the development and/or lease of the site know as the Ballarat Intermodal Freight Hub Terminal Common User Facility;

“Response Forms” has the meaning given in the EOI;

“EOI” means the expression of interest issued by Development Victoria for the Project;

**Preamble**

- I hold the position of [insert title] of the Respondent and I am duly authorised by the Respondent to make this declaration on its behalf.
- I make this declaration on behalf of the Respondent and on behalf of myself.

Acceptance of EOI Conditions

- The Respondent accepts the requirements of the EOI including the EOI Conditions in Part A of the EOI.

**Submission of the Response**

- The Respondent declares that the information set out in its Response (including any information provided in support of any preceding expressions of interest or accreditation process) is true and correct.
- The Respondent submits its Response, including all attached Response Forms, in good faith and in the genuine belief that they are accurate and complete.
- The Respondent:
  - confirms it has made its own inquiries and has not relied upon the information in the EOI in submitting its Response; and
  - acknowledges and agrees that nothing in the EOI or the conduct of the EOI process has resulted in a process contract.
- Neither the Respondent, nor any proposed consortia entities, nor of its employees or agents of the Respondent or proposed consortia entities has a potential, actual or perceived potential conflict of interest in relation to the Project, except as listed below:
  - \_\_\_\_\_ [Respondent to complete]
- Neither the Respondent nor any proposed consortia entities, nor any employees or agents of the Respondent or proposed consortia entities have nor any of its employees or agents have engaged in any collusion, anticompetitive conduct or any similar conduct with any employee, agent or consultant of Development Victoria, any other Respondent or any other person.
- The details of the Lead Respondent are as follows: [Respondent to complete]

Name: \_\_\_\_\_

Registered office: \_\_\_\_\_

ABN: \_\_\_\_\_

ACN: \_\_\_\_\_

Contact Name (authorised agent): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Company Registration numbers where applicable – e.g. Builder’s Registration number: \_\_\_\_\_

Declarant Signature

Witness Signature

Declarant Signature

Witness Signature



10. The details of proposed consortia entities are as follows: [Respondent to complete, add additional boxes as required]

Name:

Registered office:

ABN:

ACN:

Contact Name (authorised agent):

Title:

Phone:

Email:

Company Registration numbers where applicable – e.g. Builder’s Registration number:

Additional information

11. The Respondent confirms that the Respondent/Consortia can work in accordance with Development Victoria’s proposed EOI process.

Genuine Competition

12. The Respondent is genuinely competing for the Project.
13. The Respondent/ Consortia has experience to complete the development and/or operate the Facility.

Confirmation of Receipt of Addenda

14. The Respondent confirms receipt of any addenda issued during the EOI process and that they have incorporated all requirements set out in the addenda in their Response.

TENDER ADDENDUM NUMBER AND DATE	RECEIVED AND REQUIREMENTS INCORPORATED? (YES / NO)

Declarant Signature

Witness Signature

Authorisation

15. On behalf of the Respondent, I authorise Development Victoria to obtain such information as it reasonably requires in relation to the Respondent’s Response from third parties including, without limitation:
- a. any employees that the Respondent lists in its Response;

b. any referees or client or other contacts whether provided by the Respondent in its Response or not and

c. any other government bodies who have knowledge or experience of the Respondent.

I confirm that I am authorised to make this declaration on behalf of the Respondent and that I have read and accept all the terms set out in this declaration on behalf of the Respondent.

I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.

Signature of person making the declaration

Declared at

on

Signature of authorised statutory declaration witness

I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration:

on

Name

Capacity in which authorised person has authority to witness statutory declaration

Address (writing, typing or stamp)

Declarant Signature

Witness Signature



# RETURNABLE SCHEDULE 2

## RESPONDENT COMPANY INFORMATION

This Returnable Schedule must be completed for each member of the proposed bidding consortium.

TABLE A – RESPONDENT COMPANY INFORMATION
1. Precise legal entity (or entities)
2. ABN or ACN
3. Address of registered office
4. Company directors
5. Date established/incorporated
6. Telephone
7. Email

Respondents shall provide details regarding the identity of the Respondent including the following:

TABLE B – RESPONDENT CONTACT PERSON
1. Name
2. Position/title
3. Telephone
4. Email

Where a respondent comprises a consortium, Table A information is required for each consortium member outlining which is the lead entity and the role each entity undertakes as part of the consortium.

# RETURNABLE SCHEDULE 3

## MANDATORY CRITERIA CHECKLIST

	INDICATE IF MET	REFERENCE SECTION OF EOI SUBMISSION
Respondents must complete and sign the declaration in RETURNABLE SCHEDULE 1		



# RETURNABLE SCHEDULE 4

## WEIGHTED CRITERIA

The following information must be forwarded within an EOI response. The submitted information will form the basis upon which EOI submissions are evaluated. It is therefore strongly recommended that responses are fully compliant and as complete as possible. It should be noted that Development Victoria may at its discretion reject any EOI response that does not meet all the required EOI response information.

CRITERIA AND ASSESSMENT WEIGHTING	INFORMATION TO BE PROVIDED
Capability & Capacity 50%.	<ul style="list-style-type: none"><li>• If the Respondent is intending to form a consortium, outline the expected roles and responsibilities of each of the consortium members in the development and operation of the Facility.</li><li>• Corporate history/overview and description of the business of each Respondent/consortium member.</li><li>• Demonstrate capacity, experience, skills, resources and expertise in developing, constructing and operating a similar Facility of this scale and complexity.</li></ul>
Job Creation 10%	<ul style="list-style-type: none"><li>• Outline the number of FTE’s that will be created for the purpose of operating the Facility.</li></ul>
Design Concept 40%	<ul style="list-style-type: none"><li>• Conceptual Drawings which indicate the extent to which the concept takes account of DV’s requirements in relation to limiting the proposed land area to approximately 6 ha and demonstrates how the design will best serve the needs of Facility users. The degree to which the concept considers existing physical constraints including site levels.</li></ul>

# APPENDIX A

## SITE INFORMATION

The Facility site is part of the broader BWEZ precinct comprising 438 hectares of Crown land that is being transformed into a high-quality estate with a mix of industrial, wholesale, logistics, construction, retail and other businesses. Areas within the precinct have also been zoned for residential and related developments.

The following site preparation works and investigations have been completed to prepare the BWEZ site for the market. The list of the documents available to Respondents is set out in Appendix B.

Planning Provisions - The land has been zoned Special Use Zone 14 (BWEZ) with a Development Plan Overlay Schedule 10 (BWEZ). Both controls facilitate appropriate industrial development in the BWEZ precinct.

The Development Plan facilitates and streamlines appropriate development and ensures quality urban form within BWEZ. The Development Plan identifies the site for the Intermodal Freight Hub Terminal and associated industrial subdivision.

Contamination – no significant environmental site issues (i.e. risk to human health or environment) have been found in a historic information review and subsequent soil and groundwater testing.

Geotechnical investigations – Preliminary geotechnical assessments have not presented any significant issues regarding soil stability.

Ecology – The ecological assessment found that the environmental values of the site are generally low. No areas of remnant vegetation remain within the site.

The overall site is dominated by introduced grasses, which provide marginal habitat value for a limited number of native species. An Environmental Management Plan (EMP) has been developed for the site to address the environmental issues within the site and specify appropriate management actions.

A Cultural Heritage Management Plan (CHMP) is a requirement of the Planning Scheme. DV has completed the required CHMP for the site.



# APPENDIX B

## TECHNICAL/SITE INFORMATION

### PRELIMINARY ASSESSMENTS

The technical reports contained in this Appendix are intended to provide prospective Respondents with additional background information on the Project. All descriptions, dimensions, references to conditions, statements, estimates and projections contained in the reports, are given in good faith and, although believed to be correct at the time of issue, may or may not be correct and are subject to final surveys and designs.

Respondents must conduct their own independent investigation and analysis in respect of the information in the Reports and rely solely on their own enquiries as to the significance, accuracy and completeness of the Reports. Neither DV nor its Employees have verified the significance, accuracy and completeness of any of the Reports, including any estimates or projections. Accordingly, DV and its Associates make no representation or warranty expressed or implied, as to the significance, accuracy or completeness of the reports or any information which may be provided in connection with it.

### PLANNING SCHEME REQUIREMENTS

The following is a DV Summary of the Planning Scheme requirements. Respondents should refer in more detail to the Planning Scheme Provisions provided at <http://planning-schemes.delwp.vic.gov.au/schemes/Ballarat>

The site is subject to the following provisions of the Ballarat Planning Scheme:

Schedule 14 to the Special Use Zone –SUZ14, Ballarat West Employment Zone (BWEZ).

Planning Provisions- The land has been zoned Special Use Zone 14 (BWEZ) with a Development Plan Overlay Schedule 10 (BWEZ) in order to facilitate development.

The Development Plan facilitates and streamlines appropriate development and ensures quality urban form within BWEZ Integrated Infrastructure Plan (IIP) February 2014 - The IIP outlines the existing services locations and those proposed to be constructed.:

BWEZ Development Plan, Urban Design and Landscape Guidelines prepared by Echelon

Cultural Heritage Management Plan prepared by TerraCulture

Ballarat Planning Scheme

Schedule 14 Special Use Zone

- i. Ballarat West Employment Zone (BWEZ) Development Plan Overlay
- ii. Ballarat West Employment Zone (BWEZ) Schedule 10 to the Development Plan overlay
- iii. Ballarat West Employment Zone (BWEZ) Schedule 14 to the Special Use Zone

Certificate of Title

Preliminary assessments including:

- Ballarat West Employment Zone Geotechnical Desktop Assessment prepared by Golder Associates
- Ballarat West Employment Zone Hydrogeological Review prepared by Senversa
- Ballarat West Employment Zone Historical Information Review prepared by Senversa
- Ballarat West Employment Zone Targeted Soil Assessment prepared by Senversa

Design Option SKE-C0001 Revision A AECOM

Design Option SKE-C0101 Revision B

Ballarat West Employment Zone Geotechnical Desktop Assessment prepared by Biosis

Feature Survey

To obtain a copy of the above reports access the link on the project website:  
<https://www.development.vic.gov.au/projects/ballaratwest-employment-zone>



# APPENDIX C

## PROCESS

### INTERNET LODGEMENT

Submissions must be lodged electronically, as set out in the table below, by the closing time.

Close date 3pm, 13 March 2020.

Submission email address	tenders@development.vic.gov.au
Requirements	<p>A Respondent is responsible for ensuring submissions submitted electronically are lodged with sufficient time to allow receipt by DV by closing time.</p> <p>DV recommends submission at least 2 hours prior to closing.</p> <p>An EOI submitted after this time will be considered a late EOI. Development Victoria may accept or reject any late EOIs at its absolute discretion. Any request for acceptance of late material should demonstrate to the satisfaction of Development Victoria that there were exceptional circumstances beyond the control of the Respondent which caused the late arrival and that the Respondent did not derive any benefit from the delay in lodgement</p>

The EOI Closing Time may be extended by DV in its absolute discretion by providing written notice to Respondents by way of an addendum.

A Respondent accepts all responsibility for the delivery of its Submission by closing time on the EOI Close Date.

### MANAGER

All questions and clarifications concerning this EOI, should be directed in writing to:

Marcelle Ganly

Senior Development Manager  
Development Victoria  
BWEZenquiry@development.vic.gov.au

Enquiries are to be provided no later than 6 March 2020

All communications regarding this EOI are to be directed to the Manager. Communications with any other person in relation to the EOI may result in the Respondent’s Submission being excluded from the EOI at DV’s absolute discretion.

### QUESTIONS AND CLARIFICATION

Respondents may seek clarification from DV regarding any aspect of this EOI. Clarifications must be sought in writing from the Manager.

Development Victoria is not obliged to respond to any communication relating to the EOI. Where Development Victoria responds to a communication it will provide its response to all Respondents unless Development Victoria believes the issues raised apply only to one Respondent.

Communication with any person engaged by Development Victoria for the purposes of the Project is prohibited and may result in the Respondent being excluded from this EOI process at Development Victoria’s discretion

### CONSULTATION AND UNAUTHORISED COMMUNICATION

Respondents must not engage in any activities or obtain or provide improper assistance that may be perceived as, or that may have the effect of, influencing the outcome of this EOI process in any way. Such activities or assistance may, in the absolute discretion of DV, lead to the exclusion of a Respondent from the EOI Process.

### FURTHER MARKET ENGAGEMENT

The State and DV reserve the right to conduct further market engagement after the EOI Close Date, in any manner it sees fit including, but not limited to, extension of the EOI Close Date or conducting one or more further EOI phases.

# APPENDIX D

## GENERAL TERMS AND CONDITIONS

The EOI Conditions are as follows:

- Ownership of EOI  
This EOI Information Memorandum is and shall remain the property of Development Victoria and may be used only for preparing an EOI submission.
- Confidentiality  
Each Respondent will treat all material received in this EOI process as confidential and must enter into a confidentiality agreement with Development Victoria if so requested.
- Conflict of Interest  
Respondents must disclose any actual or potential conflicts of interest and Development Victoria retains the right to exclude a Respondent if it cannot demonstrate, to Development Victoria’s satisfaction, that it has adequately managed any such conflicts.
- EOI is not an offer  
This EOI does not constitute an offer and does not create any legal rights or obligations (including any process contract).
- EOI documentation  
This EOI and the information contained in it are provided on the basis that it is not binding on Development Victoria.  
Development Victoria does not give any warranty or make any representation as to the completeness or accuracy of the information contained in this document or any information that may be provided in connection with it.  
A Respondent should not rely on any information contained in this EOI. Respondents must make their own inquiries as to the adequacy and completeness of any information contained in it.
- Privacy  
Respondents are bound by the Information Privacy Principles set out in the Privacy and Data Protection Act 2014 (Vic) and any applicable code of practice with respect to any act done or practice engaged in by the Respondent in connection with this EOI in the same way and to the same extent as Development Victoria would have been bound in respect of that act or practice had it been directly done or engaged in by Development Victoria.
- Intellectual Property Rights  
Any intellectual property rights as may exist in this EOI and any other documents provided to Respondents by or on behalf of Development Victoria in connection with this EOI are owned by (and will remain the property of) Development Victoria.
- Complaints about EOI process  
Any complaint about this EOI or the EOI process must be submitted to the General Counsel, Level 9, 8 Exhibition Street, Melbourne, Victoria, 3000 in writing immediately upon the cause of the complaint arising or becoming known to the Respondent.  
The written complaint must set out: the basis for the complaint (specifying the issues involved); how the subject of the complaint (and the specific issues) affects the person or organisation making the complaint; any relevant background information; and the outcome desired by the person or organisation making the complaint.
- Disclosure of Response
  - Development Victoria will not disclose the contents of a Response, except: as required by law (including under the

- Freedom of Information Act 1982 (Vic)); for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- to external consultants and advisers of Development Victoria engaged to assist with this EOI process or any engagement resulting from this EOI process;
  - as required to gain approval to proceed with any engagement resulting from this EOI process; or
  - to the extent that general information from Respondents is required to be disclosed by government policy.
- Use of Response  
All Responses submitted in accordance with this EOI will become the property of Development Victoria.  
Respondents will retain ownership of all intellectual property contained in the Response that has been produced by the Respondent.  
Each Respondent, by submission of its Response, is deemed to have licensed Development Victoria to use and reproduce the whole, or any portion, of its Response for the purposes of enabling Development Victoria to evaluate the Response.
- Period of validity  
All Responses must remain valid for a minimum of 120 days from the Closing Date. The period of validity of a Response may be extended by mutual agreement in writing between Development Victoria and the Respondent.
- Status of Response  
Each Response constitutes and must be presented in a form which constitutes a non-binding proposal by the Respondent to Development Victoria to deliver the Project required under this EOI.
- Each Respondent is bound by its Response.  
A Response must not be conditional. Development Victoria may, in its discretion, disregard any Response that is, or is stated to be, subject to any condition.
- Notice of non-compliance  
Respondents must state if they will not comply with any of the requirements of this EOI. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the Response.  
The Respondent will be deemed to comply with all parts of this EOI unless the Respondent states otherwise.
- Alternative Response  
Respondents may submit an alternative Response(s). An alternative Response will only be considered if the alternative Response is clearly identified as an “Alternative Response”.  
The alternative Response may depart from the requirements of this EOI or deliver the Project in a manner different to that specified in this EOI. Any alternative Response must set out full details of any non-compliance.  
An alternative Response should offer options or solutions which may, in an innovative and value for money way, contribute to Development Victoria’s ability to deliver the Project in a more cost-effective manner. Development Victoria may, in its discretion elect to consider any alternative Response.



16. Reservation of Development Victoria’s rights in relation to EOI process  
Development Victoria gives notice that (and by lodging an EOI, each Respondent accepts that):

- Development Victoria will not pay or reimburse any costs or expenses incurred by any Respondent in preparing and submitting an EOI or in the negotiating with Development Victoria in relation to an EOI under any circumstances:
- Development Victoria is not bound to accept or select any EOIs and reserves the right to reject or refuse to consider any EOI for any reason whether or not made in conformity with this EOI process, to invite or re-advertise for further EOIs and to negotiate with any party as to the Project outside the terms of this EOI
- Development Victoria reserves the right to seek clarification or further information in relation to any EOI
- Development Victoria reserves the right to modify at any time the selection process, procedures and terms and conditions set out in this EOI document or the Project including the structure and timing, or to elect not to proceed with the selection process or the project at any time, and will not be liable for any loss or damage suffered by any Respondent as a result:
- Development Victoria reserves the right to publish or disclose the names of successful and/or Respondents and to publish or disclose the terms of any contract entered into, subject to any information Development Victoria agrees to keep confidential
- No Respondent may influence or attempt to influence any person or persons involved in the assessment and selection of a successful Respondent other than by preparing and lodging an EOI in accordance with this document;
- No Respondent may collude with any other party in relation to this EOI process; and
- Each Respondent agrees not to employ any staff, contractors or consultants of Development Victoria during the EOI process without Development Victoria’s prior written consent. Where a Respondent breaches this requirement, they may be disqualified from the EOI process.

**Development Victoria’s Reservation of Rights**

Development Victoria reserves the right in its discretion to:

- a. accept, reject or refuse to consider any Response;
- b. negotiate with any person who is not a Respondent and enter into an agreement with any person on such terms as Development Victoria in its discretion accepts (without notifying any Respondent);
- c. withdraw, suspend or terminate this EOI or part of this EOI;
- d. change the structure and timing of this EOI and notify Respondents of such changes;

Development Victoria reserves the right to terminate this EOI at any time and, following termination of this EOI process, Development Victoria may negotiate directly with any party it chooses at its

discretion. Development Victoria may also undertake the Project or any aspect of the Project that forms the subject of this EOI itself.

**Selection Process**

Development Victoria may, in its discretion and at any stage of the evaluation process, give notice to one or more Respondents that it wishes to:

- a. shortlist one or more Respondents and invite tenders from those Respondents for the Project, part thereof or any similar or related Project;
- b. elect to engage in detailed discussions and negotiations with any one or more Respondent (with or without short listing any);
- c. invite one or more Respondents to give a presentation to Development Victoria in relation to their Response;
- d. reject any or all of the Response(s) or disqualify a Respondent (without giving reasons for so doing);
- e. accept a Response (or any part or parts thereof) received after the Closing Date;
- f. cease, suspend or defer this EOI process or any other EOI process for the Project ;
- g. terminate the participation of any Respondent in the transaction process the subject of this EOI;
- h. call for bids from new Respondents or call for new tenders for the Project (as the context requires) should it discontinue the EOI Phase or RFP PHASE (in which event Development Victoria will not be obliged to invite the Respondent to participate in any new EOI or RFP process); and/or
- i. proceed with the EOI of the works or services (as the context requires) by an arrangement other than that proposed by this EOI.

Development Victoria may rely on any and all information submitted by a Respondent (including earlier submissions and information provided as the result of any of the processes set out above). No additional weighting will be given in the evaluation process to any information provided by a Respondent as a result of any of the processes set out above.

**Employment of Development Victoria’s employees and internal contractors**

Each Respondent agrees that it will not, without the Respondent first obtaining Development Victoria’s prior written consent, allow any person who had been an employee or internal contractor of Development Victoria (Former Employee) within 12 months before the commencement of this EOI to be involved in any way in any aspect of this EOI including the preparation of its Response.

In considering a request for consent Development Victoria may require a Respondent to demonstrate to Development Victoria’s satisfaction that the Respondent has implemented measures to ensure that the Respondent will not be provided with an unfair advantage in this EOI by the involvement of the Former Employee and to implement separation protocols.

Development Victoria reserves the right to exclude any Respondent from participation in this EOI for any breach of this condition.

**DISCLAIMER**

Development Victoria gives notice that (and by lodging an EOI) each Respondent accepts that:

- a. By accessing this EOI, each Respondent acknowledges that it has read, understood and accepted the terms and conditions of this EOI and of this disclaimer. If the Respondent does not accept these terms, it must immediately return this EOI to Development Victoria.
- b. All descriptions, dimensions, references to conditions, statements, estimates and projections contained in this EOI are given in good faith and, although believed to be correct at the time of issue, may or may not be correct. This EOI does not purport to contain all the information each Respondent may require.
- c. Each Respondent must conduct its own independent investigation and analysis and rely solely on its own enquiries and inspections as to the significance, adequacy, accuracy, currency, reliability and completeness of the Information and obtain independent advice from appropriate sources.
- d. Neither Development Victoria nor its employees or consultants have verified the significance, adequacy, accuracy, currency, reliability or completeness of any of the Information, including any estimates or projections.  
  
Accordingly, Development Victoria and its employees and consultants make no representation or warranty as to the significance, adequacy, accuracy, currency, reliability or completeness of the Information.
- e. To the extent permitted by law, neither DV nor its Employees shall be liable to any Respondent or Respondent’s Participant or any other person for any loss, expense, damage or other liability which may arise from or be incurred or suffered as a result of anything contained in (or omitted from) the Reports, and DV expressly disclaims any and all

liability relating to or resulting from the use of such information by any Respondent in the preparation of a Submission.

**GOVERNING LAW**

The Respondent must comply with all relevant laws in preparing and lodging its Response and in taking part in this EOI.

This EOI will be governed by the laws of Victoria and by submitting a Response, each Respondent irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

**GOVERNMENT POLICY REQUIREMENTS**

This EOI may be subject to the following government policy requirements depending upon the final funding model: Local Jobs First Policy, Ministerial Directions for Public Construction EOI in Victoria, Social EOI Framework and Modern Slavery Reporting.

# APPENDIX E

## DRAFT LEASE TERMS, ACCESS AGREEMENT AND ACCESS PROTOCOLS

Indicative VicTrack Lease Terms Access Agreement and Access Protocols have been provided as Appendix E for Respondents information. These are VicTrack's template intermodal freight hub lease and common user documents, provided for information only and are subject to amendment. Respondents should note that no response to these documents will be considered during the EOI phase, and that additional guidance will be provided as part of the RFP.



L9, 8 Exhibition Street  
Melbourne 3000  
VIC Australia

GPO Box 2428  
Melbourne 3001  
VIC Australia

+61 3 8317 3400  
[development.vic.gov.au](http://development.vic.gov.au)

