



31 August 2020

INQUIRY INTO ECOSYSTEM DECLINE IN VICTORIA

Dear Environment and Planning Committee,

This submission addresses the inquiry ToR seeking, “legislative, policy, program, governance and funding solutions”.

It is in three parts.

Part one summarises my case studies and recommendations for action and change.

Part two introduces and recommends ‘collective impact’ as a governance method that can address ecosystem decline. It further recommends that Victoria’s ten Catchment Management Authorities (CMAs) be directed and resourced to be the ‘backbone organisations’ for collective impact. I explain why CMAs are well-placed to advance collective impact and three major barriers they will need to overcome. I conclude with recommendations for action.

Part three describes how current policies and the way they are implemented contribute to ecosystem decline. Part three comprises two case studies to illustrate this problem. It too concludes with recommendations for action.

These three case studies and recommendations are a small part of a big story. I expect others will contribute ecological science, social science, economics and passion. I expect many privately believe there is little ground for optimism.

I will be pleased to talk with the committee to explain, expand and consider questions.

I expect the Committee will find ‘change’ is the key word in this inquiry. This is because the continuing tragedy of ecosystem decline and extinction in Australia cries out for change. The seriousness and scale of the extinction crisis is unparalleled in human history. Responding to it with everything you have and more will be a public service to be proud of.

Yours sincerely,

Ian Morgans

See next page for my credentials

RESUME for IAN MORGANS



OVERVIEW

During my career I have:

- Led the evolution of conservation strategy for Victoria's most urbanised region and built an alliance of 50+ organisations that share the strategy to guide decision-making, action and evaluation.
- Assisted a project to help the Melbourne region's indigenous people make their aspirations for land and nature influential in public conservation policy, planning and action.
- Explored new ways to support self-managed community learning in an urban conservation program; *Gardens for Wildlife* and *Conservation Action Planning*.
- Worked with rural communities for EPA Victoria to turn *State Environment Protection Policy* into practical action.
- Helped deliver a \$2m wetland repair program on the SA Murray for *Wetland Care Australia*.
- Led a 9-year project to guide 23 River Management Authorities from a focus on flood-control and land-drainage to be enterprises for river conservation.
- Investigated and applied great ideas from 'livability-through-nature conservation' projects in and around five American cities.
- Learned to manage organisations, accountabilities and successful teams of environmental specialists.
- Built a hundred professional relationships through understanding how people learn and engage in different ways and for different motives.

EXPERIENCE

2003-2018

MANAGER, ENVIRONMENTAL STRATEGY, PORT PHILLIP & WESTERNPORT CMA

- I led three progressive evolutions of Regional Catchment Strategy (RCS).
- I was central to evolving the RCS to provide services - shared objectives, common measures and simplified ways for reporting for public authorities, Committees of Management, NGOs and Landcare networks. Our aim: to make partnership more rewarding than working alone.
- I led RCS presence and relevance to multiple interests with a team that promoted its vision with face-to-face services, tailored support, shared forums, field work and celebrations of success.
- I helped facilitate great improvements in Traditional Owner involvement in environmental decision-making across our region.

DECEMBER 2018 – MARCH 2019

SUMMER SEASON PARK RANGER, PARKS VICTORIA

- I worked as part of a team of 6 Rangers to manage peak-season visitors and facilities in the Morning Peninsula NP.
- We monitored threatened shorebird nesting and actively engaged with visitors to inform them about the bird, its habitat in the park and how to support PV's conservation program.

- We conducted surveillance and usually made first-contact to enforce park regulations - most often with visitors breaching prohibitions on dogs and camping.

2001-2003

PROJECTS MANAGER, WATER & CATCHMENTS, EPA VICTORIA

- I managed the team writing *State Environment Protection Policy* (SEPP) for water. I led projects with rural communities to act on water pollution problems.

1999-2001

EXECUTIVE OFFICER, WETLAND CARE AUSTRALIA

- I led, with our technical manager, planning and management for large-scale wetland projects on the SA Murray; Native Title and Indigenous Heritage management; office management for a staff of six and executive services for our Board of Directors.

1998-1999

GENERAL MANAGER, RIVER MURRAY CATCHMENT MANAGEMENT BOARD (SA)

1992-1998

OWNER-CONSULTANT, COMMUNITY WORKS P/L

AND BEFORE 1992

RIVER MANAGEMENT PROJECT, ENVIRONMENT VICTORIA & DEPT WATER RESOURCES

EXECUTIVE OFFICER, MANSFIELD ADULT CONTINUING EDUCATION

TECHNICAL SCHOOLS TEACHER, ENGLISH, HUMANITIES & MEDIA

EDUCATION

1995

GRADUATE DIPLOMA ENVIRONMENTAL SCIENCE, MONASH UNIVERSITY

Distinctions in Ecological Systems & Management, Physical Sciences & Environment and Multidisciplinary Organisation.

HIGHER DIPLOMA OF TEACHING, RUSDEN STATE COLLEGE

Majors in English Literature, Drama and Media Studies

PART ONE

Summary of case studies and recommendations.

Case study 1

Biodiversity decline can only be arrested by coordinated action, across whole landscapes, by multiple organisations working on a common agenda. This is ‘collective impact’. I argue here that Victoria’s ten Catchment Management Authorities (CMAs) are our best, ready-made organisations to lead collective impact for biodiversity. To do this, they need enabling direction, policy support and adequate funding. Governance to achieve collective impact for ecosystem repair needs to be devolved as closely as possible to responsible communities.

Recommendations

- 1.1 The Victorian Government and CMAs need development and community co-design to equip CMAs to be ‘backbone organisations’ for collective impact.
- 1.2 Amendments to policy, to the CALP Act, operational agreements and influences on CMA culture need to position CMAs as confident and visible professional champions for nature and its ecosystems.
- 1.3 The current *Biodiversity 2037* targets need to be supplemented with contributing RCS targets that are measurable and meaningful to communities.
- 1.4 Funding for biodiversity conservation needs to be tied to achieving *Biodiversity 2037* and relevant RCS targets.
- 1.5 Funding governance needs to provide collective impact programs no less certainty than government business partners would accept. Consultations, applications and assessments should be efficient and transparent.
- 1.6 Conservation governance needs to be connected, cohesive and responsive to the advice, priorities and histories of collective impact partners and their communities.
- 1.7 CMAs need to be the Victorian Government’s primary means to devolve funding to on-ground projects in their regions.
- 1.8 The roles needed to implement *Biodiversity 2037* should be assigned according to principles that devolve governance as closely as possible to the communities affected and responsible for achieving collective impact for ecosystem repair.

Case study 2

This case study shows how environment protection laws are used to licence destruction, how minimising losses in ‘statutory nature’ permits the web of life across the rest of a landscape to be dismantled and how Environmental Effects Statements are written by proponents to get their projects approved.

Recommendations

- 2.1. While the EES Act section 4 requires EES to “... *be prepared and submitted at the expense of the proponent of the works*”, EES should be prepared by an independent body as a highly consultative process of shared learning and decision-making.
- 2.2. EES should be a clear-sighted and unbiased assessment of the nature of the problem to be solved. They should make explicit the likely environmental impacts, opportunity costs, trade-offs and

relative benefits of a full range of alternative solutions. The language should be blunt, not dissembling euphemisms.

- 2.3. EES must describe and respond to the history of cumulative ecosystem loss across relevant landscapes and assess the effect of more dismantling of the local ecosystem.
- 2.4. The aim of every EES should be to fulfil the assertive and visionary environmental conservation aims of relevant legislation and strategy, not to exploit their get-out-of-jail provisions for minimising, mitigating and rationalizing ecological decline.
- 2.5. Victoria's environmental legislation should be reviewed to emphasise its conservation aims and reduce its use to licence threatening processes.
- 2.6. The Fauna and Flora Guarantee Act should be reviewed to end its use as a licence to clear non-listed habitats and emphasise its aims to prevent further ecological decline.
- 2.7. The EES Act should be reviewed to make EES respond explicitly to all regional and local environment strategy

Case study 3

When the Urban Growth Boundary (UGB) for Melbourne was expanded in 2010-11, a draft strategy was written to ensure the conservation of the Southern Brown Bandicoot (SBB). The strategy called for wildlife corridors to maintain and improve SBB population connectivity. But, in March 2014, the State government removed habitat corridors from the plan. The development industry was allowed to maximise its new housing build by replacing wildlife corridors with a 'management zone' of integrated pest control. This conclusion confident science that without wildlife corridors to connect populations and habitats, bandicoots become locally extinct, even with good habitat and no fox control. Why this late-entry science replaced respected, scientific, evidence-based work remains unclear.

Recommendations

- 3.1. All decision-making should be in clear view and transparent. Opaque decision-making destroys confidence in the process. The policies needed to halt ecosystem decline will need support and confidence as they will inevitably impact on people's lives and expectations.
- 3.2. Decision-making should be representative and collaborative; a process of shared learning, negotiation and resolution between all affected parties. There is no place for final decisions to be made in confidential talks. Capital and development decision-makers should be at these tables. The rule should be, No show – no influence.
- 3.3. Compromise and 'balanced decisions' between conserving species and ecosystem resilience and the interests of capital and development mean prioritizing nature.

PART TWO

‘Collective impact’ and Catchment Management Authorities (CMAs) as ‘backbone organisations’.

Biodiversity decline can only be arrested by coordinated action, across whole landscapes, by multiple organisations working on a common agenda. This is ‘collective impact’. I argue here that Victoria’s ten Catchment Management Authorities (CMAs) are our best, ready-made organisations to lead collective impact for biodiversity. To do this, they need enabling direction, policy support and adequate funding. Governance to achieve collective impact for ecosystem repair needs to be devolved as closely as possible to responsible communities.

The biodiversity and species loss crisis shows that scattered, disconnected conservation works are not enough to halt or slow the decline of Victoria’s ecosystems. We need sustained action that is even more successful to improve habitats and the web of connections between them and stops activities that keep pulling the web apart. No single organization can accomplish this alone, especially at landscape scale. We need many organisations to do their job in ways that combine to create collective impact.

Collective impact is a recognised method to help many partners pursue coordinated improvement in many parts of a complex system¹. Collective impact is won when actors from different sectors to use a common agenda to solve a specific problem. Collective impact needs a ‘backbone’ organisation with dedicated staff and a structured process that leads to a common agenda. The agenda must include shared terms of measurement, continuous communication and mutually reinforcing activities. Here is those five key requirements again:

- a ‘backbone’ organisation
- a common agenda
- shared measurement systems
- mutually reinforcing activities
- continuous communication

CMAs CAN BE BACKBONE ORGANISATIONS

The five key requirements for collective impact are developed, right now, in Victoria’s ten Catchment Management Authorities (CMAs). CMAs are our best, ready-made organisations, on the ground now, to lead collective impact to halt the decline of Victoria’s ecosystems.

CMAs are established under the Catchment & Land Protection Act 1994. The Act has four purposes. The top two are:

- To set up a framework for the integrated management and protection of catchments
- To encourage community participation in the management of land and water resources

¹ https://ssir.org/articles/entry/collective_impact Collective impact is the subject of detailed study and documentation by Stanford University

The ideas of 'integration' and the land-water nexus implicit in 'catchment' respond to the maxim that, *'everything is connected to everything else'*. The Act's aims for 'community participation' recognise that conservation makes choices that affect people's lives.

Victoria's CMAs have been in business for 25 years. They have experienced, expert staff with strong social and professional connections to communities and the organisations whose work affects biodiversity. They are well positioned to be a 'backbone organisation' for collective impact.

Every CMA is required to have a Regional Catchment Strategy. RCS provide targets and directions for multiple organisations. They are each region's common agenda for land, water and nature conservation. Every RCS has a strong focus on biodiversity and climate change response. They include shared measurement systems and spell-out their actions as mutually reinforcing activities. RCS are written every 5-6 years in consultation with their communities. Their situation-analyses, actions and measures are based on science, community priorities and 25 years of experience.

CMAs have won real environmental improvements. The standout example is the visible progress they have made to repair Victoria's rivers and streams. They have done this with consistent state funding provided by a levy on water diversions, vastly improved science and engineering, intelligent management and continuous communications with landholders.

WHAT ARE THE BARRIERS TO COLLECTIVE IMPACT?

CMAs are not fully positioned to succeed as leaders for collective impact to halt the decline of Victoria's ecosystems. Diminishing funding, competition from DELWP and a culture that makes CMAs reluctant to be consistent champions for nature are major barriers to be addressed.

There's not enough funding to do the work

There is not enough money to buy the services needed, at the scale required, to halt the crisis in biodiversity decline. All parties contributing to a common agenda must be confident of their sustained capacity to succeed. As backbone organisations, CMAs should be a reliable, respected and collaborative providers of funds. Instead, CMAs have become one of two or three or four disconnected providers of episodic, short-term, project-specific funding barely adequate to produce more than a piecemeal patchwork of one-off projects. On the ground, the endeavour to halt ecosystem decline tries to succeed with underfunded uncertainty. Fragmented funding sources, roundabouts of catchy-titled 'initiatives' and never knowing where next year's funding will come from is not a funding model to rescue Victoria's ecosystems.

CMAs need funding to sweeten the common agenda

As backbone organisations, CMAs need to offer financial incentives to secure partner time and commitment to the RCS common agenda. It would be nice if every local Council, agency, utility corporation and community group adopted RCS targets and measures just because it's a good and sensible idea. But, in reality, everyone has their own mission, culture, priorities, funding and accountabilities. Many people support RCS in principle but they are cautious, selective, even dismissive about hitching their operations and investments to it. The risks look high, the rewards uncertain. But money talks. No local Council, agency, utility corporation or community group has enough money to do even half the good work they would like. Cost-share funding for projects will secure collaboration. Cost-share funding will be tied to

agreed RCS targets and provide enough money to make an attractive cost-share deal. One million dollars a year for each CMA to disburse to strategic partnerships would hugely enhance their ability to build collective impact for biodiversity.

DELWP is undermining CMAs and RCS

DELWP has used its policy leadership for Biodiversity 2037 to capture most of the program's \$86 million budget and use this to intrude into on-ground management of conservation in the regions. This is fragmenting rather than integrating conservation effort. It is starving CMAs of project funds and undermining partner perceptions of the value of CMAs as backbone organisations. It is eroding the influence of RCS as common agendas for collective impact.

Biodiversity 2037 is valuable statewide strategy but DELWP has used it to create its own funding program, set new regional boundaries and to install a monitoring and assessment system that is inaccessible (and almost incomprehensible) to anyone but DELWP management. DELWP has completely ignored RCS and conducts its own *Biodiversity Response Planning*.

For communities, DELWP's command of *Biodiversity 2037* has made project funding less certain, duplicated their burden of consultations, applications and assessments. It has made conservation governance look disconnected, internally competitive and deaf to the advice and priorities they have pursued for three decades. DELWP's Biodiversity Unit is part of a Ministerial department in a city office block. Its determination to micro-manage *Biodiversity 2037* planning, funding, monitoring and evaluation and on-ground projects across regional Victoria is an inappropriate role for which it is ill-placed, inexperienced and unqualified. DELWP needs to work as the backbone organisation at state scale – working collaboratively with regions and communities to make supportive policy, secure funding, design and provide scientific support, develop statewide monitoring and reporting systems, resolve conflict and reward success.

Collective impact cannot be achieved while DELWP runs *Biodiversity 2037* as a private enterprise to which it invites contracted guests to play selected roles.

CMAs need to be stronger champions for nature

CMAs will need to be more confident, consistent champions for nature to be backbone organisations for the collective impact we need. CMA wins in nature conservation have largely been in doing and engineering things. They often show little appetite for trying to stop things; even when partners and communities have asked CMAs to question nature-threatening projects. CMA Boards and management have a tacit agreement to remain silent about projects that act on government policy or are subject to a statutory assessment even if they conflict with RCS targets, cut swathes through natural environments or negate gains made by their work elsewhere.

Section 12 of the CALP Act provides for CMAs to '*advise the Minister on regional priorities, resource allocations, on matters relating to catchment management and land protection and on the condition of land and water resources in the region*'. This is a valuable power that CMAs should be able to use as part of their value as a backbone organisation. But few, if any, CMAs have used this avenue to provide constructive advice against a nature-threatening development or policy.

WHAT NEEDS TO BE DONE?

- 1.9 The Victorian Government and CMAs need development and community co-design to equip CMAs to be ‘backbone organisations’ for collective impact.
- 1.10 Amendments to policy, to the CALP Act, operational agreements and influences on CMA culture need to position CMAs as confident and visible professional champions for nature and its ecosystems.
- 1.11 The current *Biodiversity 2037* targets need to be supplemented with contributing RCS targets that are measurable and meaningful to communities.
- 1.12 Funding for biodiversity conservation needs to be tied to achieving *Biodiversity 2037* and relevant RCS targets.
- 1.13 Funding governance needs to provide collective impact programs no less certainty than government business partners would accept. Consultations, applications and assessments should be efficient and transparent.
- 1.14 Conservation governance needs to be connected, cohesive and responsive to the advice, priorities and histories of collective impact partners and their communities.
- 1.15 CMAs need to be the Victorian Government’s primary means to devolve funding to on-ground projects in their regions.
- 1.16 The roles needed to implement *Biodiversity 2037* should be assigned according to principles that devolve governance as closely as possible to the communities affected and responsible for achieving collective impact for ecosystem repair.

PART THREE How environment legislation and policy contributes to ecosystem decline.

Case study 2: The Mordialloc Freeway EES process

This case study shows how environment protection laws are used to licence destruction, how minimising losses in 'statutory nature' permits the web of life across the rest of a landscape to be dismantled and how Environmental Effects Statements are written by proponents to get their projects approved.

In 2017, the Victorian Government announced its intention to extend the Mornington Peninsula Freeway 9km from Springvale Rd to the Dingley By-Pass in Melbourne's southern suburbs. The extension would occupy a reserve set aside for a freeway 50 years ago.

The Victorian Minister for Planning decided that the freeway approval be subject to an Environmental Effects Statement and independent planning approval process. The planning approval process included the Federal Environment Minister's approval because the freeway was deemed to have potential effects on the Ramsar listed wetlands at Edithvale providing habitat for a bird listed under the EPBC Act, the Australasian Bittern.

In its submissions to the EES and at the subsequent public hearings, the community group, *Residents Against the Mordialloc Freeway (RAMF)* argued that the freeway's benefits were uncertain, poorly justified, ephemeral and of low value while its costs certain and permanent - damage to environments, air quality and urban amenity and lost potential for many, more precious uses. The freeway's environmental costs are:

- 40ha of wetlands across 11 waterbodies fragmented and degraded
- 12ha of intact native vegetation destroyed
- +1000 native trees destroyed
- More fragmented open space habitats
- Birds and animals under more stress
- Further isolation of the Edithvale-Seaford Wetland - the last 8% of the Carrum Carrum Swamp - from surrounding wetlands and at risk of upstream hydrological change.
- 150ha of open space and the potential to restore it as habitat and urban parkland destroyed forever.

The urban amenity costs for residents are:

- More noise for 3000 residents.
- Worse air quality for 6000 residents.
- Degraded qualities of quiet enjoyment and conservation in Braeside Regional Park (the freeway now forms the Park's 2.5 km western boundary)

All this at a price tag of at least \$750 million – money that should be spent on projects that improve quality of life for generations to come.

Environmental protection was supposed to be provided by no fewer than 5 separate Acts of State and Federal Parliament, 5 state, regional and local conservation strategies and a climate strategy. But all they did was cost a million dollars in consultant’s fees and presentations to build a slightly more sophisticated freeway. 150ha of precious open space, woodland and wetland and their potential to be so much more is now being buried forever under another single-purpose, alienated wasteland of a traffic sewer.

WHY DID THIS HAPPEN?

1 Environment protection laws are used in practice to licence destruction

Every piece of environmental protection legislation *‘taken into account’* by the freeway EES commences with high ideals for conservation. But they’re all embroidered with ‘get-out-of-jail’ provisions. For example, the Integrated Transport Act commences with the objective,

“The transport system should actively contribute to environmental sustainability by—

(a) protecting, conserving and improving the natural environment;

but this is made ‘toothless’ by clause (b):

(b) avoiding, minimising and offsetting harm to the local and global environment, including through transport-related emissions and pollutants and the loss of biodiversity;

These provisions requiring proponents of threatening processes to *‘avoid’, ‘minimise’, ‘offset’, ‘mitigate’, ‘balance’* *‘wherever possible’*, allow legislation to be used to permit and licence ecosystem damage or destruction.

The table below shows the major legislations and purposes that affect nearly all infrastructure and development projects. Taken alone, we might expect these aims to have ecosystem damage from development to be under control. But in every case, subsequent clauses renders these essential objectives little more than ‘talk’.

Act or policy Instrument	Purpose statements or objectives with environmental imperatives	Likelihood the Mordialloc Freeway will fulfil this aim
EPBC Act	<ul style="list-style-type: none"> ▪ Provide for the protection of the environment, especially matters of national environmental significance. ▪ Conserve Australian biodiversity. ▪ Promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources 	<p>Doubtful</p> <p>Unlikely</p>
National Strategy for Ecologically Sustainable Development	<ul style="list-style-type: none"> ▪ ‘Using, conserving and enhancing the community’s resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased’. 	<p>Unlikely</p>

<p>Flora & Fauna Guarantee Act</p>	<ul style="list-style-type: none"> ▪ Guarantee that all taxa of Victoria's flora and fauna ... can survive, flourish and retain their potential for evolutionary development in the wild ▪ Conserve Victoria's communities of flora and fauna ▪ Ensure that any use of flora or fauna by humans is sustainable ▪ Ensure that the genetic diversity of flora and fauna is maintained. 	<p>Unlikely</p> <p>Doubtful</p>
<p>Planning and Environment Act</p>	<ul style="list-style-type: none"> ▪ Protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity 	<p>Doubtful</p>
<p>Catchment and Land Protection Act</p>	<ul style="list-style-type: none"> ▪ Ensure that the quality of the State's land and water resources and their associated plant and animal life are maintained and enhanced. 	<p>Unlikely</p>
<p>Integrated Transport Act</p>	<ul style="list-style-type: none"> ▪ The transport system should actively contribute to environmental sustainability by protecting, conserving and improving the natural environment 	<p>Unlikely</p>
<p>Victoria's Climate Change Framework</p>	<ul style="list-style-type: none"> ▪ Vision: Victoria in 2050: Climate-ready and prosperous ▪ All our actions sustain and enhance (nature and its resilience) to climate change. ▪ Our cities ... mimic natural catchments with greener streets, vibrant and well-used open spaces. ▪ Renewable, clean energy powers Victoria with infrastructure and built environments that support zero carbon living for all Victorians. 	<p>Not at all</p>
<p>Plan Melbourne</p>	<ul style="list-style-type: none"> ▪ Melbourne provides housing choice in locations close to jobs and services. ▪ An integrated transport system that connects people to jobs and services and goods to markets. ▪ Neighbourhoods that support safe communities and healthy lives. ▪ Local parks & green neighbourhoods. ▪ A low-carbon city designed to cope with the effects of climate change. 	<p>Doubtful</p>
<p>Biodiversity 2037</p>	<ul style="list-style-type: none"> ▪ Victoria's natural environment is healthy. ▪ All Victorians connecting with nature. ▪ Functioning plant and animal populations, improved habitats and resilient ecosystems. 	<p>Unlikely</p>

Regional Catchment Strategy	<ul style="list-style-type: none"> ▪ ‘Nature Links’ enabling species transit, improved ecosystem resilience and habitat integrity. ▪ Green Wedge biodiversity, ecosystem health and resilience. ▪ Productive and valuable Green Wedge agriculture and local food security. ▪ Natural and open landscapes for social and recreational benefit. 	Unlikely
Kingston Green Wedge Plan	<ul style="list-style-type: none"> ▪ Conservation areas that safeguard environmental values and provide open space opportunities. ▪ Elimination of uses that cause off-site impacts on amenity, agriculture and environmental qualities. 	Doubtful

Projects like the Mordialloc Freeway are required to take account of all or most of these environmental instruments so the resources spent on preparing EES focus on finding and exploiting their ‘get-out-of-jail’ provisions – the allowances for mitigation, minimising, balanced decisions and offsets. The language of EES is designed to mitigate, minimise and sooth concerns that the project will damage anything worth keeping. Hence:

- Projects promise offer an *appropriate balance* (not defined) of environmental, economic and social outcomes.
- Costs & trade-offs are not made explicit – only the development’s glowing benefits
- Destruction is called ‘impact’.
- Protection is called ‘minimise’.
- Decision-making is ‘balanced’.

2 Minimising loss of ‘statutory nature’ permits the web of life to be dismantled.

Populations and habitats of legally threatened species and places listed on legal registers or in reserves can be thought of as *Statutory Nature* – nature that is recognised and (somewhat) protected by law. The perverse effect of the Commonwealth’s *EPBC Act* and Victoria’s *Fauna and Flora Guarantee Act* is to leave unlisted species, habitats and places more open to damage and destruction because the legislation is used by development proponents to show that they have little value compared to the glowing benefits of their development. Nature conservation to protect the wider integrity of the web-of-life and social amenity intrinsic to healthy environments is actually made more vulnerable by the processes that uphold statutory nature.

Strong representation from RAMF about the importance of the reserve and its wetlands and their potential for repair as habitat came to nothing. The Minister approved the project simply because the Australasian Bittern could not be found (It has probably become locally extinct in the past five years), the potential effects on the Edithvale wetlands could not be certified and the proponents said they could minimise damage to a handful of threatened wetland plants. All else was irrelevant.

Everything is connected to everything else. Declines in statutory nature tell us we will not succeed in conserving threatened and rare species and places by treating them as little no-go zones while all around them is open for business. Moreover, we know that many species we now define as '*Of Least Concern*' are inexorably heading towards being of great concern. They need space and protection too.

The reserve on which the Mordialloc Freeway is built was not a Ramsar site, world heritage listed or a significant remnant ecosystem. But it was part of a landscape connected to places that are or do hold those statutory nature values. Moreover, since it was listed as a freeway reserve over 50 years ago, it had become a precious 150ha of open space in a sea of suburbia. It could have been repaired and used to improve the prospects for the statutory nature around it. But it wasn't and now it will be buried under a traffic sewer.

3 EES are written by proponents to get their projects approved

The Mordialloc Freeway EES is a tome of technical assessments, no-harm assurances and marketing. From the standpoint of good assessment, its fundamental flaws are its lack of a problem statement and the lack of independence in its assessments of effect. What was a promised commitment of hundreds of millions of dollars supposed to solve or change? The environmental, social health and economic costs of this project demanded better than a self-serving EES written by the proponent and supported by a local MP who election-promised a freeway without asking enough questions about its purpose and costs.

The Mordialloc Freeway EES demonstrates failings of the EES process:

- The existence of the reserve for a freeway became the self-fulfilling justification for a freeway.
- The problem was tacitly treated as 'lack of freeway', not 'too much traffic causing a nuisance'.
- No alternatives to the freeway were described – only alternative roads in the same road reserve
- The EES did not assess the alternative uses of the reserve and therefore, the freeway's opportunity costs.
- Costs & trade-offs were not made explicit.
- The EES did not recognise the history of cumulative ecosystem loss across the affected landscape. The whole project was assessed as a balance between development and environment as if it is always 'year-one'.
- The EES treated permanent losses as of no more significance than a benefit expected to last 20 years.

WHAT NEEDS TO BE DONE

- 2.8. While the EES Act section 4 requires EES to "*... be prepared and submitted at the expense of the proponent of the works*", EES should be prepared by an independent body as a highly consultative process of shared learning and decision-making.
- 2.9. EES should be a clear-sighted and unbiased assessment of the nature of the problem to be solved. They should make explicit the likely environmental impacts, opportunity costs, trade-offs and relative benefits of a full range of alternative solutions. The language should be blunt, not dissembling euphemisms.

- 2.10. EES must describe and respond to the history of cumulative ecosystem loss across relevant landscapes and assess the effect of more dismantling of the local ecosystem.
- 2.11. The aim of every EES should be to fulfil the assertive and visionary environmental conservation aims of relevant legislation and strategy, not to exploit their get-out-of-jail provisions for minimising, mitigating and rationalizing ecological decline.
- 2.12. Victoria's environmental legislation should be reviewed to emphasise its conservation aims and reduce its use to licence threatening processes.
- 2.13. The Fauna and Flora Guarantee Act should be reviewed to end its use as a licence to clear non-listed habitats and emphasise its aims to prevent further ecological decline.
- 2.14. The EES Act should be reviewed to make EES respond explicitly to all regional and local environment strategy

PART THREE How environment legislation and policy contributes to ecosystem decline.

Case study 3: New housing trumps Southern Brown Bandicoot science

When the Urban Growth Boundary (UGB) for Melbourne was expanded in 2010-11, a draft strategy was written to ensure the conservation of the Southern Brown Bandicoot (SBB). The strategy called for wildlife corridors to maintain and improve SBB population connectivity. But, in March 2014, the State government removed habitat corridors from the plan. The development industry was allowed to maximise its new housing build by replacing wildlife corridors with a 'management zone' of integrated pest control. This conclusion confident science that without wildlife corridors to connect populations and habitats, bandicoots become locally extinct, even with good habitat and no fox control. Why this late-entry science replaced respected, scientific, evidence-based work remains unclear.

Southern brown bandicoots (SBB) were once common in the Western Port region but listed in 2001 as *Endangered* under the EPBC Act. The SBB is listed as an important component of the Ecological Character of the Western Port Bay Ramsar site.

SBB decline is due to:

- land clearing
- predation by feral and domestic animals (foxes, cats, dogs)
- damage to the quality of movement corridors between populations
- habitat fragmentation and isolation of populations from each other

Only two SBB populations remain in relatively large patches of remnant habitat at Royal Botanic Gardens in Cranbourne and on Quail Island (in Western Port off Warneet). Smaller populations are holding on in narrow linear corridors of vegetation along roads, drains and railway lines around Koo Wee Rup at the northern end of Western Port.

When the Urban Growth Boundary (UGB) for Melbourne was expanded in 2010-11, The *Southern Brown Bandicoot Regional Recovery Group* was established to research and write strategy to ensure the SBB's future. The Recovery Group is well-credentialed. It includes community groups, local government, State and Federal environment agency staff, land management authorities, non-government organisations, veterinarians and wildlife carers. The Group takes policy and scientific advice from the Federal and State sources and an independent Technical Reference Group to guide its approaches.

The Recovery Group's draft strategy was released in 2011 as a report by scientific consultants to guide conservation of SBB. It called for wildlife corridors to maintain and improve population connectivity. Other actions included feral and domestic animal controls. The draft disappeared into the State and Federal departments for consideration. Approval was slow and the process became opaque.

Conservation groups wrote Federal Minister Hunt in 2013. He assured them,

"The strategy will only be approved if it provides appropriate protection for populations of the bandicoot within the south eastern growth corridor".

But Minister Hunt delegated his powers of assessment and approval under the EPBC Act to the Victorian State Government.

The development industry did not idly await the approval process to run its course. It pressed the Government to hire a second group of science consultants. This group's assessment was that fox control trumped connecting corridors. It rejected the critical requirement for wildlife corridors to be conserved in the development area and proposed replacing them with a 'management zone' of integrated pest control. This conclusion rejected documented, peer-reviewed and empirical evidence that without wildlife corridors to connect populations and habitats, bandicoots become locally extinct, even with good habitat and no fox control. The empirical evidence clearly showed that fox control is unlikely to be the key determining factor for the Bandicoot's ongoing survival. Moreover, habitat connectivity is a critical adaption to climate change. There was little explanation of how this assessment was arrived at or on what scientific evidence it was based. Many of final strategy's quoted values were contrary to the Recovery Group's understanding of the scientific literature and the quality evidence available to everyone.

In March 2014, the Coalition state government released the final strategy with habitat corridors removed. The development industry was allowed to maximise its new housing build while it was expected that reduced predator numbers would allow the bandicoots to flourish and connect across their new urban habitat. It remains unclear to the Recovery Group how and why this late-entry science replaced its respected, scientific, evidence-based work.

WHAT WENT WELL?

- The inquiry was designed as a collaborative learning and decision-making project
- This project was led by a well-designed, credentialled and representative decision-making group.
- The decision-making group had the funding and executive support it needed.
- The decision-making group had a clear mission and legitimacy provided by the EPBC Act and the Act's regulations for species recovery planning.
- A good knowledge base permitted confident, evidence-based decisions.

WHAT FAILED?

- The decision-making group was not completely representative – it did not include the commercial land developers. Commercial and capital interests never want to be part of decision-making groups and consultations that include community. They don't need to be involved – the responsible Minister's door has always been open to confidential discussions with multi-million-dollar businesses.
- The final decision-making process was opaque. There was no compulsion and no attempt to publicly share, let alone discuss, the final decision's rationale, evidence base or cost-benefit analysis.
- The final decision was taken out of the community's view and completed in a closed, political office. The decision was final. There was no provision for appeals.

- The Australian Government Minister, who should have been responsible for this endangered species as matter of national significance and who may have preserved his distance from the competing parties, delegated the decision to a State government much closer to the commercial land developer's interests and more vulnerable to its lobbying.
- The final decision did not respond to the critically poor prospects for the SBB's future abundance and population health. It compromised the best prospects to secure the SBB's future in favour of private capital's profit expectations.

WHAT NEED TO BE DONE?

- 3.4. All decision-making should be in clear view and transparent. Opaque decision-making destroys confidence in the process. The policies needed to halt ecosystem decline will need support and confidence as they will inevitably impact on people's lives and expectations.
- 3.5. Decision-making should be representative and collaborative; a process of shared learning, negotiation and resolution between all affected parties. There is no place for final decisions to be made in confidential talks. Capital and development decision-makers should be at these tables. The rule should be, No show – no influence.
- 3.6. Compromise and 'balanced decisions' between conserving species and ecosystem resilience and the interests of capital and development mean prioritizing nature.