**Submission No 165**

# INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

**Organisation:** Victorian National Parks Association

**Date Received:** 31 January 2022

# Legislative Council, Environment and Planning Committee
# Inquiry into the protections within the Victorian planning framework

## Submission by the Victorian National Parks Association

31 January 2022

# Contents

# 1 Introduction and overview

Thank you for inviting submissions to this inquiry into the adequacy of the *Planning and Environment Act 1987* and the Victorian planning framework in relation to planning and heritage protection.

The Planning and Environment Act 1987, the Victorian planning framework and its interactions with other laws and policies are critical to the conservation and protection of Victoria's natural environment. We welcome the opportunity to highlight some areas where this system falls short, and to provide suggestions for the Committee's consideration as to what can be done about this.

Established in 1952, the VNPA is Victoria's leading community based nature conservation organisation. We are an independent, non-profit, membership-based group, which exists to support better protection and management of Victoria's biodiversity and natural heritage. We aim to achieve our vision by facilitating strategic campaigns and education programs, developing policies, undertaking hands-on conservation work, and by running bushwalking and outdoor activity programs which promote the care and enjoyment of Victoria's natural environment.

Our submission focuses on paragraph (2) of the Committee's Terms of Reference ("environmental sustainability and vegetation protection"). We have interpreted this clause broadly to include not just the protection of native vegetation but habitat and natural ecosystems generally.

Our submission builds upon our submissions to other inquiries by this Committee (Inquiry into ecosystem decline in Victoria, and the Legislative Assembly Environment and Planning Committee Inquiry into Environmental Infrastructure for Growing Populations).

Our submission covers the following topics:

- A long term perspective on Victoria's planning framework and the natural environment, and a need to reinvigorate the objective of the Planning and Environment Act 1987 to "provide for the *protection* of natural and man-made resources and the *maintenance of ecological processes and genetic diversity".*

- The trajectory of ecosystem decline – the context for this inquiry, and the need for fundamental reforms to halt and reverse this trajectory.

- Victoria's planning framework and the challenge of protecting, reconnecting, and restoring landscapes for nature.

- The role of planning schemes and public land, particularly national parks.

- Threatened species protection and the interaction of Victoria's planning framework and the provisions of the amended Flora and Fauna Guarantee Act 1988.

- The importance of enhancing urban space networks and enhancing Melbourne's "green edge" to support and complement the objectives of Victoria's planning framework.

# 2 Victoria's planning framework and the natural environment – past aspirations and future direction

Ecological objectives have a prominent place in the *Planning and Environment Act 1987*. Paragraph 4(b) of the objectives set out in the Act is as follows:

> "to provide for the *protection* of natural and man-made resources and the *maintenance of ecological processes and genetic diversity*"

As the emphasis indicates, these objective goes well beyond simply protect remnant habitat and provides a firm basis for using the Victoria's land use planning framework to maintain both the components of ecosystems (land, water, fauna, and flora) together with the processes that sustain a healthy, resilient and functioning natural environment.

In practice, as reflected in Planning Scheme provisions and their actual implementation, Victoria's planning framework is mostly focussed on protection of remnants of native vegetation. This protection is critical, but not of itself sufficient to support resilient, healthy and functioning ecosystems, particularly in the context of the threats posed by climate change.

Although objective 4(b) is more relevant than ever to Victoria today, the foundational elements for planning framework for its implementation have not been revisited for many years. Although there have been refinements, the Planning Policy Framework, Zones, Overlays and native vegetation controls are all in the order of 20 years old if not older. Refinements where they have occurred have tended to be in the direction of a decreasing emphasis on these elements at the expense of other planning objectives.

The durability of the core elements of a regulatory system is not of itself a bad thing, however where there is a continuing decline in extent and quality, as is the case with Victoria's ecosystems, then there is a need to look to foundational problems and opportunities for fundamental reform.

This, we submit, is the case with Victoria's system of land use and development planning. The legacy of ecosystem decline since colonisation, in combination with the challenges posed by a changing climate, require more than tinkering with the current system and the consideration of the need for more fundamental reforms.

# 3 Ongoing habitat decline – the context for considering planning protections for native vegetation and environmental sustainability in Victoria

## 3.1 Historic and continuing losses of native habitat on private land in Victoria

We submit that there are two related important features of the current environment important to Committee's consideration of the role of Victoria's planning system in protecting and maintaining Victorian ecosystems and processes.

The first of these is the legacy of 200 years of land use and development since European colonisation and the massive changes to the land management practices of Victoria's First Nations people over this relatively short period of time. This legacy is manifested in features such as the differential clearing and loss of certain habitat types, fragmentation of habitat, and a mix of highly modified and more "natural" habitats,

The second is related feature of our current situation is that decline in extent and quality of habitat in Victoria is continuing. This partly a legacy of past practices, but also critically a contemporary phenomenon that is a consequence of the failure of current laws and policies to halt the decline, let alone to reverse this trajectory.

These points are highlighted in the recently released Biodiversity Update to the State of the Environment Report:[1]

> *"Victoria is the most-cleared state in Australia, with 66% of native habitat removed since 1835. On private land, which covers 63% of Victoria, 80% of native habitat has been lost. Almost 90% of the EVCs that are poorly represented in parks and reserves are found on private land. However, only 1–2% of private agricultural land is managed for conservation e.g. native vegetation protection, revegetation and livestock exclusion. A smaller 0.5% is managed under a conservation agreement.* **The way in which private land is used and managed in the future will be critical in Victoria's efforts to secure, restore and conserve biodiversity. "**

**B:18** Net gain in extent and condition of native vegetation

**Region** Statewide

**Measures** Estimates of the overall rate of change in extent and quality of native vegetation on public and private land in Victoria

**Data Custodian** DELWP

**Comment** There is a continuing net loss of native vegetation (habitat hectares) on private land in Victoria, with a smaller net gain on public land. The largest contributors are grazing, removal of trees and fallen logs, environmental weeds and clearing exempt from requiring a permit (e.g., fences and fire protection).

| 2018 Status | 2018 Trend | 2018 Data |
|---|---|---|
| ● | ↙ | ● |
| **2021 Status** | **2021 Trend** | **2021 Data** |
| ● | ↙ | ● |

[1]Page 180 https://www.ces.vic.gov.au/sites/default/files/publication-documents/State%20of%20the%20Environment%20Biodiversity%20Update%202021%20Report_WEB.pdf

The assessment of B:18 Net gain in the extent of native vegetation revealed an ongoing net loss.

The update builds on the 2018 State of the Environment Report which found in summary:

- There had been a loss in native vegetation on public and private land between 2008 and 2014.

- The largest contributors to net loss in native vegetation on private and freehold land were entitled uses (e.g. grazing and removal of trees and fallen logs for personal use), unmanaged threats beyond legislative obligations (e.g. environmental weeds) and clearing that was exempt from requiring a permit (e.g. fences and fire protection).

According to the 2021 update:[2]

> *"Although the rate of land clearing has slowed since the introduction of Victoria's native vegetation clearing regulations in 1989, the quality and extent of native vegetation continues to shrink by about 4,000 habitat hectares each year… This trajectory is largely the result of activities and unmanaged threats that are outside the regulatory framework such as the exempted removal of native vegetation from fence lines and roadsides (resulting in loss of extent of native vegetation) together with insufficient management of threats, such as introduced weeds and pest herbivores or inappropriate fire regimes (resulting in loss of quality).*
>
> *DELWP's 2020 report on implementation of Biodiversity 2037 revealed that there was a net annual loss of 8,200 habitat hectares of native vegetation in Victoria in the previous year. This is 4,200 hectares more than the average annual loss reported by DELWP in the above quote and which was based on data in 'Protecting Victoria's environment – Biodiversity 2037.'.*

| | | 2018 Status | 2018 Trend | 2018 Data |
|---|---|---|---|---|
| **B:19** Landscape-scale change<br>**Region** Statewide<br>**Measures** Native vegetation extent and land use from 1987–2020<br>**Data Custodian** DELWP | **Comment** Analysis of landscape-scale change shows an increase in landscapes associated with human-based activities, along with an overall decrease in native vegetation and intermittent and seasonal wetlands (not of a marine water source). | | | |
| | | **2021 Status** | **2021 Trend** | **2021 Data** |

[2] At pages 286 and 287.

**B:09** River health

**Region** Statewide

**Measures** Percentage of major rivers that remain in a near pristine or largely unmodified state; Assessment of freshwater biodiversity information; Area of management in priority locations; Restoration of habitat

**Data Custodian** DELWP; Catchment management authorities; Melbourne Water

**Comment** The health of Victorian rivers is influenced by grazing, clearing, bushfires, invasive species, timber harvesting and urban development, which can cause disturbances in river dynamics and impact native aquatic species.

| 2018 Status | 2018 Trend | 2018 Data |
|---|---|---|
| | → | |
| **2021 Status** | **2021 Trend** | **2021 Data** |
| | → | |

As this Committee recognised in the comprehensive review that forms part of the report of the Ecosystem Decline Inquiry, Victoria has a confronting record of loss when in species since European settlement:

*"Victoria is the most intensively settled and cleared state in Australia and much of it has been altered for farming and other human activities.*

*This decline in extent and quality of habitat has had major implications for Victoria's plants and animals. Since European settlement, Victoria has lost 18 species of mammal, 2 birds, 1 snake, 3 freshwater fish, 6 invertebrates and 51 plants have become extinct. Today, between one quarter and one third of all of Victoria's terrestrial plants, birds, reptiles, amphibians and mammals, along with numerous invertebrates and ecological communities, are considered threatened with extinction."*[3]

## 3.2 Climate change

The contribution of climate change to ecosystem decline in Victoria was also thoroughly explored by this Committee in the Inquiry into Ecosystem Decline. Key findings of the Committee in that inquiry provide important context for this inquiry:

- Finding 11: Climate change is a major driver of ecosystem decline.
- Finding 12: Climate change is already driving ecosystem decline across Victoria with devastating impacts for native flora and fauna species.

These findings emphasise the need to see Victoria's naturel environment as a dynamic system rather than static remnants. The findings also emphasise the need for Victoria's planning framework and the need to be responsive to change that is already occurring in our natural systems at a pace that exceeds the natural rate of change in these systems, and the need to emphasise building in resilience to shocks and disasters.

[3] DELWP website https://www.environment.vic.gov.au/conserving-threatened-species/threatened-species-overview quoted at page 169 of this Committee's report into Ecosystem Decline in Victoria.

## 3.3 National and International context

Victoria's Planning Framework operates in a national legal and policy context, which in turn reflects Australia's international commitments.

This context is referenced in the State Planning Policy Framework of the Victoria Planning Provisions. Clause 12 refers the Intergovernmental Agreement on the Environment, and the National Strategy for the Conservation of Australia's Biodiversity which is intended to implement the commitments agreed to by Australia under the Convention on Biological Diversity.

Both references lack currency. Although notionally still the framework for dividing up responsibilities for the environment between the Commonwealth and States and Territories, the 1992 Intergovernmental Agreement on the Environment represents Hawke/Keating era thinking and law, policy and practice have moved on considerably since that time. Similarly, the 1996 National Strategy for the Conservation of Australia's Biological Diversity references in the VPPs was replaced in 2010 by *Australia's Biodiversity Conservation Strategy 2010-2030*, and then in 2019 by *Australia's Strategy for Nature 2019-2030.*[4]

### 3.3.1 International – new framework for nature

The biodiversity strategies listed above are intended to implement Australia's commitments under the framework of the 1992 Convention on Biological Diversity. Following the acknowledged failure of the 2010-2020 strategy under the Convention negotiations are now well underway to develop a new 2020-2030 strategy. Significantly for Australia and so also for Victorian land use planning law and policy this new strategy is likely to see Australia joining with the international community in agreeing to a much stronger set of commitments to halt and reverse biodiversity decline.

While the details will not be finally agreed until later this year, they are likely to include commitments that would require a significant strengthening of Victoria's planning framework. Commitments currently under negotiation, for example, include reversing the trajectory of biodiversity decline by 2030, halting human induced extinctions, and a commitment to effective legal protection of 30% of all land and sea areas.[5]

[4] See https://www.awe.gov.au/environment/biodiversity/conservation/strategy
[5] https://www.awe.gov.au/environment/biodiversity/international/un-convention-biological-diversity/post-2020-global-biodiversity-framework

# 4 Victoria's planning framework and the challenge of protecting, reconnecting, and restoring landscapes for nature

As noted in the introductory section above, despite lofty ambitions of protecting and maintaining ecological processes, the reality is that law and policy in Victoria is currently to halt the continuing decline in the health, quality and extent of ecosystems. This reflects the legacy of habitat destruction since European colonisation and the challenge will only increase with climate change.

This section explores the current role played by strategic land use planning and Victoria's native vegetation controls, and some of the changes that might be required if Victoria's planning framework is to do more than merely moderate the continuing decline in ecosystems.

Our submission builds on our submission to this Committee's inquiry into ecosystem decline in Victoria, and responds to the invitation to further develop issues related to Victoria's planning framework through the present inquiry.

## 4.1 The untenable reality – the continuing decline and fragmentation of Victorian ecosystems

The continued decline in the extent and quality of habitat in Victoria is so commonplace in Victoria that it was worth pausing to reflect on how problematic the situation is. By no measure can a trajectory of continuing decline be said to be consistent with the objectives of sustainability and ecologically sustainable development that have been a prominent part of the rhetoric of Victoria's planning framework since the 1990s, but despite the ever-accumulating evidence of decline there is no sense that this trajectory needs to turned around in the near future or indeed ever. Victoria's land use planning system ought to play a critical role in reversing this trajectory and the fact that it does not so is a a significant failing that must be addressed.

### 4.1.1 Habitat loss is continuing

Native vegetation continues to be lost in Victoria at approximately 4,000 habitat hectares per year (which is roughly equivalent to 8,000 to 10,000 hectares of varying quality and this includes counting alleged gains in vegetation quality made up through the management of other areas).

Using satellite to imagery to analyse landscape scale change, Victoria's 2018 State of the Environment Report6 indicated that there have been decreases for the following habitats in Victoria between the years 1990 and 2015:

- native grasslands and herblands from 2,282,992 hectares to 1,820,093 hectares (20% decrease)
- native scattered trees from 542,201 hectares to 393,147 hectares (27% decrease)
- native shrubs from 165,262 hectares to 116,620 hectares (29% decrease)
- intermittent wetlands 47,286 hectares to 42,133 hectares 2015 (11% decrease)
- seasonal wetlands 418,611 hectares to 342,955 hectares (18% decrease) respectively

As outlined in a opening remarks (see section 3.1 Historic and continuing losses of native habitat on private land in Victoria above) , the 2021 biodiversity update to the State of the Environment Report indicates that this situation is continuing, despite recent refinements to Victoria's native vegetation protection laws.

### 4.1.2 Habitat fragmentation – reconnecting and restoring landscapes for nature

Habitat fragmentation due to historical land clearing is one of the oldest, most pressing and often neglected legacy issues contributing to ecosystem and biodiversity decline in Victoria. This is because habitat fragmentation can make a whole array of threatening processes worse due to remnant flora and fauna being confined to small and isolated populations.

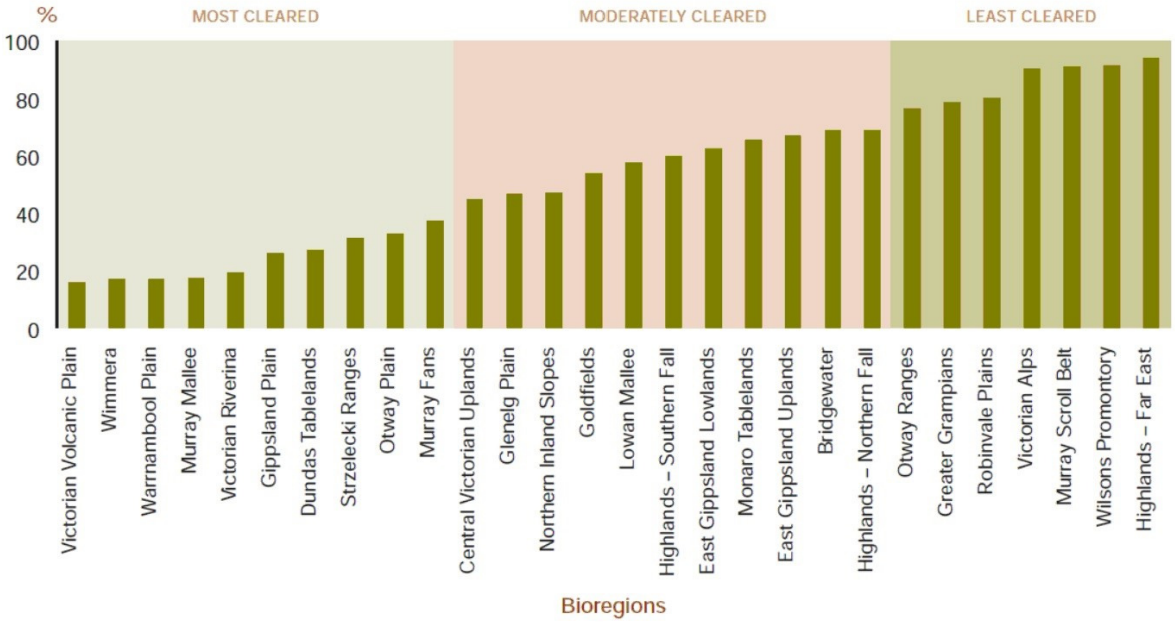
Fragmented habitats and isolated populations are more vulnerable to 'edge effects' and the impacts of weed invasion, fires (planned and wild), grazing pressure, predation by foxes and cats, and to changes in climate, vegetation and habitat. Furthermore, pollination and seed dispersal is limited, animals are isolated, and the population genetics of flora and fauna can be vulnerable to genetic bottlenecks.

Centuries of land clearing, particularly beginning during waves of agricultural expansion and in the gold rush era of the mid 1800's, has left Victoria as the most cleared state in Australia. The below graph from the VEAC Remnant Native Vegetation Investigation 2010 discussion paper7 demonstrates that for the ten most cleared bioregions in Victoria (with the exception

[6] Commissioner for Environmental Sustainability Victoria (2018). Victorian State of the Environment 2018 Scientific Assessments (B). https://www.ces.vic.gov.au/sites/default/files/SoE2018ScientificAssessment_B.pdf

[7] Victorian Environmental Assessment Council (2010). Remnant Native Vegetation Investigation Discussion Paper.

of the Strzelecki Ranges which has an unusual land-use history) all have relatively flat terrain and fertile soils, and less than 40% of their original extent of native vegetation remaining. As a result, habitat loss and isolation of remnants are a major cause of biodiversity loss in these landscapes.

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These mostly cleared bioregions typically contain many small patches of remnant native vegetation, little native vegetation in larges patches, and patches that rarely adjoin largely-intact landscapes. They are also characterized by a high proportion of remnant native vegetation on private land, poor conservation reserve representation, a high proportion of native vegetation on roadsides, generally poor site condition and generally poor landscape context (especially on private land).

The landscape context (that is, consideration of components such as patch size, distance to core area, and extent of nearby vegetation) in these bioregions is particularly bimodal, with much of the remaining native vegetation in a small number of large patches (usually on public land) and otherwise large areas with little native vegetation (mostly on private land). The landscape context is especially poor in the Victorian
Volcanic Plain, Wimmera and the Victoria Riverina bioregions.[8]

http://www.veac.vic.gov.au/investigation/remnant-native-vegetation-investigation/reports

[8] Victorian Environmental Assessment Council (2010). Remnant Native Vegetation Investigation Discussion Paper.
http://www.veac.vic.gov.au/investigation/remnant-native-vegetation-investigation/reports

## 4.2 Native vegetation protection under planning schemes – clause 52.17 and the "Guidelines for the removal, destruction or lopping of native vegetation 2017"

### 4.2.1 The current approach

Since its introduction in the late 1980s, the Victorian approach to state-wide regulation for the protection of native vegetation has been to regulate through permit requirements in planning schemes. Although the system has undergone considerable refinement (and increased substantially in complexity) since this time, the fundamentals of the approach remain the same:

- Conditional permitting for native vegetation removal, including since the Native Vegetation Management Framework in 2002, reliance on offsets as a disincentive to clearing and compensatory mechanism for permitted clearing.

- A complex mix of responsibilities with environment department policy implemented through state wide planning controls administered by the planning department, with permitting and enforcement the responsibility of local government as responsible authorities under planning schemes, with varying degrees of involvement by the environment department in a referral authority capacity.

- Significant exemptions. Although these exemptions were initially intended to be a temporary and transitional feature of the system, they have become deeply embedded in how the system operates and are now play a significant role in facilitating the ongoing loss of native vegetation in Victoria.

- Variable levels of compliance.

- A focus on native vegetation rather than ecosystem or habitat protection per se.

As DELWP's reporting and the recent 2021 Biodiversity Update to the State of the Environment report demonstrate, despite considerable refinements and improvements to the system in recent years, the system of native vegetation controls is still not unequivocally meeting its objective of "no net loss" in the extent and quality of remnant vegetation in Victoria.

Stronger native vegetation laws and regulations are necessary to remove exemptions and stop clearing. The current "Guidelines for the removal, destruction or lopping of native vegetation 2017" do not state how, or what, biodiversity will actually be protected and clearing is based on the "avoid, minimize and offset" model, implemented through planning laws. There are also dozens of exceptions in the current regulations.

We acknowledge the concerted efforts by DELWP in recent years to address problems with the system, and to develop more detailed guidance for the assistance of landholders and

decision makers. The commitment to monitoring and evaluation is also a very important and welcome development and has contributed to a clearer picture of the limitations and failings of the current system.

The question that we submit this Committee needs to address is whether the acknowledged problems will be resolved by incremental improvements in the current system, more information and better guidance or whether more fundamental change is required to reverse the current decline trajectory. Although this Committee's Ecosystem Decline inquiry report recognised many of the problems, the recommendations (Recommendations 15 and 16) were relatively limited in their scope and ambition.

One response given increasing emphasis by DELWP is the need to utilise strategic planning processes to reduce reliance on the native vegetation permit system. We agree with this position in principle and address the need for this approach further below, however we think that is also necessary to recognise that strategic approaches will never be able to comprehensively deal with the protection of native habitats and the need for a regulatory system to at least "hold the line" by protecting remnant vegetation.

### 4.2.2 Options for change

Issues we submit this Committee could usefully consider are:

**More definitive protection of native vegetation or habitats**. The form of the current particular provision and the way in which this operates as a development control within the Victorian Planning Framework essentially means that despite increasing discouragement and expense as habitat significance increases, a permit to clear vegetation will always in theory be available.

Clearing of native vegetation should never be considered a right of land ownership. Prospective landowners should be forewarned that native vegetation may limit their rights to develop land.

Clearly designating areas where clearing is not a permitted activity would address this, but even without going this far a much stronger emphasis on the need to avoid clearing vegetation under the current system would be a significant advance. Although DELWP has recently refined its advice regarding the need for permit applicants to demonstrate that they have taken steps to avoid clearing vegetation, the requirements are procedural in nature (and "Avoid and Minimisation Statement"), and ultimately subordinate vegetation protection to use rights. According to DELWP guidance the permit applicant is required to demonstrate

"that no feasible opportunities exist to further avoid and minimise impacts on native vegetation without undermining key objectives of the proposal".[9]

**Strictly limit the use of offsets.** The VNPA is opposed to the use of offsets that permit destruction of medium to high quality ecosystems where there is no evidence that the offset can achieve the same or better conservation value.

Offsets should always be a last resort. The trend to increased utilisation of offsets simply facilitates and hastens biodiversity destruction rather than contributing to its protection.

For all unavoidable losses of indigenous ecosystem values in aquatic (including marine) or terrestrial environments, including that for fire protection, associated with a development, an offset must be required.

VNPA opposes the clearing of remnant vegetation where the habitat attributes of that vegetation, such as hollows, are locally limited in availability and unable to be replicated locally.

Actions, such as a change in tenure, which do not result in a physical improvement in ecological values, are not considered by VNPA to be an offset.

If an offset is to be used then –

- The offset should be – in place, transparent (e.g. specified on land titles for private land), supported by an effective enforcement program, and be legally protected before any losses of native vegetation are permitted.
- The offset should result in an enduring and measurable net gain in extent and quality of indigenous ecosystems, including species and genetic diversity, ecosystem function, and ecosystem services.
- Existing conservation reserves should not be used as offsets unless restoration (revegetation or understorey re-establishment) or enlargement is involved.
- The offset should be in the same geographical area and include the same ecosystems and species that are being adversely affected by a development.
- The offset must be able to be managed appropriately, such as with fire, to enable ecosystem function, and not be subject to restrictions.

**Review exemptions.** As noted above, a commitment by DELWP to review and improvement has contributed to some welcome refinements to the system in recent years. One notable exception is in the area of exemptions to clearing controls. As the DELWPs own data and the Biodiversity Update to the State of the Environment Report make clear, exempt clearing

[9] Assessor's Handbook. Applications to remove, destroy or lop native vegetation, page 12. https://www.environment.vic.gov.au/__data/assets/pdf_file/0022/91255/Assessors-handbook-Applications-to-remove,-lop-or-destroy-native-vegetation-V1.1-October-2018.pdf

is a significant contributor to the continuing loss of native vegetation in Victoria. We were lead to understand that a review of these exemptions would follow the initial round of reviews in 2018, however this has not happened. We recommend that the Committee recommend that such a review to ensure that the range of exemptions under clause 52.17 and elsewhere in the planning framework are necessary and are not undermining the "no net loss" and 'net gain" objectives of the whole system.

**Reform compliance and enforcement.** This Committee's Ecosystem Decline Inquiry report thoroughly considers the compliance and enforcement challenges for Victoria's native vegetation regulations and includes useful recommendations for reform, including ensuring that local government have the necessary powers to undertake effective enforcement (Recommendation 65) and resourcing and support (Recommendation 67).

The Ecosystem Decline Inquiry separately considers the recent development of the Office of Conservation Regulator and recommends further steps to develop the Office as a independent agency "with responsibility for regulatory activities in relation to conservation and the environment" (Recommendation 61), without considering the potential for this agency to assume responsibility for compliance and enforcement with native vegetation regulations.

In our view it would be logical and timely this Committee to consider the options for doing so as this could address many of the challenges inherent in the current system of DELWP relying on local government to enforce Victoria's native vegetation regulations. One option to explore would be a model based on the Environment Protection Authority's Local Environment Protection Officer program, which sees EPA compliance officers embedded in local councils.[10]

### 4.2.3 Double standards? Increasing loss on public land risks overall vegetation protection objectives

While the discussion above focusses on the protection of native vegetation in a predominantly private land context, the role of native vegetation protection on public land and the potential for public land clearing to undermine overall objectives is a critical issue.

The current state policy which addresses counterbalancing, is the "*Crown Land Procedure – the procedure for the removal, destruction or lopping of native vegetation on Crown land*". [11] It is weaker and less transparent than obligations imposed on private land holders for offsets through native vegetation regulations. While it does allow for counterbalancing measures it

[10] See https://www.epa.vic.gov.au/about-epa/what-we-do/compliance-and-enforcement/local-officers
[11] https://www.environment.vic.gov.au/__data/assets/pdf_file/0033/408489/CrownLandProcedure.pdf

also requires that "native vegetation removal is kept to the minimum extent necessary". There is little indication with the current program that an adequate attempt has been made to avoid or minimise removal of native vegetation, though we understand that the way this is applied varies from region to region. While there is a native vegetation removal exemption for emergency works, this exemption comprises seven separate parts, each with a specific purpose. The guidelines suggest that "exemptions must be relied upon sparingly"[12], which appears far from the case for project like the State-wide Firebreaks program (SFB program)

We note that the state's land managers DELWP and Parks Victoria (PV) are already the largest clearers of native vegetation in Victoria; the total extent of new removal reported by DELWP and Parks Victoria was 2,023 hectares in 2018-2019, about 10 times more than was recorded on private land. A significant proportion of this, 506 ha, was for fuel breaks.[13] In 2019-2020 the amount removed for fuel breaks was 152 ha according to annual reports, roughly 50% more than recorded private land clearing state-wide. (See full letter attached on strategic fuel breaks).

## 4.3 Strategic planning and habitat protection

As noted above, one important response to the acknowledged limitations of permit based regulatory controls for native vegetation removal is an emphasis on the use of forms of strategic land use planning. According to DELWP's 2016 Outcomes Report. following the review of native vegetation clearing regulations:

> *Under the regulations, clearing of native vegetation and the establishment of offset areas is generally considered on a permit by permit basis. Strategic planning processes can be more effective in protecting areas of high biodiversity value. DELWP will develop guidance to support councils to undertake strategic planning for biodiversity. This will describe how statewide biodiversity products can be used to achieve better protection of important biodiversity values.*[14]

As explained above, we agree with this assessment on the proviso that strategic planning or ecosystem based planning, although a preferred approach for a range of reasons, cannot completely replace the need for permit level control and should be seen as a complementary or supporting mechanism rather than a substitute for habitat protection regulation.

[12] https://www.environment.vic.gov.au/__data/assets/pdf_file/0018/91251/Exemptions- from-requiring-a-planning-permit-to-remove,-destroy-or-lop-native-vegetation-Guidance.pdf

[13] Annual report 2018 – 2019 & 2019-2020 a report on the operations of the native vegetation removal regulations https://www.environment.vic.gov.au/native-vegetation/native-vegetation

[14] Outcomes Report. Review of the native vegetation clearing regulations. https://www.environment.vic.gov.au/__data/assets/pdf_file/0014/51800/RNVCR-Outcomes-Report.pdf

Strategic planning approaches can take a number of forms, but fall into two broad categories:

- Strategic assessment followed by tailored regulation as with for example the Melbourne Strategic Assessment; and

- Utilisation of existing strategic planning tools under the Planning and Environment Act 1987 including local policy, zones, overlays and native vegetation precinct plans. The "strategic planning toolkit" described in guidance produced by DELWP.[15]

- Ecosystem or Bioregional based planning

### 4.3.1 Strategic assessment

Strategic assessment in areas experiencing significant development pressure is advocated as a "win-win" approach which has the potential to deliver conservation benefits through early and thorough identification of and planning for conservation values and the avoidance of the cumulative impacts associated with proposal by proposal development assessment, while at the same time delivering long term certainty to developers and regulators on the use and development of land.

The Victorian Planning Authority in its submission to this Committee's Inquiry into Ecosystem Decline in Victoria for example, recommended a 'broader roll-out of a MSA [Melbourne Strategic Assessment] type approach for other major growth areas outside of Melbourne's greenfield growth areas, where planning for biodiversity is at risk of being inconsistent and fragmented, leading to uncertainty, dispute, delay and poor environmental outcomes".[16]

We caution strongly against unqualified support for strategic assessment, particularly modelled on the Melbourne Strategic Assessment which has failed to deliver the promised Western Grassland Reserves or to effectively protect important environmental values within the assessment area. These concerns are documented at 7.2.3 The Western Grassland Reserve and the Grassy Eucalypt Woodland Reserve below. While in principle strategic assessment could be effective, we believe that there are important lessons to be learned from the experience with the Melbourne Strategic Assessment:

- There should be clear mechanisms for the delivery of promised environmental benefits, especially reserves. These should be delivered up front to avoid the risk of the failure to deliver falling on the environment.

[15] Planning for Biodiversity. https://www.environment.vic.gov.au/__data/assets/pdf_file/0014/91220/Planning-for-biodiversity-Guidance.pdf

[16] Submission of the Victorian Planning Authority to the Inquiry into Ecosystem Decline, 31 July 2020 (submission 103).

- The limitations of up front survey effort in identifying environmental values needs to be recognised, and accommodated by including scope within endorsed plans and programs to respond to new information or changing circumstances.

- Adequate time and support for public participation in the assessment process is critical. The Melbourne Strategic Assessment was rushed and the time frame and the complexity of the issues involved made it impossible for groups like the VNPA or concerned local groups and individuals to effectively participate.

- Strategic assessment should involve a comprehensive assessment of environmental values including not just extant values but future restoration needs and potential broadly conceived. The Melbourne Strategic Assessment was driven by "matters of national environmental significance" recognised under the EPBC Act, which are important but under our national system not intended to be a complete catalogue of environmental values. Non-EPBC values have been effectively ignored.

- Strategic Assessment processes could also significantly benefit from focusing on whole ecosystems rather than responding to specific development proposals (see section 5.3.3).

### 4.3.2 The strategic planning toolkit – strategic planning for ecosystem protection under Planning Schemes

Following the 2016 review of native vegetation regulations and the emphasis on strategic planning approaches for the protection of remnant native vegetation developed through that review, DELWP has produced the useful guide mentioned above *Planning for Biodiversity.* This is a useful guide which provides Planning Authorities with information on the biodiversity planning policy framework and the tool kit available to implement these policies through planning schemes, including zones and overlays such as the Vegetation Protection Overlay and Environmental Significance Overlay.

This is useful and commendable guidance, and a good demonstration of the unrealised potential of existing Planning Scheme provisions to complement and support the state-wide native vegetation clearing controls, and to more comprehensively document and protect environmental values that goes beyond remnant native vegetation.

Experience has demonstrated, however, that lack of resources together with a lack of policy support means that utilisation of these planning tools is highly variable, with some local government enthusiastic in their use of such tools, while at the other end of the spectrum, other Planning Authorities demonstrate little if any engagement. This suggest that DELWP needs to do more than simply provide guidance and go further in providing direction and financial support to ensure the uptake and implementation of these approaches.

### 4.3.3 Ecosystem based or Bioregional Planning

Bioregional plans give Commonwealth, state and local governments the opportunity to map areas of environmental significance (such as critical habitat) across bioregions and make decisions about the need for protection of those areas. The Commonwealth has the power to make bioregional plans under the EPBC Act, but it has never been used for land/terrestrial assessments (as has been done in the marine space for example in fisheries). A much greater use of bioregional planning to identify upfront nationally significant areas such as critical habitat, Ramsar wetlands, and national heritage, should be developed.

Victoria has had over 60 years' experience with bioregional planning process through the Land Conservation Council (LCC) and it' successors such as the Victorian Environmental Assessment Council**.**

The LCC, established in 1971, and its successors (the ECC and VEAC) were established to carry out studies or investigations of public land throughout Victoria and make recommendations to government on the appropriate use of that land. Since the LCC made its first recommendations to government in 1973 for the use of public land in the South-Western Area District 1, these organisations have systematically and comprehensively examined and made recommendations on the use of most public land in Victoria. Forty-three separate regional studies, reviews and state wide or special investigations have resulted in thousands of individual land use recommendations, the vast majority of which have been accepted by government.[i]

The current incarnation, the Victorian Environmental Assessment Council (VEAC) was established under the *Victorian Environmental Assessment Council Act 2001.*The Council is made up of five members including a Chairperson. The members are collectively required to have a range of experience, skills and knowledge in a number of areas related to management of public land and natural resources. [ii]

The role of the Council is to conduct investigations that are requested by the Victorian Government relating to the protection and ecologically sustainable management of the environment and natural resources of public land. While a bioregion is usually larger than just the public land in it, the approach undertaken by the LCC and VEAC is useful data rich model which could be applied at a bioregional scale, across tenures to inform planning schemes.

## 4.4 Beyond reactive development control

Even the strategic planning approaches outlined above are essentially reactive development controls rather than pro-active mechanisms to identify, protect, restore and reconnect habitat.

While on the one hand there is a tendency to say that such activity is not the province of the land use planning system but rather requires other programs and incentives, it would be timely for this committee to consider the role of land use planning in facilitating enabling

not just halting the decline in Victoria's ecosystems but reversing this trajectory. It is notable, for instance, that zones and overlays do not specifically contemplate designation of areas for future habitat restoration, something which is acknowledged as critical given the legacy of past losses and the impact of climate change. In contrast to other areas of development activity where the future focus of planning schemes is prominent, when it comes to our natural environment planning are essentially backward looking and seek only to maintain existing values and attributes.

One the other hand it is important to acknowledge the limitations of what can be achieved through Victoria's planning framework as these limitations highlight the need for the coordinated investment in other mechanisms such a public and private land reservation, and landscape scale restoration and reconnection.

There is also a recent tendency to use planning scheme and EES processes as a one size fit all approach, which become problematic when dealing with highly protected areas, such as national parks. There is need for a specific 'conservation' zone for these high value areas. See Section 6 and or the recent VNPA submission to the Warburton Destination Bike Track, which high light this tension in detail https://vnpa.org.au/publications/submission-warburton-mountain-bike-destination-environmental-effects-statement/

### 4.4.1 Reversing habitat fragmentation – reservation, restoration and reconnection

To address habitat fragmentation as a threatening process we need to protect and carefully manage remnant habitats and, crucially, we need well-funded, strategic revegetation and land care programs to reconnect landscapes. Reconnecting and restoring habitats through 'biolinks' on both public and private land is one of the top things Victorians can do to restore the health of our vulnerable ecosystems and assist with threatened species recovery.

The conservation actions needed to reverse habitat fragmentation can be thought of in three categories:

- reservation – to protect large areas of remnant vegetation on public land; transferring existing nature reserves to be protected under the *National Parks Act 1975* (addressed further below in Section 7); protecting high conservation value private land under conservation covenants.

- restoration – to restore the health of remnant vegetation on both public and private land, including actions such as: managing invasive weeds and exotic animals; exclusion of livestock grazing; revegetation works to improve the condition or increase the size of fragmented areas; nest box installation and other species specific conservation action; protection from too frequent fire; restoration of natural water regimes

- reconnection – creating biolinks on both public and private land including the revegetation of cleared land to link isolated and fragmented remnant vegetation

### 4.4.2 Private land conservation

Protection and restoration of habitats on private land is critical in addressing habitat fragmentation, and one of the key mechanisms for achieving this is through Trust for Nature conservation covenants. The state biodiversity strategy, *Protecting Victoria's Environment – Biodiversity 2037*[17] states that "The estimated gap in additional protected areas required to meet Australia's criteria for a comprehensive, adequate and representative reserve system is 2.1 million hectares. In some bioregions… this can only be achieved by land purchase or additional formal protection of habitat on private land." Our own estimates are around 3.1 million hectares of vegetation on both public and private land including 1.5 million ha on public land and 1.7 million hectares of private lands.

A key recommendation from the 2018 State of the Environment Report was

*"That DELWP improve biodiversity outcomes on private land by accelerating private land conservation. This will require resourcing permanent protection measures that focus on high priority ecosystems and landscapes, and investing in local government capability to enforce the existing Guidelines for the Removal, Destruction or Lopping of Native Vegetation and the Invasive Plants and Animals Policy Framework."*[18]

The report identified private land conservation as the only biodiversity indicator to be trending upwards, which is a positive sign. However, although the Biodiversity Strategy has set a target of 200,000 hectares (about 10,000 ha per year to 2037) of new permanently protected areas on private land, little of the money provided to implement the state biodiversity strategy has been spent on supporting land stewardship or expanding the number of Trust for Nature covenants. Since 2000-2001, TFN has seen average annual growth of 2,654 hectares per year (see graph on left).

The Trust for Nature Statewide Conservation Plan[19] has identified 12 focal landscapes (areas of at least 20,000 hectares in size that contain extensive private land areas with important biodiversity values) assessed as being capable of making the greatest contribution towards nature conservation on private land and maintaining the viability of ecosystems and species.

[17] Department of Environment Land Water and Planning (2017). Protecting Victoria's Environment – Biodiversity 2037. Port
Melbourne: The State of Victoria. Page 49. https://www.environment.vic.gov.au/biodiversity/biodiversity-plan
[18] https://www.ces.vic.gov.au/sites/default/files/SDG_Presentation_16.08.2019_FINAL_0.pdf
[19] https://www.trustfornature.org.au/statewide-conservation-plan

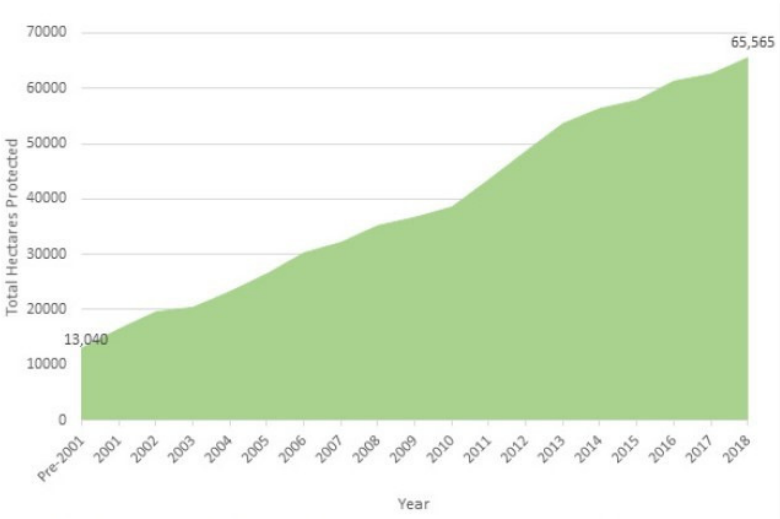



Figure B.4 Growth in total hectares of private land under covenant, 2001–18

(Data source: TfN 2018)

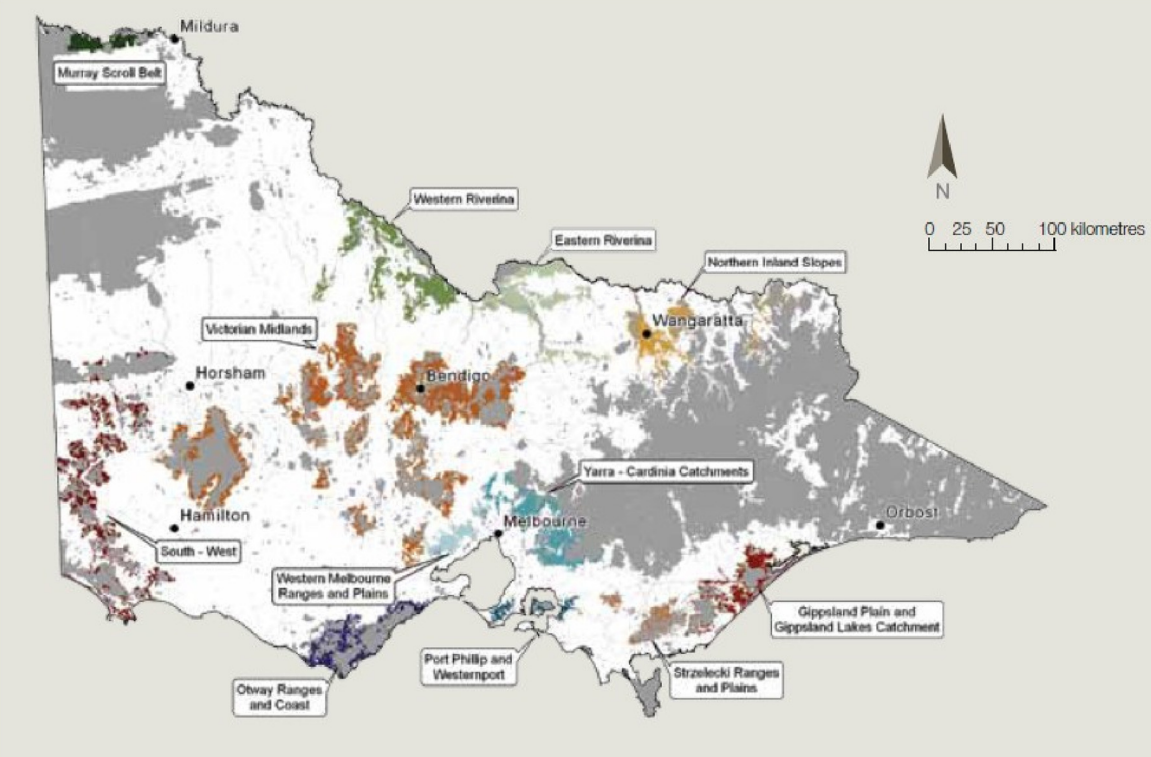



*Figure 1: Locations of the focal landscapes identified in the Statewide Conservation Plan in relation to private land.*

*"Collectively, the 12 focal landscapes cover 12% of Victoria's private land area; almost two million hectares. They contain more than 30% of the most poorly represented ecosystems on private land, more than 50% of the priority native plants and wildlife identified for conservation on private land identified by the Statewide conservation*

*plan, and most of Victoria's internationally significant wetlands. These focal landscapes enable the Trust to work in the most effective and efficient way possible."*

There is a need for a significant increase in funding for private land conservation through the Trust for Nature, including the establishment of a $20 - $30 million revolving fund. Focal landscape areas could also be useful in identifying areas for increased support for Landcare restoration projects on private land. Ideal new covenants should also be supported, as matter of course with relevant planning controls.

## 4.5 Recommendations

- Approaches should be developed to secure more definitive protection of native vegetation within Victorian planning schemes, for example through strengthening the requirement to avoid vegetation removal

- The use of offsets for native vegetation clearing should be a last resort and strictly controlled and limited.

- The exemptions to native vegetation clearing controls should be reviewed with a view to reducing the current extent of exempt clearing which is undermining Victoria's no net loss objectives

- The need for fundamental reform to compliance and enforcement should be recognised, and options for developing new regulatory responsibilities building on this Committee's recommendations in the Ecosystem Decline Inquiry report explored.

- Clearing of native vegetation on public land constitutes a double standard in terms of native vegetation protection and the lack of strength and transparency in *Crown Land Procedure – the procedure for the removal, destruction or lopping of native vegetation on Crown land* is undermining state-wide native vegetation objectives. This issue should be addressed and Crown land clearing subject to standards that are at least as stringent as those that apply under the Victorian planning framework.

- Strategic planning approaches to the protection of native vegetation and natural habitat should be encouraged and supported. However any moves to develop approaches based on the Melbourne Strategic Assessment model must learn from the significant shortcomings of that approach, and strategic planning for biodiversity using existing planning tools requires direction and support to increase its utilisation and effectiveness.

- The Victorian government should do more to encourage land use planning as well as other policy and regulatory mechanisms to support the reservation of land for conservation purposes, and to facilitate the restoration and reconnection of Victorian ecoystems

# 5 The role of planning schemes on public land, especially national parks

In this section we outline some concerns about the relationship between planning in and outside national parks. We have complementary concerns which illustrated by recent and current development proposals impacting on national parks:

1. The inappropriate use of land use planning and development under the Planning and Environment Act 1987 (and related Environment Effects Act 1978 procedures) in a manner that undermines the established responsibilities and planning processes for national parks.

2. Tourism and commercial development proponents using park planning processes under the *National Parks Act 1975* and *Parks Victoria Act 2018* to advance development proposals for the National Park without adequate consideration being given to alternative development sites on adjacent non- Park public land or private land.

These issues represent two sides of the same coin in the sense that the first represents an inappropriate reliance on *Planning and Environment Act* mechanisms to assess and regulate development within a national park. The second constitutes the opposite phenomenon – an exclusive focus on attempting to navigate development proposals through Park planning processes which unduly restricts consideration of more appropriate land (public or private) outside of Parks Victoria's planning responsibility.

Our position is that there needs to be a coordinated approach to planning across private and public land, including National Parks and other public land under the control and management of Parks Victoria. However, we wish to be very clear that by coordination we do not mean that these processes ought to be integrated or merged into a process that fails to recognise the significance of the national park tenure in some misguided effort to adopt a "tenure blind" approach. There is no such thing as "tenure blind" in our minds, as tenure is often there for good reason. "Cross tenure" planning may be appropriate, but it should under no circumstances be 'blind' or ignore the underlying tenure. To do would be to fail to recognise the critical tenure level protection that is central to the National Parks and other land reserved for conservation, and would also ignore the appropriately limited application of Planning and Environment Act 1987 planning policy and controls to national parks and other public land reserved for conservation purposes. These points are developed further below.

## 5.1 Public land tenure, and the limited application of planning controls to National Parks and other public land reserved for conservation purposes

Land Use planning provisions under the Planning and Environment Act 1987 apply concurrently but in a qualified and limited manner. This is reflected in the standard formulation land use zoning ordinances such as PCRZ deferring to uses and developments carried by or on behalf of the public land manager.

In respect to planning Schemes VEAC note:

> *"Local government planning schemes may apply to all private and public land in Victoria…" and "Public land zones are not intended to identify the legal status of the land nor indicate the existing land use. They are intended to set out appropriate statutory requirements which apply to the use and development of the land in addition to the relevant land management legislation."*[20].

The Practitioners Guide to Planning includes guidance to similar effect:

> *"Public land zones are not intended to identify the legal status of the land or indicate the existing land use. They are intended to set out appropriate statutory requirements that apply to the use and development of the land in addition to the relevant land management legislation."*[21]

The outcome of these arrangements is that State and Local Planning Policy and other planning scheme provisions are not a comprehensive land use and regulatory framework public land management, and in particular where the land is designated as National Park then primary criterion for management will be derived from that status rather than the land use planning policies and controls familiar to those focussed on private land use and development. Typically, National Park status will bring with it a higher and more stringent set of standards for environmental protection than is the case under Planning Schemes, and in this way the relevance of planning policy and controls is more as a baseline standard rather than as a set of criteria or standards which support development if satisfied. There is a clear hierarchy of provisions with public tenure as a national park at the apex.

The key point here is that the national parks status and objectives that come with that prevail over other considerations including those provided for under the applicable Planning Scheme – this is not an exercise in seeking to optimising competing policy objectives to achieve a "net community benefit" as occurs with land use planning under the Planning and Environment

[20] Statewide Assessment of Public Land - Discussion Paper, page 32 https://www.veac.vic.gov.au/investigations-assessments/previous-investigations/investigation/statewide-assessment-of-public-land

[21] A Practitioners Guide to Victorian Planning Schemes, at page 31. https://www.planning.vic.gov.au/guide-home/a-practitioners-guide-to-victorian-planning-schemes

Act – the status as a National Park and the statutory objectives that come with this prevail to the extent that there is any conflict with other planning policies and objectives.

These points apply equally to strategic land use planning processes, the assessment of use and development proposals and the regulation of any use or development permitted – while these things are all core elements of land use planning by responsible authorities and planning authorities under the Planning and Environment Act, different and more appropriate planning mechanisms and institutional responsibilities apply in National Parks. These arrangements are the most appropriate for National Parks and should by the primary mechanism for park management, though there may be value in reflecting this primacy in a formal "conservation zone" to avoid any confusion over the role and purpose of the land.

## 5.2 Inappropriate use of Planning and Environment Act and Planning Schemes to govern development proposals in National Parks – the Warburton Mountain Bike Development and Yarra Ranges National Park

A current example what we believe is an inappropriate attempt to introduce infrastructure development to a national park using processes using a process that subordinates parks planning to land use development planning can be found in the Warburton Mountain Bike Development.

The proponent of that development, Yarra Ranges Council, is proposing of recreational infrastructure within Yarra Ranges National Park in the form of new mountain bike trails. The development of the trails and the change in use to the park proposed is contrary to the Yarra Ranges National Park Management Plan and would impact on significant biodiversity values which are clearly prioritised for protection by the objectives of the *National Parks Act 1975*.

Parks Victoria routinely assesses and manages the development of recreations uses within Victoria's park estate, and the combination of the National Parks Act 1975 of the Parks Victoria Act 2018 is the appropriate framework for doing so. Allowing development proponents to proceed with proposals under the rubric of the land use planning framework undermines the parks system, and if encouraged will risk a diminution of park protection as the standards and priorities of Planning Schemes are lower than those that apply to parks under the *National Parks Act*.

In the case of the Warburton Mountain Bike Development, the assessment of the proposal against the applicable Planning Scheme, strategic and impact assessment under a combination of the Planning and Environment Act and the Environment Effects Act, and the proposal to manage the development even within the park under a Special Purpose Overlay and incorporated plan all serve to undermine the established system of Parks Planning. We are concerned that the end result is to encourage a Planning and Environment Act approach to development facilitation which is clearly at odds with longstanding conservation objectives under the National Parks Act. The legislated objectives for national parks and the

management plans implementing these objectives should not be treated as subordinate objectives and processes.

You can reads more detail in our recent submission: https://vnpa.org.au/publications/submission-warburton-mountain-bike-destination-environmental-effects-statement/

## 5.3 Lack of public land planning processes outside national parks – Mount Buffalo example

When a planning process takes place for a park or parks (either by Parks Victoria or in a joint management process involving a Traditional Owner Group and Parks Victoria), there is no legal obligation or responsibility to include adjacent public land and/or private land in that planning process.

That can mean that anyone advocating for visitor infrastructure in the area only has access to a park planning process, even though the proposed infrastructure might be more appropriate in nearby state forest or other public or private land. Inappropriate proposals for high value conservation land might include hotel accommodation or a café complex.

Current government policy (and legal limits on commercial leases) make other land adjacent to parks a far better option for such infrastructure. See: https://www.ecotourism.org.au/assets/Resources-Hub-Protected-Area-Management/tourism-leases-in-national-parks.pdf

A recent example of this problem was a proposal for extensive accommodation in the area of Mount Buffalo National Park, adjacent to the holiday towns of Bright and Porepunkah in Victoria's north-east. Several years and large amounts of money were wasted discussing an inappropriate and unworkable proposal for a complex of hotels, spas and roller skating rinks in the national park. The proposal inevitably failed, but it might have been far more viable and had an easy passage through a planning process if it was available on nearby public land. Parks Victoria however has no capacity to make recommendations, let alone plan, for land it doesn't manage.

This situation is also evident with the development of mountain bike, trail bike and vehicle tracks in a range of parks in peri-urban and regional parks across Victoria. As above, the development of new tracks is best accomplished in a planning process that operates across all public and private land, so the best recreational, nature conservation and commercial objectives can be achieved across the landscape. Currently there is no formal planning framework, other than logging schedules, for broader uses of the broader state forest estate, outside of the parks and conservation reserves.

## 5.4 Recommendations:

- Development of tourism, recreational or other proposals within National Parks and other land under the control and management of Parks Victoria should continue to be managed under the *National Parks Act 1975* and the *Parks Victoria Act 2018,* and the use of processes and regulation under Planning Schemes and the Planning and Environment Act in a manner that subverts this system should be discouraged.

- Proponents advocating for new tourism development within parks through park management planning processes should be required to include consideration of options on public and private land outside the park as part of their planning, and where appropriate planning under the distinct systems should be coordinated across land within and outside the park.

- Development of an explicit "conservation zone" should be considered for high value natural areas.

- A state forest planning framework, for broader uses other than logging, should be developed for the broader state forest estate, outside of the parks and conservation reserves.

# 6 Threatened species protection and the interaction of the planning framework with the Flora and Fauna Guarantee Act 1988

This section of our submission addresses the role of the *Flora and Fauna Guarantee Act 1988* (including the 2019 reforms to the Act) in relation to Victoria's planning framework.

In our view, action is required to integrate the reforms introduced to the FFG Act in 2019 into the Victoria's planning framework. However, we also submit that the limitations of the protection of native vegetation and habitat under the Victorian planning framework mean that DELWP, the Secretary to the Department and the Environment Minister must commit to utilisation of the biodiversity conservation tools under the FFG Act rather than continuing the longstanding practice of relying almost exclusively on planning controls such as clause 52.17 to protect habitat on private land.

## 6.1 The Flora and Fauna Guarantee Act and recent reforms

Victoria has a very large number of flora and fauna species threatened with extinction. Due to recent amendments of the *Flora and Fauna Guarantee Act 1988*, the classification of threatened species in Victoria is changing, and the official numbers of threatened species in Victoria protected under the Act is unclear for the time being.

The Department of Environment, Land, Water and Planning is in the process of undertaking an assessment of threatened taxa in Victoria and will amalgamate taxa listed as threatened under the Act and taxa listed on DEWLP's non-statutory advisory lists. It is envisaged that the new Threatened List will increase species listed under the legislation from around 900 to over 2000. There are also likely to be many other rare species of flora and fauna in Victoria that are data deficient and which will remain unprotected by Victoria's threatened species legislation.

The *Flora and Fauna Guarantee Act 1988* is the main piece of legislation protecting Victoria's threatened flora and fauna, ecological communities and habitats. Great name with great intent, but unfortunately the Act has historically been poorly implemented. Limited obligations on public authorities have resulted in many of the legal tools available to protect flora and fauna never being used.

Many of the listed threatened species do not have recovery action statements and no management plans have been made to guide and enable the implementation of action statements. Just one critical habitat determination and zero conservation orders have been made in the 32 year history of the Act.

The new amendments to the FFG Act that came into effect on the 1st of June 2020 somewhat improved the legislation but, fundamentally, threatened species protection is still at the discretion of government ministers and departments. Our government and government

agencies need far more political will to implement the legal conservation tools available under the Act, or better still, need to be legally obligated to act.

There are number of new and refreshed legal tools in the amended or 'modernised' FFG Act which are yet to be utilised. These tools are well covered by this Committee's Ecosystem Decline Inquiry report and so are only briefly summarised below:

## 6.2 A new flora and fauna duty on public authorities

The amended FFG Act requires ministers and public authorities to give proper consideration to the objectives of the Act, which notably include a "Guarantee" on the persistence of Victoria's flora and fauna in the wild and an objective "to protect, conserve, restore and enhance biodiversity". There are also requirements for ministers and public authorities to give proper consideration to biodiversity impacts, and to any instrument made under the Act including the Biodiversity Strategy, action statements, critical habitat determinations and management plans.

The Minister is able to make guidelines in regards to how public authorities properly consider the objectives and instruments of the Act, and the Minister has the power to request information about action taken in a sort of 'name and shame' model. This is a significant new compliance power and there needs to be clear avenues for concerned individuals and organizations to request that the Minister exercise this power, to ensure that it does not become yet another unused tool.

The definition of "public authority" makes it clear that duty extends to responsible and planning authorities under the Planning and Environment Act 1987 (whether the authority in question is local government, the Minister for Planning or another body with planning responsibilities such as the Victorian Planning Authority).

To date the roll out of this important new provision has been muted – DELWP has produced a fact sheet but promised consultation on developing more specific guidance seems not to have commenced.[22] We strongly support this Committee's Recommendation 49 in the Ecosystem Decline Inquiry report that the Victorian government produce information including ministerial guidelines to support the implementation of the duty. We urge the government to pay particular attention to specifying expectations as to how the duty is to be applied in the land use planning context given the frequent interaction between decision making by planning and responsible authorities and the subject matter of the new duty.

[22] https://www.environment.vic.gov.au/__data/assets/pdf_file/0031/466681/Public-Authority-Duty-factsheet.pdf

## 6.3 Protecting critical habitat using FFG Act powers

The FFG Act contains important but underutilised protections for threatened species habitat which could be a powerful mechanism for protecting and conserving habitat where planning controls prove inadequate. Despite the existence of these mechanisms since the FFG Act was introduced in 1988, there has been a reluctance to utilise them and a de facto reliance in native vegetation planning controls rather than these stronger and more appropriate tools.

The 2019 reforms the FFG Act reformed these provisions with the objective of making them easier to utilise. Given the limitations of limitations of the Victorian Planning framework in protecting biodiversity discussed throughout this submission, we believe that it is critical that DELWP, the Secretary and the Minister meet the expectation created by the 2019 reforms and commit to actually utilising these powers.

### 6.3.1 Critical habitat determinations

To date, critical habitat determinations have essentially been unused. One of the purposes of the FFG Amendment Bill 2019 was "to deliver effective protection for taxa and communities of flora and fauna and important habitats by creating critical habitat determinations and habitat conservation orders". The Scientific Advisory Committee can now make a recommendation to DELWP to make a critical habitat determination, and DELWP must then make a decision and publish the reasons for it on the internet. DELWP can only make a critical habitat determination if it considers that the area contributes significantly to the conservation in Victoria of a listed (or recommended to be listed) species or community, or the area supports "ecological processes or ecological integrity" that significantly contribute to the conservation of the species or community.

There are no provisions specifying conditions when critical habitat determinations must be made by DELWP. It would therefore be highly beneficial if action statements and management plans included efforts to recommend/identify/propose areas of critical habitat. It would also be useful if there were avenues for individuals and organizations to make recommendations to the Committee regarding critical habitat determinations.

### 6.3.2 Habitat conservation orders

In the 32 year history of the FFG Act in Victoria, conservation orders have never been used by a Victorian environment minister. Habitat conservation orders (formerly known as interim conservation orders) provide for a Ministerial power to order the conservation, protection or management of flora, fauna, land or water within a critical habitat (or proposed critical habitat), as well as to order the prohibition of any activity, land use or development within the critical habitat. The order can also provide for prohibitions outside the critical habitat if the activity is likely to adversely affect it. If a critical habitat determination is for a community or a critically endangered species, the Minister must now consider whether or not to make a habitat conservation order for that critical habitat within 2 years of the determination.

Ultimately, conservation orders are still optional, so a will to implement both critical habitat determinations and habitat conservation orders are paramount.

## 6.4 Other matters

The reformed FFG Act includes new nationally consistent criteria for listing threatened species and communities and Victoria's threatened list has since been reviewed and updated, with this new list replacing the previous mix of statutory and non-statutory advisory lists. Despite these reforms, the Native Vegetation Guidelines and assessment system still rely on the superseded advisory lists.

According to a recent DELWP newsletter:

> *Recent changes to the FFG Act Threatened List The Flora and Fauna Guarantee Amendment Act 2019 came into effect on 1st June 2020, leading to the publication of the FFG Act Threatened List in August 2021. This list supersedes the Victorian Threatened Species Advisory Lists (fauna, flora and invertebrates). At present, the NVR define rare or threatened species according to the Advisory Lists. Habitat Importance Maps (HIMs) exist, and Species Offsets can be triggered, for the majority of plants and animals classified as Rare, Critically Endangered, Endangered or Vulnerable on the Advisory Lists. The existing HIMs, based on the Advisory Lists, will continue to apply for now. In the longer term, the HIMs will be updated to reflect the new FFG Act Threatened List. The NVR team is in the process of planning how best to implement this transition.*

The reforms to the FFG Act were intended to address the confusion and unsatisfactory situation of multiple threatened species lists with varying legal status to this situation should be remedied as soon as possible. Doing so would support responsible authorities in acquitting their responsibilities under the new public authority duty for example.

Action Statements specifying recovery actions for listed threatened species and communities remain a mandatory requirement under the Act, however progress to address the massive backlog in these plans seems to be slow. The development of these Actions Statements needs to be prioritised as these are an important means for Planning and Responsible Authorities to determine the protection and recovery actions required for listed threatened species and communities.. There should be a clear link between these statement and as a matter of course reflected in relevant planning controls.

## 6.5 Recommendations

It is important to ensure that the *Flora and Fauna Guarantee Act 1988* is adequately implemented. This Committee's recommendations in the Ecosystem Decline Inquiry report

provide a good starting point. In the context of this inquires consideration of protections under the Victorian Planning Framework we recommend the following actions:

- ensuring that public authorities including especially Responsible and Planning Authorities are aware of their new duty to consider biodiversity conservation and the objectives of the *Flora and Fauna Guarantee Act 1988* and ensuring that any making of guidelines relating to duty includes a vigorous public consultation

- creating action statements and management plans to guide and implement conservation action for listed threatened species and communities – it should also be noted that the amended Act now provides for efficient management plans that can incorporate multiple action statements under the one plan. These provide important "official" information for both Planning and Responsible Authorities in exercising their functions under *the Planning and Environment Act 1987*

- making critical habitat determinations so that the environment Minister is able to use habitat conservation orders in urgent conservation situations. The longstanding practice of not utilising these powers in the context of land use and development proposals should be abandoned and replaced by a commitment to use these tools in recognition of the limitation of planning scheme protections in many situations.

# 7 Increasing urban space networks and enhancing Melbourne's green edge

The limitations of Victoria's planning framework when it comes to achieving nature conservation and associated social, recreational and economic objectives highlights the need for a coordinated consideration of policy and processes for creating "environmental infrastructure" through land reservation.

This section focuses in the greater Melbourne area and highlights current needs and opportunities to create and enhance urban space networks, the need for an Urban Nature Space Strategy, and opportunities to enhance the city's "green edge" through new national parks.

This part of our submission draws on elements of our submission to the yet to report Environment and Planning Committee of the Legislative Assembly *Inquiry into Environmental Infrastructure for Growing Populations.* We are drawing this material to the attention of this Committee because we believe that your consideration of the effectiveness of Victoria's planning framework will benefit from an understanding of this broader context, and because an integrated consideration of processes and opportunities for the reservation and enhanced protection of public land is important to an overall understanding of Victoria's system for managing land use and development.

## 7.1 Planning, creating and enhancing urban nature space networks

Victoria is the most densely populated state in Australia. According to the Australian Bureau of Statistics, in September 2019 Victoria had a population of 6.63 million people and a population growth rate of 2.0% per annum – the highest growth rate in Australia.

As 62.5% of Australia's population growth is from net overseas migration, it is likely that due to the 2020 pandemic that Melbourne's population growth will stall – at least for some time. As Victoria has no coherent plan to manage the impact of population growth on open space or natural areas, the current reprieve from population growth gives the state a chance to get its planning for infrastructure back on track, including environmental infrastructure such as parks and reserves, and better planning to reduce the impact of population growth and urbanisation on biodiversity.

Issues can also arise in established suburbs. Population densification increases demand and recreational pressure on existing parks and reserves, and then subdivision and development results in further losses of remnant vegetation, established gardens and urban biodiversity.

As urban areas become more hostile to native wildlife, the species that remain need to compete for food and habitat in remaining established gardens, parks and reserves. There is a need to enact better planning to retain our urban biodiversity.

In 2011 the Victorian Environmental Assessment Council released a report on their Metropolitan Melbourne Investigation[23] which identified and assessed the uses, resources, condition, values and management of Crown land, and public authority land in metropolitan Melbourne.

The report outlined a number of recommendations for enhancing the contribution of public land to Melbourne's liveability and natural and cultural values, however these recommendations have largely remained ignored. Some of the recommendations included:

- additional protection for Crown land with remnant native vegetation through reservation
- conserve and protect biodiversity whilst providing for informal recreation for large numbers of people associated with enjoyment of natural or semi natural surroundings or open space
- local biodiversity action programs
- the next Victorian Coastal Strategy to consider the implications of sea level rise and inundation for Crown land foreshores
- update the public open space data for public land and land owned by local councils at least every five years and use the data to inform the Government's proposed metropolitan strategy for Melbourne
- preparation of a metropolitan open space policy and strategy that provides a long-term plan for public open space in metropolitan Melbourne

### 7.1.1 Protecting remnant vegetation in urban areas through reservation

Maintaining natural values in areas outside conservation reserves or the protected area system can be more difficult in Melbourne than elsewhere because of the pressures on public land to accommodate a number of often incompatible uses. This emphasizes the importance of reservation for the retention and protection of remnant native vegetation and biodiversity values.

The first recommendation of the VEAC Metropolitan Melbourne Investigation final report was that additional protection for Crown land with remnant native vegetation be provided by: (a) reserving unreserved Crown land for a purpose that includes the protection of its

[23] http://www.veac.vic.gov.au/investigation/metropolitan-melbourne-investigation/reports

remnant native vegetation; and (b) amending the reservation purpose of reserved Crown land, where appropriate, to include the protection of its remnant native vegetation.

In addition to general recommendations confirming current public land use, the report contained recommendations for changes to land use to enhance the protection of natural values, and included the addition of approximately 3,640 hectares of public land to the protected area system.

The recommended changes to land use and protected area additions included:

- Approximately 2,590 hectares be added to Kinglake National Park (including the Yan Yean Reservoir and surrounds and the northern and southern buffers of the Sherwin Ranges)
- An area of approximately 62 hectares be added to Bunyip State Park.
- Approximately 970 hectares of Crown land near Point Cook abutting the coastline and Point Cooke Marine Sanctuary be managed as one coastal park under Schedule Three of the National Parks Act. This area includes the existing Point Cook Coastal Park and Cheetham Wetlands, Truganina Wetland Coastal Park and the adjoining section of the Altona Foreshore Reserve, and 10 hectares of unreserved Crown land, and unused and unlicensed government road.
- A new 8 hectare Bandicoot Corner Bushland Area
- A new 5 hectare Edithvale Wetland Bushland Area
- An addition of 5 hectares to the existing Seaford Wetland Bushland Area
- A new 3 hectare Beaumaris Cliffs Geological and Geomorphological Features Area
- A new 6 hectare Yallock Creek Streamside Area

Few if any of these specific land use change recommendation from 2001 have been implemented, most were either fully or partially supported by the government of the day in March 2012. http://www.veac.vic.gov.au/documents/Vic-Gov-Response-to-VEACMetro-Melb.pdf. The recommendation of this detailed investigation should be revisited by this committee.

Recommendation:

That the committee revisit and refresh the recommendations of the 2010 Victorian Environmental Assessment Council Metropolitan Melbourne Investigation

### 7.1.2 Delivering Large Regional Suburban Parks.

The current government promised at the last election that if re-elected, “Labor will invest $150 million to create more than 6,500 hectares of parkland and new walking

and bike trails right across Melbourne, giving families great places to spend the weekend or a day off."

In a media release[24] by the Premier in November 2018 titled "CREATING A RING OF NEW PARKLAND IN OUR GROWING SUBURBS", the government committed to the following:

In Melbourne's south-eastern suburbs:

- establish Cardinia Creek South Parkland, a 508 hectare parkland near Officer
- create the Sandbelt Parklands, a 355 hectare chain of parks running from Moorabbin to Dingley Village with walking and bike trails, conservation and adventure play areas
- complete Clyde Regional Park, creating a 120 hectare parkland
- plan for the Frankston Greenbelt that will link together 1,881 hectares of parks and reserves for locals to enjoy between the Seaford wetlands and Mornington

In Melbourne's north and north-eastern suburbs:

- create a new 2,778 hectare Upper Merri Park, near Craigieburn
- expand the Quarry Hills Parkland to cover 1,088 hectares, near South Morang
- complete the Plenty River Trail, building another 17 kilometres of walking and cycling trail stretching from Mernda to the Western Ring Road at Greensborough
- invest in new bike and walking trails across Nillumbik, Moreland, Banyule, Darebin, Hume and Whittlesea council areas
- undertake a feasibility study for a new Wallan Regional Park

In Melbourne's west and north-western suburbs:

- create a new 1,008 hectare Jackson Creek Park, near Sunbury
- complete Kororoit Creek Park, creating a 260 hectare parkland
- complete Werribee Township Regional Park, creating a 340 hectare parkland
- complete planning for a new 130 hectare Toolern Regional Park at Melton
- complete planning for a new 223 hectare Werribee River Park at Wyndham

It was also stated that "As well as creating large new parklands, bike and walking trails across Melbourne's growing outer suburbs, Labor will invest $35 million to purchase or repurpose land to create 25 new pocket parks in built up areas, where there is a lack of public open space."

[24] https://www.danandrews.com.au/more-green-spaces-in-our-communities

The VNPA welcomes these commitments https://vnpa.org.au/labor-commitment-tonew-suburban-parks/.

We note that a successful process to establish three regional parks, (Clyde, Kororoit Creek and Werribee Township) is well under way. These parks require the acquisition of private land, and consequently the State budget committed funds for land acquisition. Public Acquisition Overlays have been introduced into the relevant Planning Schemes, with the Minister for Environment as acquiring authority.

The commitment from 2018 election also includes creation of a new 2,778 hectare Upper Merri Park (the largest of the regional park proposals) and a feasibility study for a new Wallan Regional Park. These parklands will be invaluable assets for new communities in the upper Merri catchment and the Northern Growth Corridor.

While we understand DELWP began planning to implement these commitments in 2019, progress on the deliverables in the Merri catchment is well behind the timeline.

We understand that the COVID-19 situation has slowed down many activities and processes, but this does not fully explain the slowdown in delivery. A schedule issued by DELWP included 'Identify land and boundaries for each park and draft plans' by March 2020. As of late 2019, the Wallan Regional Park Feasibility Study by consultants was due to be completed in early May 2020, but currently "is still in its early stages".

In the Upper Merri and Wallan areas there appears to be an absence of a strategic planning process for regional park planning that will inform and guide precinct structure planning in the Upper Merri. Precinct Structure Plans (PSP) establish the future urban structure and land use pattern in urban growth areas.

A current example is Beveridge North West PSP which includes the upper Kalkallo Creek, a proposed inter-urban break between Beveridge and Wallan, and Spring Hill cone – all of which are in the study area for Wallan Regional Park. The advertised PSP did not refer to the proposed park and proposed substantially reducing the extent of the Kalkallo Creek corridor and the width of the inter-urban break. Through the course of the Planning Panel hearings which concluded in mid-August 2020 (13/08/20) there were significant pressures to further extend residential zoning in the (unidentified) parkland investigation areas.

Another two PSPs covering the Wallan Park study area are being fast-tracked by the State Government as part of post-COVID recovery stimulus. It appears that the regional park planners are waiting to be directed by the Precinct Structure Plans rather than vice versa. Some scrappy patches of parkland comprised of undevelopable land is the potential outcome.

Recommendations:

- That the committee investigate the delays in the delivery of the promised Wallan and Merri Creek parklands.
- That a clear publicly available implementation plan, with timelines be produced for the delivery of the Suburban Parks package promise at the last election.

### 7.1.3 The need for an Urban Nature Space Strategy

Linking People and Spaces (Parks Victoria, 2002) was the last State Government Plan, which had a metropolitan wide approach to natural areas and open space. Plan Melbourne which was released in 2014 (with various updates) acknowledges the importance on natural areas in metropolitan areas:

> "There is a critical need to maintain and improve the overall extent and condition of natural habitats, including waterways. Natural habitats need to better protect native flora and fauna, enhance the community's knowledge and acceptance of wildlife in areas they live, enhance access to nature and recreational opportunities across urban areas and make Melbourne an attractive place to live and visit…" [25]

The plan includes a number of policies, including:

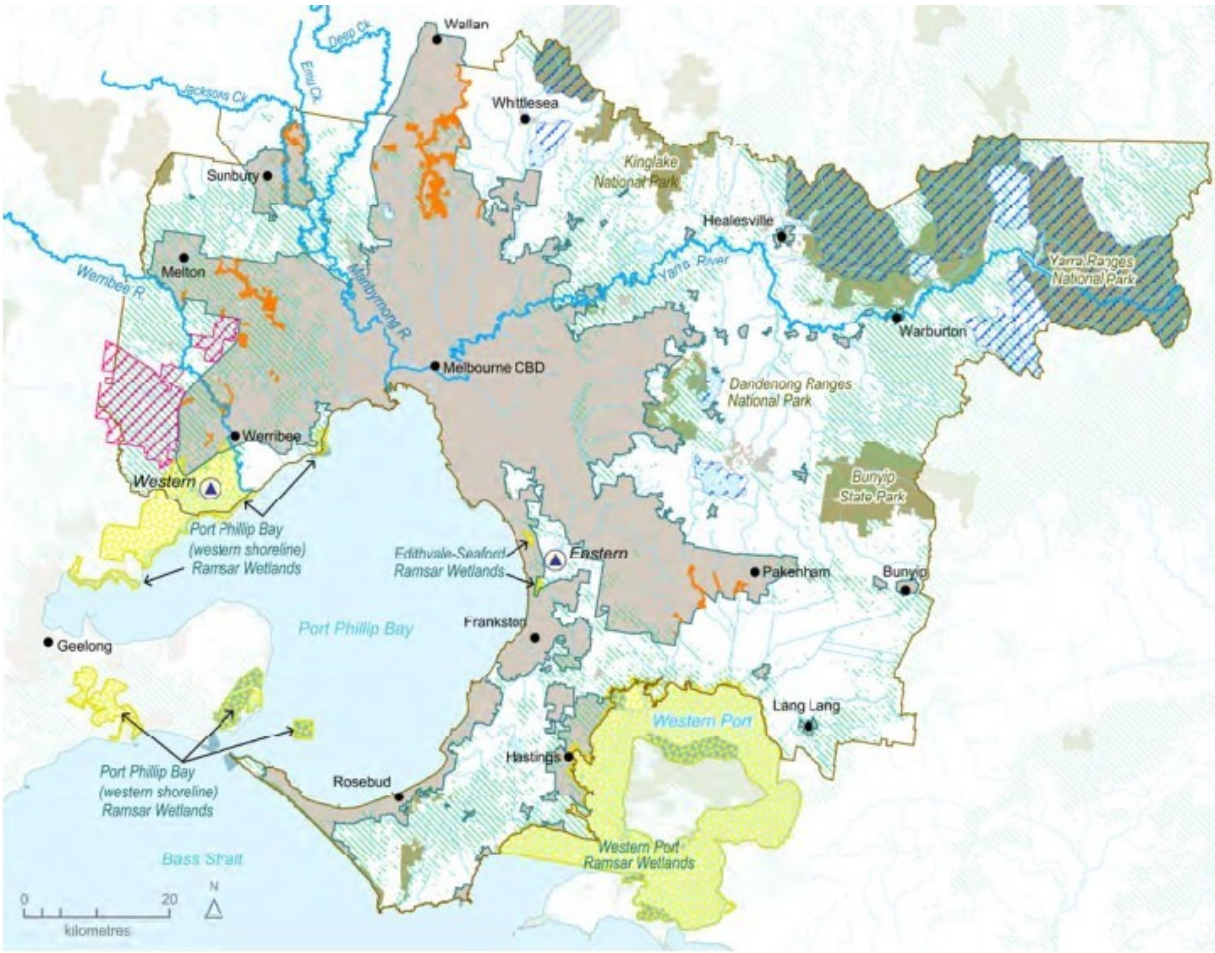
- Policy 6.5.1 Create a network of green spaces that support biodiversity conservation and opportunities to connect with nature
- Policy 6.5.3 Protect the coastlines and waters of Port Phillip Bay and Western Port and Policy 4.1.4 Protect and enhance the metropolitan water's edge parklands

There are also policies to protect green wedges, distinctive landscapes and biodiversity in peri-urban areas and local parks. The Melbourne 2030 implementation plan includes a range of measures around the protection of waterways including the Yarra River Protection (Wilip-gin Birrarung murron) Act 2017 and associated actions. There is also a range of climate change mitigation, coastal hazard reduction plans, but nothing which explicitly addresses nature within the urban context or provides a vehicle for policy 6.51 to be clearly implemented.

The following map (Map 21 page 120) from Plan Melbourne highlights some of those values.

[25] page 121 Plan Melbourne 2017 -2050 https://www.planmelbourne.vic.gov.au/the-plan

Map 3: Plan Melbourne identified Natural Areas




## Biodiversity conservation and natural features

- Western Grassland Reserve
- Conservation area (1)
- High-value terrestrial habitat (2)
- National park / state park
- Water supply catchment (closed and uninhabited)
- Ramsar site
- Marine national park / marine sanctuary
- Water's edge parklands
- Wastewater treatment plant
- Urban growth boundary
- Urban area
- Waterway
- Waterbody
- Metropolitan Melbourne region

(1) As identified in the *Biodiversity Conservation Strategy for Melbourne's Growth Corridors*
(2) Represents the three highest levels of NaturePrint strategic natural values

The following map (Map 20 page 119) from Plan Melbourne highlights the potential open space additions, though there appears to be some misalignment or misunderstandings of the role of things like closed water catchment as highlighted in Map 21.

Map 4: Plan Melbourne proposed open space


## Map 21

### Open space

- Public open space (1)
- Restricted public land (with open space potential) (2)
- Private open space (3)
- Regional park — emerging (4)
- Regional park — proposed (5)
- Conservation reserve — emerging (6)
- Conservation reserve — proposed (7)
- Water's edge parklands
- Urban growth boundary
- Urban area
- Waterway
- Waterbody
- Metropolitan Melbourne region

(1) Publicly owned and publicly accessible - includes areas where access is free of charge but limited or managed in some way
(2) Publicly owned and provides for restricted public access and/or use - includes areas where access is not possible by the public most of time or access is significantly restricted by fees and charges and/ or barrier fencing
(3) Privately owned or leased. Public access prohibited or significantly restricted
(4) Parks where land acquisition or transfer and/or associated infrastructure delivery is incomplete
(5) Future parks where land and infrastructure delivery has not yet commenced
(6) Reserves where land acquisition or transfer and/or associated infrastructure delivery is incomplete
(7) Future reserves where land and infrastructure delivery has not yet commenced

The implementation plan Action 93 Metropolitan open space strategy notes that an open space strategy will be prepared and notes natural areas in passing. " Prepare an

open space strategy that enhances recreation, amenity, health and wellbeing, species diversity, sustainable water management and urban cooling across Melbourne" [26]

While we acknowledge the good work undertaken to protect water ways and river corridors, broader natural assets are being neglected or largely ignored in the Plan Melbourne implementation plan. Likewise many of the proposed conservation reserves flagged in plan Melbourne such as the Western grassland reserves have failed to be delivered (see section 2.3 of this submission).

Approximately 145,600 hectares of land in the Metropolitan Melbourne VEAC investigation area contains native vegetation, of which two thirds is private land and one third is public land (i.e. Crown and public authority land). Approximately half of the public land with remnant native vegetation is managed for conservation within the protected area system, so there is a big opportunity to enhance and build on this asset.

The park or open space plan in Plan Melbourne (see Map 20), provides no real differentiation between open space for active or passive recreation use and is in some instance plainly wrong – for example classifying large areas of the Yarra Ranges as simply public open space, when most of it is a closed water catchment (for water quality purposes) with no public access.

Even though Plan Melbourne has been in place for six years, there is still no comprehensive open space strategy for Metropolitan Melbourne.

In reality there is also no real strategy for natural open space in the Melbourne Metropolitan Area, and there hasn't been a formal one for 18 years. This should be developed as either a stand alone strategy or as part of the commitment to an open space strategy.

## Recommendations

That the committee consider recommending:

- As part of the Plan Melbourne implementation plan develop a specific Urban Nature Space Strategy to recognise, enhance and integrate the role of natural areas within the urban context.
- That an Urban Nature Space Strategy also consider the role and opportunity for enhanced protection and management of natural areas adjacent or within a short commute/drive from surrounding metropolitan Melbourne and regional cities such as Bendigo and Ballarat.

[26] page 41 PLAN MELBOURNE REPORT ON PROGRESS 2019
https://www.planmelbourne.vic.gov.au/__data/assets/pdf_file/0003/516171/Report-onProgress-2019.pdf

- Revisit and refresh the recommendations of the 2010 VEAC Metropolitan Melbourne Investigation.
- Complete a metropolitan-wide open space strategy, with a clear time line within the Plan Melbourne implementation plan.

## 7.2 Enhancing Melbourne's "Green Edge"

A great city needs a great system of national parks. Within a 90 minute drive of central Melbourne are habitats of national and international conservation significance, only some of which are protected in national parks at present. There is also a diverse range of landscapes, from grasslands to tall forests.

Although Victoria has a fairly extensive national park and conservation reserve system, our great variety of terrestrial ecosystems are unevenly protected. We are far from meeting the national goal of a comprehensive, adequate and representative reserve system. (For further discussion about filling gaps in our reserve system see section 12 of our submission to the parliamentary inquiry into ecosystem decline here: https://vnpa.org.au/publications/submission-parliamentary-inquiry-into-ecosystemdecline-in-victoria/ )

The last decade has been a low point in the creation of parks, with few areas being formally added to the park estate by either side of politics.[27] The progress of creating new national parks on public lands in Victoria is now at its slowest pace in the past 60 years. See: https://vnpa.org.au/national-parks-creation-needs-a-jump-start/

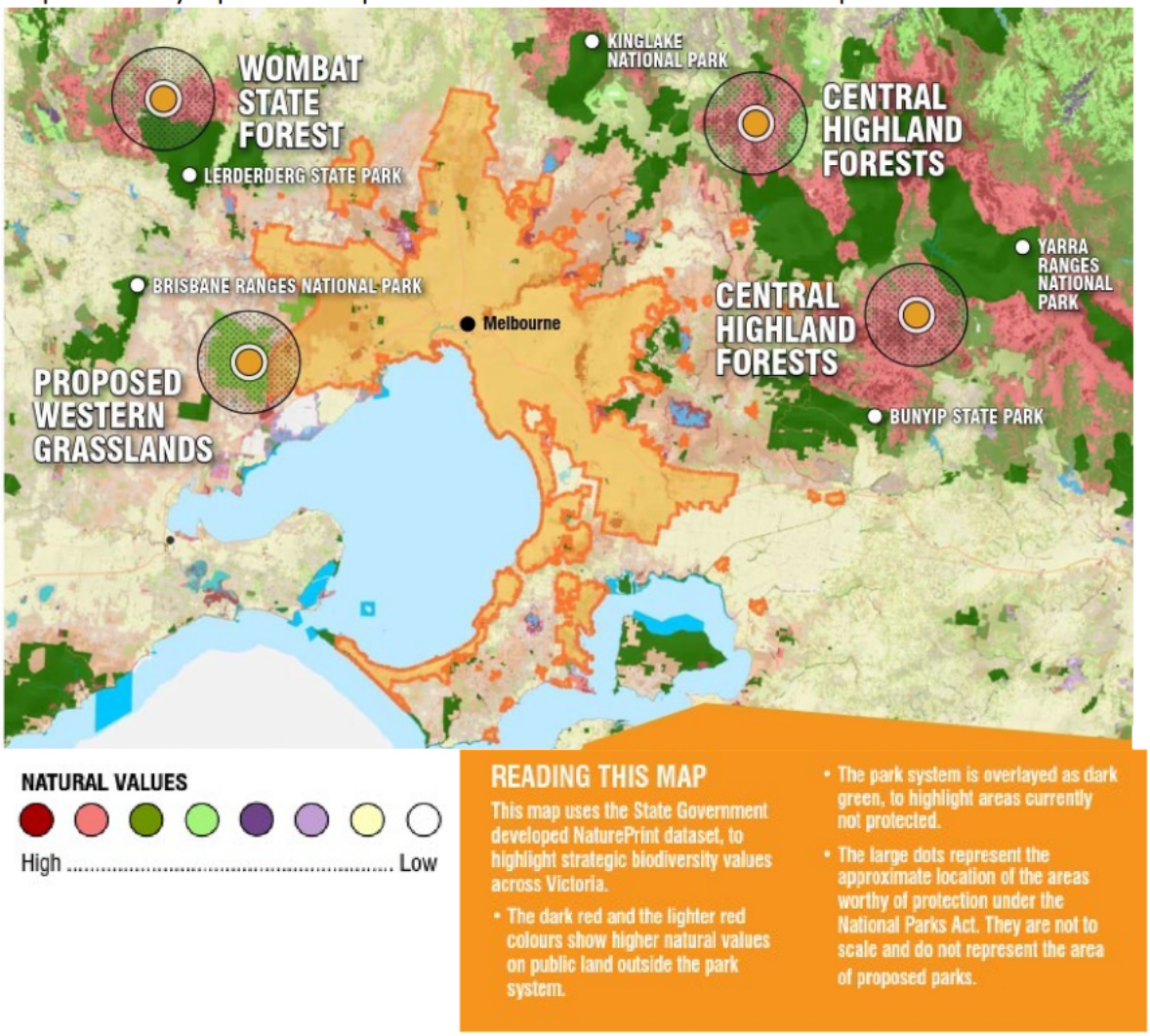
There are currently some historic opportunities for nature reservation in Victoria that will help towards filling some of the gaps in the reserve system and which will also encourage nature based tourism close to Melbourne and other regional towns. These proposals have high public support and are waiting for government to gather the political will to take action.

These are:

- new national parks and reserves in the high conservation value forests of the central west including the Wombat, Wellsford, Mount Cole and Pyrenees Range forests
- the Great Forest National Park to protect the magnificent forests of the central highlands and Melbourne's water catchments
- the Western Grassland Reserve and the Grassy Eucalypt Woodland Reserve to protect highly threatened native grasslands on the Victorian Volcanic Plain

[27] https://vnpa.org.au/national-parks-by-premier-op-ed/

Map 2: Key potential protected areas in Melbourne peri urban area.




### 7.2.1 New national parks in Victoria's central west

The Victorian government has belatedly and partially accepted recommendations by the Victorian Environment Assessment Council for the creation of new parks and reserves in Victoria's central west.

The Victorian Environmental Assessment Council's final recommendations for public land use in the Central West Investigation area, include an increase of 58,115 hectares in protected areas as national park, conservation park, nature reserve, bushland reserve and heritage river – including the Wombat Forest (near Daylesford), Wellsford Forest (near Bendigo), Pyrenees Ranges Forest (near Avoca), and Mount Cole Forest (near Beaufort) as well as many smaller forest areas. An additional 19,728 hectares of regional parks are proposed close to townships and to be managed primarily for recreation which will allow for almost all forms of recreation, including dog walking, fossicking and prospecting.

The proposed new national parks and reserves in the central west will protect (from damaging activities such as mining and logging) important habitat types currently underrepresented in the reserve system, and will help deliver key elements of Victoria's biodiversity strategy. Victoria's forests of the central west have incredible natural values. Their forests harbour hundreds of threatened species such as the Powerful Owl, Brushtailed Phascogale, Greater Glider, Swift Parrot and many rare plants.

Notably, the Wombat Forest near Daylesford is a vital refuge for a regionally significant population of the Greater Glider. A new national park here would secure long-term protection for this iconic species that is in decline across much of the state. (See a new report released by the Victorian National Parks Association and local group Wombat Forestcare Wombat Forest, A greater refuge for Gliders). This is now increasingly important as last summer's large-scale wildfires burnt through 32% (21% at high severity) of modelled Greater Glider habitat in Victoria.

The new parks will also protect eleven significant headwaters of important rivers including the Moorabool, Werribee, Lerderderg, Maribyrnong and Wimmera rivers – which provide water supply for large areas of western and northern Victoria.

In the past few months exploration works for gold and other minerals involving large drilling rigs has commenced in the proposed Wombat-Lerderderg National Park, in the headwaters of the Heritage Listed Lerderderg River. Bushwalkers, conservationists and native plant enthusiasts are also concerned that intensified logging plans have been released for key areas around the Beeripmo Walk, a popular overnight hiking trail in the Mount Cole forest within the proposed national park for this area. Active logging happening now on the park boundary is risking the future of the threatened rare endemic Mount Cole Grevillea which has already suffered a 75% decline, largely from logging.

It has been almost a decade since the last major additions to our national parks and reserves system in Victoria. Now is the time to act – new national parks in our state's central west will be a positive outcome for people and nature during a year Victoria needs it most.

The central west forests are within the Central Victoria Uplands bioregion which only has approximately 10% of its Ecological Vegetation Classes (units for assessing ecosystem representation) targets met. 43 of the 107 important EVC's identified in the central west investigation area will have significantly improved representation in the Comprehensive Adequate Reserves system (CAR) system if VEAC's proposals are implemented. This will add up to 16,000 hectares of particular EVC's and will either meet or significantly add to ecosystem representation targets.

In June 2021 the Andrews Government announced it accepts in principle, or accepts in part, 76 of 77 recommendations made in VEAC'S Central West Investigation Final Report.

They are committing to creating the new Wombat-Lerderderg National Park, Mount Buangor National Park and Pyrenees National Park, along with other parks and reserves, including a new regional park at Wellsford near Bendigo. The decision has come with strings attached. Tugging a little harder at those strings reveals a convoluted, regressive and mixed set of outcomes, not in line with many of VEAC's expert recommendations.

An especially disturbing departure from the final recommendations is the gross twisting of VEAC's implementation timeline. We are alarmed to see that the proposed parks will be logged before being established at some mercurial yet-to-be-specified date. This was not contemplated by VEAC, nor ever discussed during any of the consultation phases.

Continued extensive logging of the forests at Mount Cole (the proposed Mount Buangor National Park) and Pyrenees (the proposed Pyrenees National Park) is deeply worrying. There will be some targeted logging in the Wombat Forest, but this is to be fairly restricted. There is also yet to be legislation or even a timeline announced to formally create the parks.

The plan to log many of these critical wildlife refuges before turning them into national parks (as late as 2030) doesn't make any sense. Especially when there is decades of wood supply existing outside of the proposed park areas. More detail here. https://vnpa.org.au/new-national-parks-for-victoria/

### 7.2.2 The Great Forest National Park

A proposal for a Great Forest National Park and network of conservation reserves in Victoria's Yarra Ranges and surrounding Central Highland forests has been developed by VNPA and other conservation groups. See more here: Great Forest National Park summary report. It would see 353,213 hectares of protected forests added to the existing 183,542 hectares of protected areas incorporating over ten smaller parks into a single, contiguous reserve system around towns such as Healesville, Kinglake, Toolangi, Warburton, Marysville and Wood's Point.

Much of the existing reserve system directly adjoins state forest that is being logged. Most of the logging is concentrated in the tall wet Ash forests of the region.

Victoria's Alpine and Mountain Ash forests have been disproportionately targeted by logging, the impacts of which are subsequently compounded by fire. Logging and fire has taken a catastrophic toll on older growth Ash forests, and now less than 1.16% of the 161,200 ha Mountain Ash landscape is pre 1900 old growth. Victoria's Mountain Ash ecosystem has been internationally listed as critically endangered on the IUCN Red List of Ecosystems.

After a devastating fire season, there is an urgent need to protect our remaining unburnt forests from the further serious threat of commercial logging. Aside from the obvious direct impacts on plants and wildlife, logging also changes the structure and composition of forests and increases fire risk (see further discussion on logging and

fire risk in section 6 of our submission to the parliamentary inquiry into ecosystem decline https://vnpa.org.au/publications/submission-parliamentary-inquiry-into-ecosystemdecline-in-victoria/ ). Logging that occurs near or adjacent to existing protected areas also creates the problem of 'edge effects', where the creation of edge along the protected area boundary alters the microclimate of the protected forest, along with promoting the spread of weeds and invasive animals.

The forests of Victoria's Central Highlands provide important habitat for a range of threatened species that rely on intact forests, large old trees and minimal disturbance. Some of these species include Leadbeater's Possum (Victoria's endemic and critically endangered faunal emblem), Sooty Owl, Powerful Owl, Masked Owl, Mountain Brushtail Possum, Greater Glider, Sugar Glider, Baw Baw Frog and Barred Galaxias. Many other iconic species also occur in the proposed area such as the endangered Spottailed Quoll (the largest carnivorous marsupial on the Australian mainland), the critically endangered Helmeted Honeyeater and the Superb Lyrebird.

BirdLife Australia estimates that over 40% of the Superb Lyrebird's range was impacted by the recent large landscape scale bushfires. The Superb Lyrebird is one of Australia's most treasured animals and the Great Forest National Park will help protect its habitat. We must not wait for Victoria's lyrebirds to become threatened with extinction before acting to protect it from logging, fire, cats and foxes.

A new Great Forest National Park and network of conservation reserves could be created following an investigation by the Victorian Environmental Assessment Council informed by extensive consultation with the broader Victorian community, forest users and Traditional Owners. In addition to nature conservation and helping protect Victoria's iconic Leadbeater's Possum, the park network would host a range of activities such as bike riding, bushwalking, bird watching, four wheel driving, camping and eco-tourism.

The park is expected to be to Melbourne what the Blue Mountains are to Sydney and would support regional tourism in local communities and generate new, sustainable, long-term employment. The Great Forest National Park will also increase the security of Melbourne's domestic water supply catchments.

Globally renowned naturalists like Sir David Attenborough and Dr Jane Goodall along with 30 international, national, local environment, recreation and scientific groups, are supporting the creation of the Great Forest National Park. There is also widespread support among the Victorian community.

> "The maintenance of an intact ecological system is the only way to ensure the continued existence of biodiversity, safeguard water supplies and provide spiritual nourishment for ourselves and future generations. It is for these reasons, and for the survival of the critically endangered Leadbeater's Possum,

that I support the creation of the Great Forest National Park for Victoria." Sir David Attenborough

Victoria's proposed Great Forest National Park could draw almost 380,000 extra visitors a year to the Central Highlands, add $71 million annually to the local economy and generate 750 jobs with a little private investment, according an analysis by the Nous Group. https://www.greatforestnationalpark.com.au/park-economy.html

A commitment to create the Great Forest National Park in the Yarra Ranges and surrounds is an investment in the future. It is an opportunity for Victoria's Government to invest in the state's natural heritage and show the world what first class parks management looks like.

### 7.2.3 The Western Grassland Reserve and the Grassy Eucalypt Woodland Reserve

The 'Natural Temperate Grasslands of the Victorian Volcanic Plain' and the 'Grassy Woodlands of the Victorian Volcanic Plain' are both listed under national environmental laws as 'critically endangered'. Once covering almost a third of Victoria, now less than 2–5% of these rare grasslands remain with less than 1% in high quality condition. What remains is home to dozens of threatened fauna and flora species listed under national environmental laws including the Growling Grass Frog, Golden Sun Moth, Striped Legless Lizard, Matted Flax-lily and several migratory bird species.

The decade-old Melbourne Strategic Assessment program had intended to streamline urban development approvals and ensure the survival of the remaining critically endangered grasslands and grassy woodlands threatened by urban sprawl in Melbourne's west and north. To offset losses from urban development, in 2010 the Victorian government committed to purchase and establish by 2020, a 15,000 hectare Western Grassland Reserve (between Werribee and Melton) and a 1,200 hectare Grassy Eucalypt Woodland Reserve (near Donnybrook), along with a range of other measures.

10 years later DELWP has still not met its commitments to establish the reserves and has purchased only 10 % of just one reserve to date, while property developers have continued apace. It is time for the Victorian government to act on this commitment create the highly important reserves as promised. For further discussion about Victoria's threatened grasslands see section 13 of our submission to the parliamentary inquiry into ecosystem decline https://vnpa.org.au/publications/submission-parliamentary-inquiryinto-ecosystem-decline-in-victoria/.

The VNPA and a range of community groups are concerned that this program is failing to deliver protection of our most endangered ecosystems. Originally flagged as costing almost $1 billion over 20-40 years and saving the development industry at least $500 million over the life of programs, to date it has failed to deliver for the environmental

protection as promised. The total cost of the program is now likely to be at least 80% higher.

The MSA program allows the clearing of around 4,000 to 5,000 hectares of grasslands and other habitat (some high-quality) within the urban growth boundary, on condition of the establishment of a series of large conservation reserves and other measures to offset the loss, mostly outside the urban area, paid for through levies on urban development.

Concerns by community members and ecologists around the "like for like" quality of offset vegetation within the urban growth boundary with poor quality vegetation within the WGR are justified, as DELWP has only been able to undertake 'over the fence' survey work of parts of the proposed WGR. This issue was also acknowledged in the Auditor General report which also noted that DEWLP can't demonstrate that the quality of land purchased matches that of land cleared.
A recent Victorian Auditor General's Office (VAGO) audit released in mid-June 2020 titled: Protecting critically endangered grasslands, focused on the implementation of the MSA program. We agree with the VAGO that:

- DELWP has not met its commitments to deliver the Western Grassland Reserve (WGR) and Grassy Eucalypt Woodland reserve by 2020.
- The delays in acquiring these reserves also mean they will likely require a significantly greater investment to restore and retain these ecological values than if they had been purchased within the intended 10-year timeframe.
- At least 22% of the existing western grassland reserve is not considered grassland and large areas are considered low quality or 'nutrient enriched'.
- None of the proposed Grassy Eucalypt Woodland has been purchased (or seeming even planned).
- DELWP cannot demonstrate that interim management to date, to preserve the Ecological value of the WGR, has been and will be cost effective (or ecologically effective).
- The MSA will need to new governance arrangements to ensure they provide sufficient oversight, stakeholder involvement and transparency to support program delivery, and that Independent monitoring has not occurred in line with the MSA program. [28]

We acknowledge the Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2019 coming into force on 1 July 2021, will potentially improve some of the over sight and revenue components of the scheme. The bill has some useful improvements, but does not deal with the fundamental flaws and failed delivery of grassland reserves and other measures. The situation remains that it will likely take some years for the

[28] https://www.audit.vic.gov.au/report/protecting-critically-endangered-grasslands

impact of the Act to flow through, and as yet there is no real change in the pace of delivery of protection, or extent and effectiveness of management of grasslands or grassy woodlands or other features of the MSA. Likewise, with the impact of COVID on the economy, urban growth rates are likely to slow significantly, and expected increases in clearing fees are unlikely to provide the revenue to deliver this program.

This was strongly debated and disputed by many conservation groups and ecologists at the time of establishing the MSA in 2010. There was and remains concern that the large conservation reserves outside the urban areas did not contain the same natural values as what was being lost within – that they were not an equal 'replacement' and that it was far better to keep some of the smaller areas of high-quality grassland and other habitat within the urban areas.

Options of protecting smaller areas of high quality grassland, which have not been cleared, within the existing UGB, should be reconsidered for protection. We note to date that there have only been around 654 ha out of 6000 ha cleared (around 10%) of area within the urban growth boundary.

In the case of grasslands, small can be beautiful. Bias towards larger areas for reservation continues, even though there is considerable evidence that smaller grasslands are quite viable.[29] The undervaluing of smaller areas of remnant grassland leads inevitably to greater push for offsetting of these remnants (as per the Melbourne Strategic Assessment). Rather than destroying all these remnant areas of critically endangered vegetation communities and important populations of threatened species, good design and management can integrate them into the network of smaller conservation reserves within the Urban Growth Boundary that will be complemented by the major western grassland reserves. This would be an effective approach to assist in:

- conserving species and important genetic diversity within species
- conserving representative areas of different grassland sub-communities
- conserving endangered woodland and ephemeral wetland communities that are not strongly represented within any grassland reserves
- conserving smaller grassland reserves as significant, sustainable and valued community assets

In 2013 the VNPA worked with the Australian Institute of Landscape Architects (AILA) and landscape architect an editor Adrian Marshall to produce the guide "Start with the grasslands: Design guidelines to support native grasslands in urban areas". The guide is the culmination of more than two years of research and is a resource for anyone interested in conserving and managing grasslands but particularly useful for those

[29] McCarthy, M. A., Thompson, C. J., & Williams, N. S. G. (2006). Logic for designing nature reserves for multiple species. American Naturalist, 167(5), 717–727.and Williams, N.S.G. (2005a). The ecology of fragmented native grasslands in urban and rural landscapes. PhD thesis, University of Melbourne.

planning new urban areas, including state and local government planners, planning consultants and landscape architects. See: Start with the grasslands

Start with the Grasslands provides guidance for the design and management of native grasslands (both large and small) within the Victorian urban context to maximise environmental and social outcomes. This guide is applicable to large-scale development of peri-urban greenfield sites, urban infill, the reconsideration of existing grasslands within established communities, and the reworking of a grassland's relationship with the surrounding urban fabric to accommodate change in adjacent land use.

This document provides:

- An overview of the benefits of grasslands to the communities with which they co-exist.
- An understanding of the vulnerability of these ecosystems in the context of planned development.
- An analysis of a number of existing grasslands in Melbourne's north and west and discussion of the lessons learnt from these examples.
- Guidelines for development, from overall planning advice through to the specifics of fence design and strategies to engage communities.
- Checklists to support the guidelines' application. References to further information

Start with the Grasslands is predicated on the recognition that grasslands need more than legislation or ecological knowledge to prosper – they need collaborations between professionals at all levels, good design, and the support of the communities with which they interact. It is possible to design and manage smaller areas of grassland within the urban areas and a number of the case studies in Start with the Grasslands highlight that these areas can become important community assets.

### Westernport woodlands

In addition to the above, there are also significant natural values in smaller plots around Melbourne. In our 2021 report Western Port Woodlands – wildlife corridor or sand pit?, highlighted the removal of native vegetation along the vital Western port woodlands wildlife corridor for sand, while vast amounts of sand are under already cleared land with no biodiversity or recreational value. The report also highlighted inconsistencies sand gaps in the relevant planning control an overlays e.g ESOs. The report can be read here- https://vnpa.org.au/publications/western-port-woodlands-wildlife-corridor-or-sand-pit/

The continued issuing of Work Authorises (WA) on native vegetation is continuing including on the Gippsland Plain Bioregion on the most cleared bioregions in the state.

Much of this is driven by project which appear to undercut current planning controls or fast track certain types of development. The Strategic Extractive Resource Areas Pilot Project now in place in Wyndham and South Gippsland lack due consideration of the impact of the extractive resource industry on the unique and threatened biodiversity values on the sites under it.

Both of the proposed mine sites are within highly cleared bioregions of the Victorian Volcanic Plains and Gippsland Plains and if implemented as planned in the draft would see the clearing of substantial amounts of remnant native vegetation. This clearing will significantly exacerbate impacts on remnant native vegetation and essential habitat for threatened species. Although the process passingly acknowledged the loss of native vegetation, it was through the lens of increased costs due to rarity of adequate native vegetation offsets available stemming from the low amount of those vegetation communities in existence.

The SERA pilot program highlights the lack of foresight nature conservation is given in planning and why Victoria's biodiversity is in decline. The VNPA's response to the Extractive Resource Areas Pilot Project is here- https://vnpa.org.au/publications/submission-strategic-extractive-resource-areas-pilot-project/

## 7.3 Recommendations

The VNPA recommends that the Committee endorse our recommendations (updated) to the Environment and Planning Committee of the Legislative Assembly *Inquiry into Environmental Infrastructure for Growing Populations*[30] and note the strongly complementary role that these recommendations if implemented would play in meeting the environmental sustainability, social and economic objectives of Victoria's planning framework:

- That the committee investigate the delays in the delivery of the promised Wallan and Merri Creek parklands.
- That a clear publicly available implementation plan, with timelines be produced for the delivery of the Suburban Parks package promise at the last election.
- That the committee revisit and refresh the recommendations of the 2010 Victorian Environmental Assessment Council Metropolitan Melbourne Investigation
- As part of the Plan Melbourne implementation plan develop a specific Urban Nature Space Strategy to recognise, enhance and integrate the role of natural areas within the urban context.
- That an Urban Nature Space Strategy also consider the role and opportunity for enhanced protection and management of natural areas adjacent or within

[30] https://vnpa.org.au/publications/parliamentary-inquiry-into-environmental-infrastructure-for-growing-populations/

a short commute/drive from surrounding metropolitan Melbourne and regional cities such as Bendigo and Ballarat.

- Revisit and refresh the recommendations of the 2010 VEAC Metropolitan Melbourne Investigation.
- Complete a metropolitan-wide open space strategy, with a clear time line within the Plan Melbourne implementation plan.
- Introduce the legislation necessary to create the new parks and reserves in Victoria's central west following the governments partial acceptance of VEACs recommendations.
- initiate a Victorian Assessment Council Investigation of Victoria's central highlands to investigate the best way to manage public land use in the region to inform the creation of a Great Forest National Park
- immediately deliver on promises to protect endangered temperate grasslands and grassy woodlands and establish the Western Grassland Reserve and the Grassy Eucalypt Woodland Reserve, prioritising the high conservation areas first consider improved planning guidelines and specialist management for the protection of smaller grassland reserves with urban growth areas.

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[i] http://www.veac.vic.gov.au/documents/SAPL%20Discussion%20Paper_online_o.pdf
[ii] http://www.veac.vic.gov.au/