

Urgent need for action: the Beeliar Group speaks out^a

The Beeliar Group takes a strong stand against the destruction of precious West Australian wetlands and woodlands (the Beeliar Regional Park), and calls for an immediate halt to work on Roe 8, a major highway development that will traverse them. In so doing, we propose an alternative long-term agenda. Our rationale is set out below.

1. Valuable ecological communities, fauna and flora are subordinated to short-term political gain and vested interests.

Roe 8 fragments one of the best remaining patches of Banksia woodland left in the Swan coastal region, which is part of an internationally recognised biodiversity hotspot. In September 2016, the Banksia Woodlands of the Swan Coastal Plain was listed as an endangered ecological community in accordance with the Commonwealth's Environment Protection and Biodiversity Conservation Act (1999). The Commonwealth document, *Banksia Woodlands of the Swan Coastal Plain: a nationally protected ecological community*, drew attention to the importance of the area and the dangers of fragmentation:

“[Banksia woodland] was once common and formed an almost continuous band of large bushland patches around Perth and other near coastal areas, but has been lost by almost 60% overall, with most remaining patches small in size. This fragmentation is leading to the decline of many plants, animals and ecosystem functions. Therefore, it is very important to protect, manage and restore the best surviving remnants for future generations.¹

There are nine distinct ecological communities in the Beeliar Regional Park, and one of them, *Banksia attenuata* woodland, is not only listed as an endangered community under the Commonwealth's Environment Protection and Biodiversity Conservation Act but also recognised by the Western Australian Department of Parks and Wildlife and endorsed by the Minister for Environment as threatened habitat.^b The Park's endangered birds include Carnaby's Black Cockatoo and the Forest Red-tailed Cockatoo; its animals, the Southern Brown Bandicoot; and its flora, the King Spider Orchid. It is also home to lizards, frogs,

^a This is a first revision of Beeliar Group Statement 1: Section 4 has been revised in the light of new information.

^b Many submissions to the Environmental Protection Authority (EPA) drew attention to the dangers of fragmentation. The EPA admitted it could not provide a suitable offset to compensate for the problem, but nevertheless concluded that the Main Road's proposal met its objectives. This was a key issue in the successful Supreme Court challenge (December 2015); only to be later overturned in the Court of Appeal on the basis that the EPA was not bound to follow its own policies (July 2016).

tortoises and turtles; numerous native birds and many protected migratory wading birds. Main Roads WA claims that Roe 8 affects only 0.49% of the “entire Beeliar wetlands”; it ignores the fact that wetlands must be contiguous and substantial if their fauna and flora are to survive, and takes no account of the damage that diesel particulates are likely to cause as they build up over time. It is staggering that this ecological destruction can occur against the weight of scientific knowledge.

In the early 1970s Environmental Impact Assessment (EIA) became the principal means for protecting the environment. EIA requires the assessment of the likely environmental impacts of a proposal and identifies options to minimise environmental damage. Its main purpose is to inform Government decision-makers of the likely impacts of a proposal before a decision is made. EIA responds to the problem of scientific uncertainty by requiring the monitoring of the environment once an initiative has been approved and implemented. Further, it has been, and is still, up to defenders of the environment to make the case against a proposed development.

Since the Intergovernmental Agreement on the Environment (1992) the precautionary principle has been part of Australia’s environmental policy. It has also been added to environmental legislation; most recently to the West Australian Biodiversity Conservation Act (2016). The precautionary principle states:

“Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation”²

Taken together, EIA and the precautionary principle emphasise developers’ obligations to assess and release publicly the benefits of their proposals, demonstrate the presence or absence of significant threats to endangered species or ecological communities, and establish that all reasonable alternatives to their proposed development have been considered. However, and as evidenced by the approval of Roe 8 through the heart of Beeliar Regional Park, this does not occur when strong vested and political interests are at stake.

We call for a clear governmental commitment to comply with the precautionary principle as a central feature of environmental legislation, thus favouring protection of the environment whenever there is doubt over the damage associated with a proposed development.

2. There is a complete lack of respect for Aboriginal heritage.

The Beeliar Regional Park contains numerous sites of spiritual significance for Aboriginal people, with Waugal, Firestick and Children Spirit Dreaming stories an integral part of its history. The wetlands and woodlands are also of historical significance for Noongar as important camping areas and sources of food. Paths leading to and away from Bibra and North Lakes formed the main transport route between the Swan and Murray Rivers. In February 2013, the Aboriginal Cultural Materials Committee (ACMA), established under the State’s

Aboriginal Heritage Act 1972, recommended that an application to disturb a registered site to make way for the Roe 8 extension be rejected because of the spiritual significance of the area. In mid 2015, and for reasons that are unclear, ACMA reconsidered the application and recommended it be approved.^c Corina Abraham, custodian from Whadjuk Noongar country, lodged a challenge in the Supreme Court in August 2016, arguing that the West Australian Government failed to follow procedural fairness in permitting the disturbance of a highly significant mythological site in the Beeliar Regional Park. She was represented by barrister Greg McIntyre, who stood for Eddie Mabo in the historic 1992 native title case. The Court dismissed her appeal. Corina Abraham was reported at the time as saying:

"It just shows me that our State Government of Western Australia, Barnett's Government, has and shows clearly a lack of respect in regards to the cultural significance we have as Aboriginal people to our country"³

These developments are a matter of public shame for Western Australia, where lack of respect for Aboriginal heritage has a long history, as exemplified by developments at Noonkanbah, Ningaloo and James Price Point, among many others.^d

We call for a strengthening of the West Australian Aboriginal Heritage Act 1972 to ensure that the avenues for consultation with Aboriginal people are endorsed and strengthened. Legislation is needed to make protection of sites with Aboriginal spiritual and mythological significance the default position, rarely if ever overruled.^e

3. The law no longer protects the environment.

The chain of events leading to the approval of Roe 8 indicates a serious weakening of the protective role of the EPA. Its failure to follow its own policies relevant to Roe 8 was successfully challenged in the Supreme Court, but later overturned in the Court of Appeal in

^c In 2015, two sites around North Lake and Bibra Lake were removed from the WA Register of Aboriginal Sites on the basis that they no longer fitted the definition of a sacred site. The reasoning behind the deregistration was never made clear, and the move created widespread concern among Aboriginal and non-Aboriginal people.

^d In a recent development (25/01/17), the South West Aboriginal Land and Sea Council (SWALSC), a native title service provider for the Noongar people, acting on behalf of the working party of the Whadjuk Native Title claim group, has called for an immediate halt to land clearing works associated with the Roe 8 project. It has made a submission to the Commonwealth Minister for the Environment under s.10 of the Aboriginal and Torres Strait Islander Heritage Protection Act seeking his intervention to protect Noongar heritage. He is yet to reach his decision.

^e We acknowledge our lack of cultural authority to speak on these matters, and respectfully pay tribute to the work of Corina Abraham and the other Noongar leaders who work so hard to defend their heritage at Beeliar Regional Park.

July 2016 on the basis that the EPA was not bound to follow its own policies. A recent legal development is also troubling. In December, 2016, the High Court rejected an appeal against the July 2016 decision of the Court of Appeal, thus effectively affirming that the EPA was not bound by its own policies. These two rulings indicate there is little or no opportunity for citizens to hold governments to account for decisions or actions that damage or destroy the environment. Where it was previously thought that binding environmental conditions were exactly that—legally binding—this is clearly not so now. As bulldozers clear large swathes of Beeliar Regional Park, so the impotence of the EPA in enforcing compliance with its own environmental conditions becomes the more apparent. In an Open Letter to Albert Jacob, WA Minister for the Environment, Piers Versteegen, Director of the Conservation Council of Western Australia, describes ‘a total loss of faith by the community in the EPA’ and continues:

“Today, clearing again took place in an area where wildlife trapping had not been undertaken or completed according to the requirements of the EPA-approved Fauna Management Plan (FMP). Bandicoots have been seen fleeing from bulldozers and have been photographed being removed from sites on the same day clearing has occurred, in blatant contravention of the FMP requirement for two days of trapping without a capture before any clearing is undertaken”⁴

The framework of policies that protect the wetlands has also been weakened. In 2015, the WA Minister for the Environment revoked two key wetland conservation measures: The Swan Coastal Plain Lakes Environmental Protection Policy (EPP) and the South West Agricultural Zone Wetlands EPP. He did so on the basis that the clearing regulations and environmental harm provisions of the Environmental Protection Act covered all of the issues affecting wetlands and that the EPPs were therefore redundant. Against this, conservationists pointed out that the EPPs served to pre-empt developments affecting wetlands and to alert developers to their inherent value.^f The fate befalling the Beeliar wetlands clearly demonstrates this point.

We call for a radical overhaul of WA’s environmental law; a reappraisal and strengthening of the role of the EPA; and the establishment of a specialised environmental court or tribunal, as with all other Australian States except Victoria, with the authority and expertise to undertake merits-based review of contested decisions.

4. The developments associated with Roe 8 are characterised by a complete lack of government accountability and transparency

The WA Government has consistently refused to release details of its \$1.9 billion Perth Freight Link business case, thus preventing any public review of whether the expenditure of such large

^f In Carter's Wetland in Bayswater, the government has approved a major housing development only metres from a wetland and bird sanctuary overruling Council insistence on a buffer zone, with the result that flora were destroyed and wildlife endangered.

sums of money can be justified in cost-benefit terms. This lack of transparency and accountability is mirrored at the federal level. Despite the national Administrative Appeals Tribunal (AAT) ruling in 2015 that the details of the Perth Freight Link (PFL) business case be made public, the Department of Infrastructure and Regional Development did not release the documents, citing as its reasons commercial confidence and the involvement of the WA government. In 2016, the AAT again ordered the Department to release the documents, but the Department appealed to the Federal Court, which has now sent the matter back to the AAT. Alannah MacTiernan, then federal MP for the seat of Perth, made the original AAT appeal and has since launched a parallel request to the WA Information Commissioner for the release of documents. In January 2017, the Information Commissioner rejected all Main Roads WA's grounds for keeping PFL documents secret, found that it was in the public interest for all documents to be released, allowing only a limited time for appeal.

Further illustrating these major failings in transparency and accountability, the WA Government's environmental management plans for Roe 8 have not been open to any feedback or peer review, and the process of negotiating the offsets required by the project remains unclear. Hence there has been no independent assessment of whether the implementation plans meet the criteria the Government has stipulated for the offsets (themselves a highly problematic notion).

These developments, which implicate both state and federal governments, represent a serious weakening of the democratic fabric of our society.

We call for bipartisan commitment in WA to a genuine 'culture of accountability' of the executive government to parliament and the people, accompanied by a strengthening of the role of parliamentary committees in bringing important information to parliamentary and public notice.

5. The WA Government has failed to follow best planning advice.

Democracy works most effectively when it explores how different strategies might affect the public good, and promotes the most promising option. A plan for servicing the expected growth in container shipping in and out of Fremantle was developed between 2001 and 2007 and received widespread support from almost all stakeholders, especially the building of a new port at Kwinana to enable modern interchange of containers between road and rail using the recently completed Latitude 32 facility. Roe 8 follows an obsolete 1955 plan and ignores the 2007 plan. The Government has failed to explain how the limited capacity Fremantle Harbour will manage expected longer-term growth in both trucks and shipping. Further, in announcing the still largely unplanned tunnel under Palmyra and Bicton residential areas (part of a future Roe 9), the Government appears to have given no consideration to the 30 per cent of trucks that will carry dangerous or noxious goods and that when trucks queue inside and outside the tunnel, as they inevitably will during the life of Roe 9, their emissions will have serious implications for the health of surrounding communities.

We call on the present WA Government to immediately cease work on Roe 8 until after the March 2017 election, and call for the succeeding Government to initiate an independent, expert and principled review of plans for the Perth Freight Link, the new Kwinana port and the future needs they are intended to serve.

We call on all political parties to make a commitment to holistic policy-making and governance whereby economic, social and environmental considerations combine in a sustainable, responsive unity.

As a result of the clearing now underway, century-old trees fall in crumpled heaps on the ground, Southern Brown Bandicoots lie dead on the road, and cockatoos screech, searching for lost homes. This devastation has occurred in the immediate pre-election period, when—if the Government really needed to demonstrate its determination to proceed—there were other less destructive options available.

Short-term political considerations have ridden rough-shod over the environment, illustrating the situation in which governments are ‘increasingly able and willing to ignore evidence and push agendas despite, rather than because of, scientific advice and environmental policies’⁵

In taking a strong and principled position against this situation, the Beeliar Group is committed to developing scientific evidence and carefully reasoned argument in the interests of environmental responsibility and a better future for all.

References

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