

TRANSCRIPT

LEGISLATIVE COUNCIL ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into Ecosystem Decline in Victoria

Melbourne—Thursday, 26 August 2021

MEMBERS

Ms Sonja Terpstra—Chair

Mr Clifford Hayes—Deputy Chair

Dr Matthew Bach

Ms Melina Bath

Dr Catherine Cumming

Mr Stuart Grimley

Mr Andy Meddick

Mr Cesar Melhem

Dr Samantha Ratnam

Ms Nina Taylor

PARTICIPATING MEMBERS

Ms Georgie Crozier

Mr David Davis

Dr Tien Kieu

Mrs Beverley McArthur

Mr Tim Quilty

WITNESS (*via videoconference*)

Mr Gerard Drew, Executive Committee Member, South Gippsland Conservation Society Inc.

The CHAIR: I declare open the Legislative Council Environment and Planning Committee's public hearing for the Inquiry into Ecosystem Decline in Victoria. Please ensure that mobile phones have been switched to silent and that background noise is minimised.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands which we are gathered on today, and pay my respects to their ancestors, elders and family. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings. I would also like to welcome any members of the public who may be watching these proceedings via the live broadcast today as well.

At this point I will take the opportunity to introduce committee members to you. I am Sonja Terpstra. I am the Chair of the Environment and Planning Committee. Also joining us today via Zoom are Mr Clifford Hayes, who is the Deputy Chair; Ms Nina Taylor; Dr Samantha Ratnam; Ms Melina Bath; Dr Matthew Bach; and Mrs Bev McArthur.

All evidence that is taken today is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same things, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded, and you will be provided with a proof version of the transcript following the hearing. Transcripts will ultimately be made public and posted on the committee's website.

If I could just get you, for the Hansard record, to please state your name and any organisation you are appearing on behalf of.

Mr DREW: My name is Gerard Drew, and I am representing the South Gippsland Conservation Society.

The CHAIR: Great. Thanks very much. With that, I will invite you to make your opening statement. If you can keep it to approximately 5 minutes, that will then allow plenty of time for committee members to ask questions of you. With that, I will hand over to you. Thanks, Gerard.

Mr DREW: Thanks. I have got a bit of a whirlwind presentation, so I am going to whip through it quite quickly to allow for lots of questions. I will share my screen and get on with it.

Visual presentation.

Mr DREW: Okay. Ecosystem decline: despite the frameworks in place, lots of laws—the EPBC and FFG Acts—environmental assessments, native vegetation removal regulations and various deliberate policies over time, habitat clearly continues to decline. It is well documented. The question is: why? To explore this I thought it would be beneficial to go through a contemporary example that we are contending with right now in our area. For some context, this is broadly our patch. It is a combination of Bass Coast shire and South Gippsland shire, and you can see that from precolonisation to now the natural extent of vegetation has been pretty decimated, I would say. Apart from the jewel of the south, which is Wilsons Prom, there are really only a few islands, enclaves, of habitat in the region. One of them in particular is the Western Port woodlands, which I am going to focus on, which is identified here, and it is just on the eastern shores of Western Port Bay near a town called Grantville. Here is just a little sample of what you might see there. It is very lovely. It has got some serious threatened species chops. I will not go through all of this, but there is a long list of flora, fauna and just under-represented EVCs generally in the area.

Here is an overview of the region a bit closer up. You can see that it is pretty compromised already by fragmentation from farmland, and more recently you can see the scars of sand mining in the region. Now,

instead of identifying this region as a focus for rebuilding threatened ecosystems—Trust for Nature have identified this as a focal area for restoring Gippsland Plains habitat, which is grossly under-represented in the system of reserves in the state—it has been targeted for extractive industry. You can see in yellow here are already issued work authorities, and in red is the broader interest area for exploration and further exploitation of this area for sand mining. Currently this is being targeted by the strategic extractive resource areas to be rezoned so that there is no public input or overview or appeal or notification at all for applications before they are approved. It is a closed loop behind the curtain of government process. This is what will replace that threatened ecosystem—extensive sand mines.

So getting back to the question of why the habitat is declining, I mean, very generally the theme is that the environment is always the lowest priority in decision-making, and the current legal structures always provide loopholes and present conflicts of interest. In this area most of it is private land tenure, which means that the FFG does not really come into effect on there unless the government makes a conservation order or if it designates critical habitat. The EPBC requires developers themselves to make referrals, which is a conflict of interest, and the observation records on private land are not great because access is poor, and improvement would be a conflict of interest depending on the attitude by title holders. Also the threats of, in this example, sand mining are cumulative from each incremental quarry, but sites are assessed one by one, which provides convenient diffusion of the threat by each applicant. There is no mechanism to assess cumulative threats. They are generally subject to the native vegetation removal regulations; however, the industry is exempt in the planning scheme, so this is administered by ERR, which is really an industry booster, despite the name being a regulator—so this in effect is a conflict of interest. With this the process is a closed loop of decision-making within the Victorian government, soon to be unseen by the public, where long-term environmental protection may be in conflict with other prerogatives of the government, generalised economic development—which is a constant theme—or even just short-term imperatives like the Big Build, for example. But once these ecosystems are gone, they do not recover. So it just presents a choice to parliamentarians or to the bureaucracy that implements it whereby the administrative culture and priorities become clearly evident, and the evidence is that the environment comes last. That is very general.

A specific example: because most of this area comes under native vegetation removal regulations or offsets, I will just give you an example of how this works. Here is a recent application where the current, pre-existing vegetation in these two parcels, which they are subject to, is 81 hectares of vegetation; the proposal, after an offset, will leave 68 hectares of vegetation—after a net gain offset. Clearly it is not a net gain; it is a loss. Now, if this was another sector—finance, for example—if this was an investment fund where you invested \$81 and then they gave you \$68 at the end, you probably would not consider that a net gain. It would be a rip-off. But apparently it is okay for the environment.

The CHAIR: You have got about a minute left, Gerard.

Mr DREW: Yes. So vegetation offsets—I mean, this is just a fraud; it is an Orwellian scheme. Really it is designed to boost the liquidity and reduce the cost of clearing permits for developers. By design the net gains scheme inevitably leads to net loss. Adding to this is just the poor administration of the scheme. Mostly it is local governments that administer it, and they do not have the capacity to be entirely focused on front-end paperwork and just have no interest in long-term compliance.

So a couple of not very specific but just general suggestions for improvements—what can be done: the overarching administrative culture, prioritising the protection of nature—it just must be done; removing the conflict of interest in decision-making; providing adequate funds to actually bring effect to the laws in place—they are not necessarily bad, but they are just not resourced to be effective; and building a culture of compliance—and I think that must come from the top down. You cannot expect the people at the end of the chain to pull the weight on this if a bad example is set. And offsets—that whole scheme needs to be overhauled. It is just criminal from my point of view. ‘Criminal’ is a heavy word, but it is just not effective; it is misleading. Whether it is this scheme or another scheme, the cost of that compliance just has to be borne by the people responsible for the loss and the administration of the scheme, which it is not at the moment. General taxpayers foot the bill for the convenience of developers, who cause all the harm, and that is just wrong. That concludes my run-through, and I am very happy to answer lots of questions.

The CHAIR: Great. Thanks very much for that, Gerard. All right. We will throw to questions from committee members. Mr Hayes, we will start with you first.

Mr HAYES: Thanks very much, Gerard. I am very interested in your presentation, of course. I just wanted to ask you about the laws involved. What sort of legislative or regulatory reform is needed to address this obvious destruction of habitat and all the on-flowing negative effects that come from that? What change could you see being made to the laws that would help?

Mr DREW: I do not think you necessarily have to change the laws to bring effect here. I mean, the FFG could be utilised in this case, because the threatened species in this corridor, for example, could be recognised and a conservation order put on certain sensitive areas of that corridor. You do not have to change the law. It is just not used. It is almost never used, the FFG Act, at the moment, but it could be.

Mr HAYES: I think you were saying also that there was no EES required or done for those projects or for that project. Do you think it would help if there was a requirement for any project to have an EES attached to it or that at least an investigation of the environmental effects should be mandatory?

Mr DREW: Yes, I do. In this particular area I definitely think an EES should be applied. I do not think that the best pathway for anyone would be to apply that on a case-by-case basis for each applicant. I mean, what we have got at the moment is a strategic extractive resource areas policy that has been under development, which is going to look at broad ease-of-access, ease-of-development paths for lots of developers to go and develop their parcel. I think that at that broad level where they are looking at opening a large area to these developments, that cumulative area should be assessed under an environment effects process, rather than asking every developer to just look at their little patch, because it does not capture the cumulative effects, plus it is a burden for everyone to go through.

Mr HAYES: Yes, or—

The CHAIR: We will have to move on, Mr Hayes.

Mr HAYES: Okay.

The CHAIR: Ms Taylor. Question?

Ms TAYLOR: Sorry. Perhaps I will come in at the end. I am still thinking about what you have been saying.

The CHAIR: Okay. No problem. Dr Bach.

Dr BACH: Thank you, Chair, and thanks a lot, Mr Drew, for coming along. I thought your submission was fascinating, and I learned a lot from what you had to say again now. Can I ask you a broad question about the involvement of First Nations people in decision-making? So it is a broad question. Our committee has heard a lot about obviously the great expertise that is held by First Nations Victorians, and so I wonder if I could invite just a broad response from you, but then also I would be fascinated to hear about any concrete steps that could be taken, any particular mechanisms that could be in place to seek to ensure that as we move forward we are able to hear from First Nations people in a really clear way to then hopefully in certain areas, including certain areas that you have spoken about in your presentation, do better to protect biodiversity.

Mr DREW: Yes, it is a good point. For example, in a recent application for a sand mine First Nations people were not consulted at all. A consulting firm that provides advice on cultural heritage provided a report and gave evidence to a panel hearing without consulting the Bunurong people who have obviously the expertise and attachment to that region. I mean, you could make it a mandate to at least call them and seek their advice. The consultants used the published ACHRIS cultural heritage mapping. That is all they use unless there is a polygon on there; that is as far as they go. Obviously cultural heritage is much deeper and more extensive and nuanced than that.

Dr BACH: All right. Thank you, Mr Drew. I appreciate it.

The CHAIR: If we have more time, we will come back around for another round of questions. Dr Ratnam.

Dr RATNAM: Thank you, Mr Drew, for your excellent evidence today and the submission that the conservation society submitted as well to the inquiry. That was really, really helpful. I am just trying to capture some of the main points of your submission, so tell me if I miss the mark. But it sounds like in terms of

improvements or areas where things are going wrong—you talked about the administration—the kind of decision-making framework needs to be improved, laws are not being resourced enough to have the impact that they need to have and the offset scheme is just not delivering the conservation that is needed. Is that an accurate summary of kind of the three main prongs, you think, of what is going wrong and what needs to be improved?

Mr DREW: Yes, that is right. I mean, the environment has clearly got lots of vulnerabilities at the moment, but it is not anywhere near the top of the agenda for the government.

Dr RATNAM: Not being prioritised, yes.

Mr DREW: Yes. There are areas that are more and less critical for protection, and here it is critical. I mean, our region is 95 per cent cleared.

Dr RATNAM: Right.

Mr DREW: And here is one of the last vestiges of natural habitat, and it is targeted for extractive industries. It is just sand for concrete essentially [inaudible] but this is the priority region and it is almost entirely under natural habitat with threatened species in it. It is crazy.

Dr RATNAM: Thank you very much for that. Could I just ask as a follow-up: in your submission—and you have talked today as well about the drastic extent of land clearing—you suggest revegetation targets and that land restoration work needs targets to really get going. What do you think are the barriers to these kinds of initiatives and programs, and how do you think the state government could help overcome them?

Mr DREW: I mean, private land tenure is a barrier for sure.

Dr RATNAM: Right.

Mr DREW: We know it can be difficult to engage landholders. Some are receptive to it; others are not. That is just the nature of it.

Dr RATNAM: Do you have Trust for Nature working there, Mr Drew? Sorry to interrupt. You referred to Trust for Nature. Are they on the ground there in that area as well?

Mr DREW: Trust for Nature: they have identified this exact area—this is an arm of DELWP, the same group that is looking to turn it into a sand pit—and they have identified it as a focus area for targeting for conservation covenants on private land to re-establish the integrity of this woodland corridor, in their recent report, because this is a Gippsland plains bioregion, which is really under-represented in the system of national reserves as an EVC. There are not that many of them. It is clear that this is one of their target areas. They are a good organisation, but they are totally under-resourced to do it. I know that there are some landholders in the area that would be interested in doing it, but it just needs a coordinated collective effort, because individuals are more motivated to do it when they sense that there is a collective effort, that a broader objective is going to be achieved than just their land parcel.

Dr RATNAM: Thank you. That is really helpful.

The CHAIR: Great. Thank you. Ms Bath.

Ms BATH: Thank you, Mr Drew, and what a wonderful part of the world you work in. It is a beautiful, beautiful place, and many people love to visit, holiday and walk in the parks, national parks and Wilsons Prom and also live there and raise a family.

Mr DREW: It has not been particularly good in lockdown—sorry for interrupting.

Ms BATH: It is not particularly good, no. At least we can go for our 5-kilometre walk down the rail trail if we are close by. That is about the best of it. To more serious matters: first of all, South Gippsland Conservation Society has been going for many decades. What are some of the current things that you are doing now—like, hands on—to support the environment? That is just a taste tester so that we understand some of the things you are doing.

Mr DREW: Yes, we do a variety of things. We do some on-the-ground revegetation projects. We do the Coastcare education program on behalf of DELWP, so we educate lots of tourist visitors to the area on the values of the coast. We advocate in the political process. The Yallock-Bulluk, for example, is an initiative that is underway at the moment, and we have been quite involved in providing advice, suggesting what would be good ways to go about that. Also we review all of the development. I mean, development is a constant threat to the natural environment, so we have to keep a constant tab on that and advocate for it.

Ms BATH: Have you been funded over a long time by funding sources from government and private entities? Just paint that picture for us.

Mr DREW: Yes, both. Our general running is just privately funded by donations. We have a little shop in Inverloch, which provides a little stipend for us. We also get grants for particular projects, mostly through Parks.

Ms BATH: Thank you. Fantastic. I am interested that in your submission you speak about establishment of a Victorian environmental commission, and I would like you to expand on that. We have heard from others in this inquiry that a more broad-reaching commission would be of benefit to the environment—to not just respond and be responsible to one minister but to encompass a far broader range of ministerial responsibilities and to look at the public land space and all its uses, both human industry there and public access. Can you expand on your environmental commission and what that would look like?

Mr DREW: I guess it is an agency that is really dedicated to good outcomes for the environment and that has a focus on doing the work that just generally gets forgotten. I mean, compliance in this space is on every piece of paper and it just never follows through. I mean, it is just so essential, because all of the impacts happen on day one and then everyone forgets that, you know, there was some promise that was made and it just never gets followed through. I mean, an agency that really focuses on the delivery of follow through and making sure that when a decision upfront is made there is a mechanism in place that ensures the outcome over the long term in the interests of the environment—

Ms BATH: I might—

Mr DREW: Sorry.

Ms BATH: No. You go. Sorry, I am just fascinated. Apologies. Keep going.

Mr DREW: Yes. I mean, they need compliance powers, actual teeth, to bring effect to the laws—someone has to have the teeth to enforce the laws. They already exist. They do not have to change the laws, they just have to enforce them and, you know, you need resourcing to bring effect to those. You need the people and the skills and the budgets—and budgets that are not, you know, so politically sort of fickle.

Ms BATH: Thank you, Mr Drew. The other comment that we have heard is that there really needs to be a matrix established. If the agenda was to establish a new commission, a matrix of, we will say, skill sets that is quite broad reaching. And I say this for your opinion. I will editorialise. We do not necessarily want an us and them, with environment versus industry. My question to you would be: how could there be a commission that actually encompassed what was the best net outcome for the environment and the public land, but which incorporated discussions, a formal system, which had industry in as well as various environmental positions and groups?

Mr DREW: I do not think it needs to be against industry but it needs to be for the environment. Whether industry is involved in that, I mean, there is lots of industry that can coexist alongside a healthy environment. It certainly does not need to accommodate industry in sensitive areas. I think someone needs to be a really strong and dedicated advocate for the environment.

Ms BATH: Great. Thanks for that.

The CHAIR: Ms Taylor.

Ms TAYLOR: Yes. I was just wondering, you were talking about—I suppose it is kind of groupthink—that if somebody knows that other people are planting or restoring land, putting in plants to help restore the ecosystem, they are more inclined to do it, they do not want to be a lone soldier. Is that what you were kind of

saying? Because one can inspire others. You know, there is the flip side of that. I am just interested in your actual experience in seeing, you know, what helps to stimulate people to want—I am talking about private land—to make those changes.

Mr DREW: Yes. I mean, there are certainly a lot of individuals that are motivated and they will do it, come what may, because they have control over their land and they want the best outcomes for it. But it is much more motivating if you feel like you are part of a broader initiative. I mean, the way that ecosystems work is that they are more resilient the larger that they are and the more connectivities there are through different habitats. So if you know that your parcel is joining to a larger continuum of diverse habitat, I mean, it is just so much stronger and more effective for environmental outcomes and biodiversity. It is so much more motivating for landholders to, you know, provide part of their title, their land, to a broader initiative that you know is going to be better for the outcomes for the environment at the end of it, if at all stitches together.

Ms TAYLOR: So the greater good—because they feel like they are contributing to the greater good. I am not trying to be too broad in that concept.

Mr DREW: Not necessarily the greater good. I mean, habitat is just stronger and more effective and resilient when it is more diverse and has more area to it. Imagine if it is just one. You know, out here it is just like a pasture desert—I call it a green desert—and if you just have one paddock, one 10-acre paddock, in the middle of that green desert with some trees on it, you have a bit of a refuge there for some species but it is not a strong and resilient habitat. But if you are the land parcel between two reserves, then you can join those two things together. It is just so much more effective in terms of conservation.

Ms TAYLOR: Thank you.

The CHAIR: We will come back to Mrs McArthur, I think. I might ask a question then, Mr Drew, at this juncture as well. I am interested in some of the things that you call for in your submission. One of the things was for an independent organisation at arm's length from the Victorian government. Could you expand on what that might look like and what sort of things it would do? And the second part of that question is also about offsets. Would that body look at offsets, or are you just proposing to say offsets do not work at all and should be disregarded? Can you unpack that a bit more for us please?

Mr DREW: Yes—a few components there. First of all, an independent body: now all the decisions come back to a minister, and so there is always a little space in the legislation that gives discretion, I guess. If there are competing interests with a minister—like, for example, at the moment there is this planning imperative to make sand available, slightly cheaper perhaps, for building things in Melbourne. The same minister decides on the environmental protections, so depending on their motivations at one point in time it will go one way or the other. But if you want consistent outcomes in favour of the environment, that is not a good model, so someone who is separated from that conflict of interest in decision-making—

The CHAIR: Because I think what your submission argues is that you believe that there is an inherent conflict of interest in the system that is about deciding whether something gets planning approval or not. That is your central construct, isn't it, that therefore there is that inherent conflict of interest and that should be separated?

Mr DREW: Yes. I mean, it is called a planning approvals process. If you have been through the process, you understand that it has got a lot of momentum towards approving a development and there is a higher burden of proof on—not derailing developments but, you know—making the case that the environment needs to be prioritised in that process. I mean, it is just the natural momentum of the planning process. The other part of your question was offsets?

The CHAIR: Yes.

Mr DREW: I mean, the system is just bogus. It is Orwellian to call it 'net gain', because it cannot deliver a gain by design. If you really want to incrementally increase habitat in the state, then you would need a different system to achieve that outcome. You know, there could be a long debate about what that is, but that is just a fact. I mean, that is a long process to replace, but while it is there, yes, the administration of it could be so much better. And one of the things that would make it function better, because compliance just always gets dropped, is probably to not leave responsibility to local government. They are just not equipped for it at all. Usually it

comes under a section 173, which is a council mechanism with hardly any effect. Replacing that with section 69, which is a DELWP-governed mechanism for these same offsets—they are just a more effective body. But there is still a cost of compliance, and that needs to be budgeted for, constantly budgeted for, and needs the skills and the money to follow through and do investigations on site. You know, it is lots of footwork to administer that. I think that that is a significant burden, and that burden should be covered by the party responsible for the cost and the compliance and the mechanism and the destruction, which is typically the developer causing clearing. And I think that because in the process of planning everything comes to a decision point at approvals. The developer makes all of their decisions at that point, all their contracts and everything. It is a go/no-go gate, if you like. And so it would be effective. So if they are entering into an agreement to deliver these offsets, for example, then part of that should be the cost of compliance, of administering that agreement, and that should be implemented as a bond at that time so that a developer at that gate, that no-go gate, knows what they are in for and whether it is still in their interests or not at that time. So at that time it either goes ahead or it does not because of, you know, that contributing factor. Whether or not that is, you know, the deciding factor I do not know, but at least it is represented at the critical decision point.

The CHAIR: Okay, great. Thank you. Mrs McArthur, question? We have got about 4 minutes left.

Mrs McARTHUR: Thank you, Chair. And I have to apologise, because I have missed most of your presentation, Gerard. So I apologise, because I had to attend another meeting. I did catch something about the fact that you said every development proposal is weighed in favour of the developers. That is certainly not my experience. The hoops that have to be gone through to meet all the requirements of regulations from umpteen quangos in any process are massive, and it is a major bar to basically doing anything in this state. So if you want to expand that further, then clearly we will all be noticing that any sorts of developments—important developments, and many local ones in rural areas—just do not go ahead because it is just too costly and inefficient to invest the money to get something through the system. I mean, the Great Ocean Road, for example—about 30 quangos involved if you want to get through anything. And now we have put another authority over the top. That whole idea was to get rid of half the ones underneath it, but we have just added another one. So, you know, I dispute the fact that it is actually easy for developers to get anything through and the environment suffers. Do you want to comment?

Mr DREW: Yes. I mean, no-one wants another quango, that is for sure. I think that despite there being a lot of paperwork—it is not weighted in favour of developers, but the process has a trajectory towards an approval. And you are right, there is a mountain of paperwork; most of the time it is to no effect, whether it is done or not. It is just the amount of paperwork on the way to an approval—it is all of the things that you have to do to get an approval. But the momentum is towards an approval. I mean, like I mentioned on Mr Hayes's question earlier about environmental effects, that will be another quango. I do not think that it is a very good idea to put the responsibility of that onto—I am not sure if you saw in my presentation, there is this region of sand mining with lots of quarries through there. I do not think it is appropriate for each quarry developer to do an environmental effects statement for their project when this is kind of like a regional industrial strategy. It should be done at the regional level, perhaps as a collaborative effort between DELWP, which has significant expertise, and industry, which has their own sort of area of expertise. Do that at the collective level once and decide on the cumulative acceptable impacts of that industry and what collective efforts can be done to minimise or improve the state of the environment—you know, there are all sorts of other things that come into developments, but just considering the environment. I mean, that would be more sensible and streamlined and efficient, from my perspective, for everybody.

The CHAIR: Okay. All right. Well, thanks very much, Gerard, for coming and presenting your evidence to us today. We are out of time for this session. So thank you again.

Witness withdrew.