



Environmental  
Justice Australia

Submission

in response to

Inquiry into Environmental Infrastructure for Growing Populations

prepared by

Environmental Justice Australia

28 September 2020

## **About Environmental Justice Australia**

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. We are independent of government and corporate funding. Our legal team combines technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to community-based environment groups, regional and state environmental organisations, and larger environmental NGOs, representing them in court when needed. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

We also pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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# Current and future arrangements to secure environmental infrastructure, particularly parks and open space, for a growing population in Melbourne and across regional centres

## The state of urban 'environmental infrastructure'

1. 'Environmental infrastructure' under the reference incorporates environmental benefits associated with public spaces, particularly parks and reserves. The term refers to management of natural systems in a manner that ensures their sustainability, ecological integrity and contribution to human health and well-being. Our focus in this submission is on areas and features with natural or ecological contributions, rather than forms of open space of parkland solely set aside for human activity (such as sporting ovals). There is a broad spectrum of 'green' spaces of these types, ranging from highly modified sites nonetheless providing important natural values (for example, golf courses or utility easements) through to sites of high biological diversity and ecological integrity (such national parks in or adjacent to urban areas).
2. There is an extensive body of scientific and geographic work looking at the extent, distribution and benefits of 'natural assets' or 'green space' in cities, including in Melbourne. No doubt the committee will have the benefit of other evidence on these issues. Certain key insights can be discerned from this literature however, such as:
  - The extent and biodiversity of urban ecosystems remains significant. For example, natural or quasi-natural ('naturalistic') spaces across Melbourne include formal parks, native ecosystems with substantial remnant vegetation, and areas with restored ecosystems. Cities are biodiversity 'hotspots' and provide habitat for important species, many of which are listed threatened species.<sup>1</sup>
  - The distribution of 'green space' and urban ecosystems across Melbourne is highly uneven<sup>2</sup>
  - Nature in cities is essential for human health (physical and mental), child development, sense of place and community connectedness,<sup>3</sup> and for the viability and integrity of ecosystems themselves.

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<sup>1</sup> Hartigan et al, *Living Melbourne: Our Metropolitan Urban Forest Technical Report* (The Nature Conservancy and Resilient Melbourne, 2019) 11; Ives et al 'Cities are hotspots for threatened cities' (2016) 25 *Global Ecology and Biogeography* 117; Soanes and Lentini 'The 39 endangered species in Melbourne, Sydney, Adelaide, and other Australian cities' *The Conversation*, 2 April 2019, <https://theconversation.com/the-39-endangered-species-in-melbourne-sydney-adelaide-and-other-australian-cities-114741>

<sup>2</sup> Hartigan et al, *Living Melbourne*; Lhakani et al '340,000 Melburnians have little or no parkland within 5km of their home' *The Conversation*, 12 August 2020, <https://theconversation.com/340-000-melburnians-have-little-or-no-parkland-within-5km-of-their-home-144069>

<sup>3</sup> Ives et al. 'Reconnecting with Nature for Sustainability' *Sustainability Science*, 1–9. doi:10.1007/s11625-018-0542-9; Hartigan et al *Living Melbourne*; Threlfall and Kendall 'The distinct ecological and social roles that wild spaces play in urban ecosystems' (2017) *Urban Forestry and Urban Greening* <http://dx.doi.org/10.1016/j.ufug.2017.05.012>

- There are a wide range of techniques and strategies for safeguarding and enhancing ecological values and integrity in cities, including through new models for urban design and planning.<sup>4</sup>
  - ‘Green’ areas in cities need to be designed, established, modified and extended in order to maximise biodiversity and support native flora and fauna.<sup>5</sup>
  - Biodiverse ‘green’ spaces in cities will be critical for climate mitigation as well as ameliorating the effects of climate change (climate adaptation).<sup>6</sup>
3. Urban ecosystems remain on trajectories of decline and confront the spectre of ecological ‘tipping points’.<sup>7</sup> In urban and peri-urban areas, decline in extent and condition of ‘environmental infrastructure’ is a product of development and land-use pressures (such as densification in established suburbs, greenfield developments and large infrastructure projects),<sup>8</sup> biological threats and pressures (such as invasive species), and legacy land and resource uses (such as extensive stormwater systems directly connected to streams<sup>9</sup> and high rates of water diversion).<sup>10</sup>
  4. The making of statutory decisions, especially as concern development and infrastructure programs, continue to contribute to these trajectories of decline in urban ecosystem and, by extension, ‘environmental infrastructure’. Key shortcomings include failure to give sufficient weight to environmental considerations in urban design and resource use approvals, discretionary and politicised implementation of environmental inquiries,<sup>11</sup> and highly problematic development approval strategies especially excessive reliance on ‘compensatory’ measures to achieve environmental outcomes.<sup>12</sup>

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<sup>4</sup> See eg Parris et al ‘The seven lamps for planning for biodiversity in the city’ (2018) 83 *Cities* 44; Garrard et al ‘Biodiversity Sensitive Urban Design’ (2018) 11 *Conservation Letters* 2 1

<sup>5</sup> See eg Bush and Doyon ‘Building urban resilience with nature-based solutions: how can urban planning contribute?’ (2019) 95 *Cities* 102483

<sup>6</sup> Hartigan et al *Living Melbourne*, Ch 6

<sup>7</sup> Hartigan et al *Living Melbourne*, Ch 2

<sup>8</sup> See eg Hartigan et al, *Living Melbourne*

<sup>9</sup> See eg Walsh et al ‘The urban stream syndrome: current knowledge and search for a cure’ (2005) 24 *Journal of the North American Benthological Society* 3 706; Fletcher et al ‘Protection of urban ecosystems from urban stormwater runoff: the multiple benefits from an ecohydrological approach’ (2014) 38 *Progress in Physical Geography* 5 543

<sup>10</sup> In the Yarra catchment, for example, around 50% of natural flows are diverted and used for Melbourne’s water supply and localised irrigation: , with significant consequential impacts on floodplain ecosystems as well as in-stream ecology.

<sup>11</sup> As occurred for example in relation to planning approvals for the North East Link Project. Key recommendations from the Inquiry and Advisory Committee report into the project, such as extending tunnelling under Watsonia Army Barracks and avoiding environmental losses from widening of the Eastern Freeway, were effectively dismissed by the Planning Minister in response. This is despite the extensive and considered investigation carried out by that Committee.

<sup>12</sup> The use of environmental offsets as a ‘compensatory’ device have been extensively criticised, both in principle and in their implementation and use. One of the more spectacular examples of such failure in terms of Melbourne’s growth areas has been the ‘offsetting’ of loss of endangered grasslands and grassland species as a result of extensive residential development in the north and north-west into proposed grassland and woodland

5. Arresting and reversing trajectories of decline in urban ecosystems is possible and necessary in order to respond effectively to human well-being in cities as well as ecological integrity. Current biodiversity policy<sup>13</sup> posits a strategy of arresting and reversing trajectories of decline (across Victoria) through targeted interventions slowing threats to vulnerable species habitat combined with improvement in general habitat condition and connectivity in landscapes.<sup>14</sup> This targeted conservation investment model will need to be further combined with a significant shift in development models,<sup>15</sup> which currently rely heavily on policy tools such as failing 'compensatory' measures (such as offsets) that 'lock in decline'.<sup>16</sup>

### **Laws and policy frameworks for urban waterways: new approaches to 'environmental infrastructure' arrangements**

6. Urban planning and environmental laws include mechanisms for protection of natural spaces and environmental assets in cities, such as in terms of specific headline policies through measures such as Plan Melbourne, the Melbourne Strategic Assessment, Healthy Waterways Strategy, Victorian Coastal Strategy, the Biodiversity Strategy and SEPP (Waters). Self-evidently, management of 'environmental infrastructure' in urban areas traverses a complex array of legal and policy schema and considerations, including planning law, public land management, water law, biodiversity law, environmental protection, and aspects of private law (such as contracts and torts).
7. EJA has extensive experience and expertise in the use and application of these types of legal schemes for the protection and/or care of urban 'environmental infrastructure'. We draw particular attention below to our work on law and policy reform of urban and peri-urban waterways. The focus of this work has been to date on the Yarra River (Birrarung), rivers and creeks of Melbourne's west, and the Barwon River system. Lessons and models (discussed below at [10]) from this work are more widely applicable to management of 'environmental infrastructure' in urban areas.
8. EJA was involved in advocacy for protection of the Yarra River (Birrarung) which led to passage of the *Yarra River Protection (wilip-gin Birrarung murrong) Act 2017*. This landmark legislation recognised the river corridor as single 'living entity', with bicultural (Wurundjeri-settler) character. The result is an impressive and important scheme for long-term management of and strategic planning for the river, in accordance with a 50-year Community Vision. The law also re-modelled institutional and governance arrangements for the river and adjacent lands, with a view to far greater integration. Implementation of the Yarra River

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reserves. The patent failure these compensatory outcomes has been recently considered by the Auditor-General: VAGO *Protecting Critical Endangered Grassland* (2020), <https://www.audit.vic.gov.au/report/protecting-critically-endangered-grasslands>

<sup>13</sup> Victorian Government *Protecting Victoria's Environment – Biodiversity 2037* (2017)

<sup>14</sup> Ibid, see generally Ch 3

<sup>15</sup> Garrard et al 'Biodiversity Sensitive Urban Design' (2018) 11 *Conservation Letters* 2 1, <https://conbio.onlinelibrary.wiley.com/doi/epdf/10.1111/consl.12411>

<sup>16</sup> Maron et al 'Locking in loss: baselines of decline in Australian biodiversity offset policies' (2015) 192 *Biological Conservation* 504

Birrarung scheme is challenging but its ambition is a critical indicator of its value. The scheme of the Act provides, in essence, a framework for long-term restoration agenda for the river.

9. The legislative approach to recognising places, landscapes or ecosystems as 'living entities' has been adopted through other legislation.<sup>17</sup> Similarly, strategic planning based on long-term 'vision', as a form of reference point, has been adopted into other legislation and policy proposals. The value to this type of legislative and policy approach lies especially in connections to ecological restoration science and practice.
  
10. Following passage of the Yarra River legislation, EJA worked in collaboration with community groups in Melbourne's western suburbs and those in the Barwon-Moorabool catchment to develop policy and law reform proposals for protection and governance of waterways in those regions. These proposals were used in advocacy to advisory bodies set up to inform Victorian government policy for waterway management in those regions. Our proposals are [A New Deal for the Rivers and Waterways of Melbourne's West](#) and [Protecting and Restoring the Rivers of the Barwon \(Barra Wallee Yulluk\) System](#). Principal lessons and proposals from these collaborations include:
  - a. Legal recognition of water ecosystems as 'living entities' within landscape context.
  - b. Waterways and wetlands are key, significant natural features in urban and peri-urban landscapes (major 'green infrastructure' and 'blue (coastal) infrastructure').
  - c. Enhanced (stand-alone) legislative protection and recognition of urban waterways is needed.
  - d. 'Green infrastructure' needs its own policy and institutional foundations, analogous to other forms of 'major infrastructure'. For example, we propose a 'Green Infrastructure Authority' and a statutory mechanism for 'declaring' major green infrastructure projects. The purpose of such a body could be to better coordinate, fund and deliver ecological restoration and biodiverse urban design. Funding comparable to the tasks of implementing 'major infrastructure' for environmental and biodiversity outcomes is required.
  - e. Reform of purposes and key considerations in the work of principal development authorities, such as the Victorian Planning Authority.
  - f. For waterways, revision of 'environmental water reserves' for specific waterways in order to set out pathways to ecological 'health'. In urban areas, this can mean using the EWR to drive innovation in water management and supply, including redistribution of water to the environment.

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<sup>17</sup> See eg *Great Ocean Road and Environs Protection Bill 2019* (Vic); compare the Whanganui River legislation in New Zealand: Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (NZ), <http://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>

- g. Natural entities, such as waterways, need dedicated community advocate networks, or ‘voices’, and supporting and building this community infrastructure is essential to ‘environmental infrastructure’. Community ‘voices’ for waterways need to be provided legislative bases and resourcing.<sup>18</sup>
  - h. Establishing legal personhood in natural entities can be an important or useful device for improved management and governance of those places. We propose this for the Barwon-Moorabool system. The Yarra Birrarung has a form of recognition of ‘personhood’ established in legislation.
  - i. Governance and reform needs to traverse land and natural resource schemes, with each being responsive to overarching outcomes, such as ecological ‘health’, and long-term reference points (such as ‘visions’).
11. EJA is currently preparing a report on the treatment of urban streams in growth areas in the Melbourne’s north-west and west.<sup>19</sup> These areas are subject to precinct structure planning processes and their implementation. These programs are essentially forms of land release. Streams are the principal form of ‘natural’ or ‘environmental infrastructure’ retained in these areas. Key findings of this report are likely to include:
- High degrees of transformation of the natural form, function and ecology of these streams as a result of urbanisation
  - High degrees of ‘hard’ and ‘soft’ engineering of streams predominantly for purposes of achieving stormwater management outcomes, contributing to loss of remnant natural condition and function
  - Priority of ‘naturalistic’ landscape outcomes over retention of remnant natural values
  - There is no sustained or direct engagement of these urban development models with ecological restoration science or practice. Law and policy does not require or even propose considered engagement of urban development with restoration science, largely to the detriment of urban ecosystems.<sup>20</sup>
  - Little or no direct or sustained community participation in design and implementation of natural (waterway) spaces.

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<sup>18</sup> See EJA *A New Deal for Rivers and Waterways of Melbourne’s West* (2018), 9. We propose joint community organisation-council bodies with legislative support, for which bodies such as the Merri Creek Management Committee are an example. The precise configuration of ‘voices’ for natural areas may vary in the circumstances according to best adapted models.

<sup>19</sup> EJA *Boulevards of Broken Streams? The fate of waterways in Melbourne’s urban growth corridor* (forthcoming)

<sup>20</sup> See eg also Nature Glenelg Trust *Hannah Swamp Discussion Paper: Analysing the Gaps in Policy and Planning for Wetlands within Melbourne’s Urban Growth Areas* (2020), <http://natureglenelg.org.au/hanna-swamp-discussion-paper-analysing-the-gaps-in-policy-and-planning-for-wetlands-within-melbournes-urban-growth-areas/>

12. From a legal perspective, a key driver of these sub-optimal outcomes is treatment of natural spaces, drainage lines (streams), and 'environmental infrastructure' generally as *encumbrances* on development of land. This approach is highly influential on the development approval process, which is orientated to commercial development of private land.
13. Treatment of natural spaces and ecosystem benefits and values as encumbrances on land generally acknowledges their public good qualities. At the same time, these qualities are then treated as burdens on property with consequential effects on monetary value. Typically, such 'burdens' are negotiated at the strategic planning stage in the context of policy considerations as well as natural qualities and value of the land. In effect, they are treated as constraints on 'developable' land and hence rates of profit. For policy and practice in these growth areas, these are residual considerations in what are primarily land release programs.
14. Treatment of natural spaces as residual legal 'burden' on development can be linked to the wider problem of economic rent-seeking in the development approvals process (for example, maximisation of profit through land-banking and maximising developable land through regulator 'capture').<sup>21</sup> While that may be a problem beyond the scope of the Committee's considerations, what is relevant is the need to consider the legal and policy framing of 'environmental infrastructure' as a form of 'public good' in development and urban design.
15. As indicated above, we propose far more robust and purposeful responses to governance of parks, reserves, and urban ecosystems, recognising the need for law reform to protect and inform future outcomes for 'environmental infrastructure'.
16. Any such legislative responses, such as special purpose legislation for waterways or overarching legislation for 'green infrastructure', should incorporate certain 'statutory facts', including:
  - recognition of the importance of biodiverse urban ecosystems to human health and ecological integrity,<sup>22</sup>
  - the need for re-establishment and/or expansion of biodiverse urban ecosystems,
  - the role of biodiverse urban ecosystems in responding to extinction crises,
  - role of biodiverse urban ecosystems in responding to climate change, and
  - the importance of biodiverse urban ecosystems is implementing just distribution of 'environmental infrastructure' across urban areas.

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<sup>21</sup> See eg Cameron Murray and Paul Frijters 'Clean money, dirty system: connected landowners capture beneficial land rezoning' (2016) 93 *Journal of Urban Economics* 99

<sup>22</sup> Compare *Yarra River Protection (wilip-gin Birrarung murrn) Act 2017* (Vic), s 5



- Recognition of Country, relationships to ancestral entities (living landscapes), and the role of Traditional Owners as custodians
- Recognition of ‘environmental infrastructure’ (biodiverse public spaces) as common goods in which the community must have a say in managing and restoring.

17. The law should expressly mandate use of ‘best available science and cultural knowledge’ in management of urban environmental assets.

**Intersection with current legislative obligations and policy intentions: ‘environmental infrastructure’ and recovery of urban ecosystems**

18. Systematic and robust improvement in biodiverse, urban ‘environmental infrastructure’ is consistent with public policy and it would enable discharge of statutory obligations on government to meet biodiversity objectives.

19. Planning, natural resources, biodiversity and public lands legislation each contain key objectives and provisions for protection and improvement to biodiversity and ecosystem management in Victoria. In each case, these objectives are relevant to policies and actions for ‘environmental infrastructure’ in Melbourne and regional cities:

- Victorian planning provisions governing biodiversity and waterways refer to intentions to ‘protect’, ‘conserve’, ‘enhance’ or ‘restore’ ecological assets and places.<sup>23</sup>
- Waterway management functions are to be implemented in ways that improve environmental values and water ecosystem health.<sup>24</sup>
- Public lands management under Parks Victoria authority is to occur in order to ‘protect, conserve and enhance Parks Victoria managed land, including its natural and cultural values, for the benefit of the environment and current and future generations...’<sup>25</sup>
- Administration of government as a whole must be responsive to new biodiversity objectives in a manner that is evident in their conduct and behaviour (‘proper consideration’), including to prevent species from becoming threatened and enable the recovery of those that are, ‘protect, conserve, restore and enhance’ biodiversity

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<sup>23</sup> Victorian Planning Provisions, cl 12

<sup>24</sup> *Water Act 1989* (Vic), s 189

<sup>25</sup> *Parks Victoria Act 2018* (Vic), s 7(1)(a)

generally, and mitigate threatening processes (arguably including those arising from statutory decisions or programs).<sup>26</sup>

In essence, there are a wide range of statutory obligations on government and public agencies to integrate ecological considerations into their practices, policies, conduct and decision-making.

20. Management of urban 'environmental infrastructure' should include setting out clearly and effectively how the decisions, policies and programs of government will best contribute to restorative processes and outcomes for urban biodiversity and ecosystems (as well as other objectives under the Act). This is currently not well thought-out. For example, while there is an extensive body of national and international literature on the science and good practice of ecological restoration (including in urban areas),<sup>27</sup> it is all but absent from policy-making and statutory decision-making. Existing policies and programs may well feed into or complement biodiversity planning and restoration techniques but they do not clearly align with current thinking and practice on environmental management and restoration.
21. We recommend recognising policy tools such as the *International Principles and Standards for the Practice of Ecological Restoration* as guidance to planning and management for urban 'green spaces' and 'environmental infrastructure'. Specifically, urban 'environmental infrastructure' can contribute to arresting and reversing trajectories of ecosystem decline and forging pathways of recovery. These pathways can be enabled through application of tools such as collaborative planning of appropriate ecological 'reference models' in urban landscapes and applying the '5 star recovery model' to thinking and policy-making about urban green spaces. Reference models concern approximation of recovered ecological systems based on analogue natural and cultural sites, which can be targeted and envisaged over a set time. The '5 star recovery model' is a summary expression of cumulative ecosystem recovery, commencing from removal of threats to (re)establishment of trophic complexity, biodiversity and connectivity in progress to self-organise ecosystem with minimal human intervention.
22. This recommendation is consistent with other, sympathetic urban design principles and tools, such as 'biodiversity sensitive urban design' or various 'urban greening' tools and interventions. The International Restoration Standards provide framing principles and measures for the *systematic* approach to ecological improvement in urban 'environmental infrastructure'.
23. Noting that the Environment Minister is empowered to make guidelines for proper consideration of biodiversity objectives and biodiversity instruments under subsection 4B(4) of the *Flora and Fauna Guarantee Act 1988*, we submit that the Committee should recommend that such Guidelines are made and address, among other matters:

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<sup>26</sup> *Flora and Fauna Guarantee Act 1988* (Vic), ss 4, 4B

<sup>27</sup> See eg SER *International Principles and Standards for the Practice of Ecological Restoration* (2<sup>nd</sup> ed, 2019), <https://www.ser.org/page/SERStandards/International-Standards-for-the-Practice-of-Ecological-Restoration.htm>; IUCN 'Restoration', <https://www.iucn.org/commissions/commission-ecosystem-management/our-work/cems-thematic-groups/restoration>

- Responsiveness on the part of public authorities, in their policies and conduct, to use and implementation of standards and principles for ecological restoration in urban and peri-urban areas;
- Responsiveness to specific restoration strategies and policies as adopted by urban and peri-urban municipalities, such as 'urban forest strategies';
- Responsiveness to Action Statements and other recovery plans relevant to the authority's functions and powers, where these concern 'environmental infrastructure' in urban and peri-urban areas;
- Responsiveness on the part of authorities to each of the biodiversity objectives in section 4 in order to set out an 'inventory' of potential actions contributing to those objectives in 'green spaces' in urban and peri-urban areas

### **Collaborations and agreement-making with community organisations in relation to 'environmental infrastructure'**

24. Community organisations and NGOs are essential to the future of all of our 'environmental infrastructure' and its biodiversity. EJA works with these sectors extensively. Working relationships between the community sectors and public agencies are uneven. There are many examples of long-term, well-established and strong relationship between agencies and community organisations. In other circumstances, these relationships are strained. The status of relationships can change over time also.
25. We submit that it is intrinsic to the good management of these places that community organisations have leading roles and/or this leadership is fostered. This is because governance of 'environmental infrastructure' is essentially a 'public good' or 'common good' issue, organised community groups are a critical base of practical care and management of parks, reserves and places, organised groups are the main conduit between care, management and governance of places and the general community, and organised communities are key repositories of expertise, knowledge, experience and connection to these places.
26. The nature of this relationship is far more than is ordinarily expressed in 'stakeholders'. This term tends to diminish and misrepresent the relationship. It is better expressed in terms of 'partnership' or 'collaboration'.
27. In respect of public or municipal lands there are instances where this collaborative relationship should be given better legal footing. We are aware of circumstances where community groups have obtained significant funds from third parties to undertake works on public land (specifically, Parks Victoria managed land) for the purposes of environmental restoration. Works can include removing invasive species, maintaining wetlands or protecting native plantings. Other relevant activities we are aware include organising 'community days' and commissioning cultural burning. Historically, these types of works and activities were planned and undertaken in liaison and collaboration with local agency or municipal staff (as relevant).

28. In recent years community groups have been deterred or prohibited by public land managers (PV) from undertaking these types of programs and acquitting funds granted to them. It has been put to them that funds need to be in effect 'gifted' to the public land manager in order to implement works and activities. To do so can put community groups in breach of funding agreements.
29. We have advised and represented community groups on forms of 'collaborative works agreement' with Parks Victoria in at least one of these instances. Although provided to PV in 2018 no meaningful response has since been received.
30. We raise this example because it is reflective of certain circumstances where community groups are in effect *co-managers* of public land parcels, that role and functions has been largely accepted by the land manager and other agencies for some time, but increasingly it is being frustrated. This is enormously disheartening to those organisations and to communities in general. It undermines the key 'conduit' role community groups often play in managing lands at heart of urban 'environmental infrastructure'.
31. In our submission, administration of public and municipal lands should expressly provide, in policy, encouragement of various levels of active engagement in community organisations in land management, up to and including forms of 'collaborative' or 'co-management'.
32. Agreement-making can occur in the form of Memoranda of Understanding, although in relation to 'collaborative' arrangements this should occur through ordinary contracts drafted expressly for these purposes.
33. All of the above points concerning agreement-making are not intended to refer to arrangements with Traditional Owners, who circumstances and rights are unique and distinguishable from those described above.

**'Environmental infrastructure' is not fully comprehensible without reference to Country of which it is a part**

34. The concept of 'environmental infrastructure' is metaphoric. It seeks to draw comparison and analogy to built landscapes and development. A link between built infrastructure and ecosystems in urban areas is the activity and agency of human intervention. Another link concerns human benefits and values associated with both built landscape and with ecological restoration.
35. For urban areas both need to recognise the fact of living landscapes. Notwithstanding extensive modification, urban landscapes retain fundamental, underpinning connections to living landscapes – in terms of ecological, hydrological and geographic processes and systems. This can often be seen even in the functioning and resilience of small, remnant parcels of urban bushland, waterway or coast.
36. That urban landscapes, such as Melbourne, are built on living landscapes may be felt intuitively by non-Indigenous citizens, such as in special feelings or connection to places such

as rivers, creeks, remnant forests, and coasts. This is sometimes associated with ‘amenity’ values but it might also be said to be a poorly expressed and undeveloped understanding of underpinning dynamics of urban-ecological landscapes.

37. It is distinctive and fundamental that the living landscape in which urban ‘environmental infrastructure’ is situated is governed by more basic law – what has been referred to elsewhere as ‘first law’ or ‘law of the land’ - and which for Melbourne is embedded in Wurundjeri law. This is recognised in Parliamentary statute in the Yarra River Birrarung Act in relation to the Yarra River corridor.
38. In other words, what the Committee’s reference poses as ‘environmental infrastructure’ needs to be related to Country and Traditional Owner authority in relation to Country, which is to say ‘custodianship’.
39. The fate of ‘environmental infrastructure’ needs, in our submission, not only to be guided by models of ecological protection, recovery and restoration (as we note above) but also by models of cultural restoration led by Traditional Owners. This may be a protracted and uneven process but it is an essential one. It is now increasingly recognised in law and policy in relation to waterways.<sup>28</sup> Such an approach should be extended in a systematic or programmatic fashion to all key natural sites across urban and peri-urban areas, especially those identified as priorities by Traditional Owners. This is likely to be a program strongly supported by local communities.

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<sup>28</sup> See Waterways of the West MAC *Protecting the Waterways of the West: Discussion Paper* (2019), [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/1915/7052/4812/WoW\\_MAC\\_Discussion\\_Paper\\_Bookmarked.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/1915/7052/4812/WoW_MAC_Discussion_Paper_Bookmarked.pdf); Barwon MAC *Our Living Rivers of the Barwon: A Discussion Paper for the Future* (2019), [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4615/7050/2370/Barwon\\_MAC\\_Discussion\\_Paper\\_Bookmarked.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4615/7050/2370/Barwon_MAC_Discussion_Paper_Bookmarked.pdf)