

Chapter 2

Issues raised

Introduction

2.1 Witnesses and submitters raised a range of environmental issues in relation to the Roe 8 project and the perceived failure of regulators to address concerns. This chapter discusses the following issues:

- the environmental significance of the area of the Roe 8 stage of the Freight Link;
- the environmental damage the implementation of the Roe 8 stage of the Freight Link has already caused;
- potential non-compliance of contractors with the project's *Fauna Environment Management Plan* (FEMP), including poor trapping standards for southern brown bandicoots, deficiencies in the reptile and turtle removal programs, the lack of adequate fencing to protect fauna in areas being cleared, and an insufficiently rigorous survey of black cockatoo and other bird nesting sites before construction began;
- alleged non-compliance of contractors to the binding conditions of the *Construction Environmental Management Plan* (CEMP), on dieback and plant disease, asbestos waste disposal and the management of dust; and
- the inadequate response of the state and Commonwealth governments to concerns raised about potential violations of the project's management plans.

Environmental and cultural significance

2.2 As noted in chapter 1, the area of development has high environmental value as well as encompassing Aboriginal heritage areas. Professor Richard Hobbs, a member of the Beeliar Group, provided the committee with an overview of the environmental importance of the Beeliar Wetlands:

The southwest [part of Western Australia] is one of the declared biodiversity hotspots of the world, so that means that it has a huge diversity of species—flora and fauna—many of which are found nowhere else in the world. The Beeliar Wetlands is one of the jewels in that crown, if you like, and it is very special not just because of its biological status but because of its location in the middle of a city. The biological value is huge, but the social value is huge as well. People love that area. People use it for recreation—and they appreciate the birds, the animals and so on. That is why you get such an emotive response from people when it is being destroyed.¹

1 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, pp. 46–47.

2.3 The committee also received evidence about the importance of the area for the southern brown bandicoot, the Carnaby's black cockatoo, the forest red-tailed black-cockatoo, glossy-leafed hammer orchid, grand spider orchid and beaked lepidosperma as well as some migratory birds.²

Environmental damage caused by Roe 8 works

2.4 The committee heard evidence that the works undertaken for the Roe 8 extension have already caused serious environmental damage to the Beelihar Wetlands. Ms Katharine Kelly, Convenor, Save Beelihar Wetlands, provided the committee with an overview of the destruction that has occurred on the construction site since works began in late December 2016:

The following Monday [after the High Court revalidation of the Roe 8 environmental approvals], the bulldozers moved into the Coolbellup woodlands and destroyed about five hectares over 19 and 20 December 2016. We watched in horror as the beautiful orchids, banksias, bandicoots, little skinks, tall jarrah trees, little sedges, bushes and grass trees alike were violently pushed together and then piled up for mulching. There was no translocation of any trees. Many of us saw bandicoots running and birds fleeing trees as they were toppled. We knew there was lots of dumped asbestos in the area and, because of the lack of water trucks and lack of any wetting down, huge plumes of dangerous dust rose in the air and drifted over homes. That night and even whilst we washed the dust and tears and anger off our bodies and clothes, many of us were wondering how the construction contractors could be getting away with such blatant shows of noncompliance. At this stage the environmental management plans had been published for a scant two weeks.³

2.5 Mr Logan Howlett, Mayor, City of Cockburn, commented on the damage that has been done to date is 'vandalism'. He noted the concerns with the destruction of ancient trees:

...we have seen 300- to 500-year-old trees bulldozed down and mulched up and wood chipped up. There are also the two Norfolk Island pine trees that were planted by John Dixon and his wife on the occasion of their wedding in 1900. Those Norfolk pine trees, which were planted in 1900, have been cut down to a height of, probably, five metres each and been left there almost as a signal to the community that this project will proceed at any cost. The Dixon family and the community are devastated in the context of that arrogance, as I would term it. It is total arrogance.⁴

2 Mr Matt Cahill, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 23.

3 Ms Katherine Kelly, Save Beelihar Wetlands, *Proof Committee Hansard*, 23 February 2017, p. 4.

4 Mr Logan Howlett, Mayor, City of Cockburn, *Proof Committee Hansard*, 23 February 2017, p. 16.

2.6 While much damage has been done to the wetlands after only a few months of work, significant areas of bushland have not yet been cleared. Miss Phoebe Corke, a member of Wetland Watchers, commented:

Two of the most beautiful parts of the project are still standing. At the other end of the project, there is some beautiful bushland still there so it is not over yet in terms of the destruction. As to what has been destroyed, it is basically a 25 to 30 metre strip that runs at the moment for 4½ kilometres. There are crushed limestone paths being put into a great deal of this and they are about four to five metres wide, and that is where we are at the moment.⁵

Implementation of the Fauna Environment Management Plan

2.7 Professor Hobbs commented that the implementation of the FEMP has been flawed in several ways.⁶ The committee also received evidence that there may have been violations of the legally binding terms of the FEMP, as well as the conditions of approval under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), including by:

- contraventions of trapping practices, particularly for bandicoots;
- poorly designed and implemented programs for turtle trapping;
- insufficient provision of fencing and netting to protect fauna from injury or mortality while bushland is cleared; and
- potentially inadequate surveys of local bird populations before clearing began—particularly nesting sites of threatened species of black cockatoo.

Trapping of southern brown bandicoots

2.8 Ms Kelly, Save Beeliar Wetlands, made it clear to the committee that the southern brown bandicoots are protected under the EPBC Act, and that they played a central part in the health of the local ecosystem:

The southern brown bandicoots are a priority species under the EPBC Act. This urban woodland and wetland system is one of the last remaining fragments of urban bushland and wetlands on the Swan coastal plain. It contains nature woodlands, which the bandicoots particularly love. There is an incredible relationship between the health of the system and the bandicoots being there. They are like constant little gardeners. They actually move about three tonnes of soil each a year. So they aerate the soil and make the trees able to have a [mycorrhizal] function. The micro-algal function is the way in which the trees communicate with one another and

5 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 12.

6 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 41. All Management Plans for the project can be found on Main Roads WA's website at <https://project.mainroads.wa.gov.au/roe8/environment/Pages/managementplans.aspx> (accessed 28 February 2017).

ensures that the health of the whole ecosystem is kept intact. They are actually essential for the health of the urban woodland and wetland system.⁷

2.9 The FEMP stipulates a number of conditions for the trapping of southern brown bandicoots before clearing can begin, including that:

- 3–4 days of trapping must take place before clearing, and that this must continue until traps are clear of bandicoots for 2 consecutive trapping nights;⁸
- should bandicoots still be found in traps for 2 consecutive after a 3–4 day trapping program is completed, a fauna expert must be consulted, and their recommendations must be implemented until the number of bandicoots trapped significantly reduces;⁹
- traps will be closed in hot weather (i.e. above 30 degrees and/or for consecutive days), and reopened in the late afternoon to avoid bandicoot mortality;¹⁰ and
- traps will be closed in periods of heavy rain, and reopened in the late afternoon to avoid drowning of trapped animals due to flooding.¹¹

2.10 Some witnesses gave evidence suggesting that trapping undertaken by contractors to prepare areas for clearance had not adhered to stipulations of the FEMP.¹² For example, Ms Corke, Wetlands Watchers, gave several examples that had been documented by the group:

On three occasions we have seen bandicoots removed the morning before they cleared an area. We have also been told that the area is scheduled for clearing the next day, which we find extremely bizarre because how can you schedule something before you know what the result of the previous night's trapping will be? Also, on two occasions on the same day, we saw bandicoots being removed from an area which they started clearing that afternoon, and right at the beginning, on the second day of clearing in January, we saw bandicoots being removed 90 minutes before they cleared an area.¹³

2.11 Ms Corke provided the committee with photos documenting poor trapping practices taken by members of Wetlands Watchers, as well as an Excel spreadsheet documenting these incidents. These included documentation of traps set in poor

7 Ms Katharine Kelly, Save Beeliar Wetlands, *Proof Committee Hansard*, 23 February 2017, pp. 10–11. Note: some witnesses referred to bandicoots as quenda, a term derived from the Noongar language.

8 *Fauna Environment Management Plan*, p. 17.

9 *Fauna Environment Management Plan*, p. 17 and Table 7 'Contingency Actions' at p. 30.

10 *Fauna Environment Management Plan*, p. 18.

11 *Fauna Environment Management Plan*, p. 18.

12 See Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, p. 6; Ms Katharine Kelly, Save Beeliar Wetlands, *Proof Committee Hansard*, p. 11.

13 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 6.

locations (too close to roads or perimeter fences and in noisy or well-lit locations), and traps set too close together or with insufficient covers (both for camouflage and trapped animal protection against the elements).¹⁴ It also appears that some bandicoots have been placed on the ground while in bags, or that these bags have been stacked on top of each other and left in the sun.

2.12 In addition, Ms Corke suggested some areas being cleared obviously had a number of bandicoots who had not been removed from the site. She stated that:

There have been bandicoots run over on road. We have seen bandicoots running from an area that is currently being cleared and others died on the nets which have been very inefficiently put in and they have not been able to leave the area and died of lack of water or panic.¹⁵

2.13 Dr Felicity Bairstow, a retired veterinarian appearing in a private capacity, suggested that traps had not been closed on hot days, and:

...on a 36 degree day, I became distressed enough—from a professional perspective—at the thought of animals being out there in traps that I called to made a report to the RSPCA.¹⁶

2.14 Dr Bairstow also raised more general concerns about the trapping program, particularly potential difficulties faced by bandicoots relocated to other areas:

I...spoke to the chief wildlife officer of [the Department of Parks and Wildlife WA] with regard to the translocation of the southern brown bandicoots and the futility of transplanting them to adjacent areas. The southern brown bandicoots are very territorial. If you put bandicoots into an area where there are already bandicoots, which there will be if it is a good habitat for bandicoots, they will get beaten up, kicked out onto the road and run over—and that is what happened. The reply from the chief wildlife officer was that it was not his department. We have heard that an awful lot in the last few months.¹⁷

Trapping of reptiles and turtles

2.15 The committee also received some evidence that reptile and turtle trapping programs had not been designed or implemented effectively.

2.16 Professor Hobbs, The Beeliar Group, commented that, whereas he considered the plan was reasonable regarding some species, it had omitted appropriate provisions to deal with reptiles and turtles on the site:

These animals are largely cryptic and very hard to track effectively, so the length of time given to that trapping is probably insufficient to ensure that

14 Miss Phoebe Corke, *Additional Information No. 10 and No. 11*.

15 Miss Phoebe Corke, *Wetland Watchers, Proof Committee Hansard*, 23 February 2017, p. 6.

16 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

17 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

you are getting the animals that you want. In addition to that, the [original] plan did not cover turtles, which were discovered as the project began...¹⁸

2.17 Ms Corke, Wetlands Watchers, also provided the committee with her letter to the Western Australian Environmental Protection Authority. This letter noted the CEMP's deficiencies for turtle trapping:

Turtle trapping at this time of year is also extremely ineffectual as in the warm months Oblong Turtles bury themselves in the mud, where they remain. According to a turtle expert trapping should be for a minimum of two to three weeks and should take place in the autumn and winter, not in the summer. The turtle traps in Stage 5 were set for only two nights and were set too high in the water for effective trapping even in the correct season.¹⁹

2.18 Reptiles may also have been handled inappropriately; poor handling of reptiles increases levels of stress while they are being captured for relocation.

Fencing and netting to protect fauna

2.19 Some witnesses argued that contractors had not provided sufficient fencing and netting to protect fauna in areas that were being cleared.²⁰ The FEMP provides that contractors must 'Install fauna fencing to exclude terrestrial vertebrate fauna from the construction footprint and the operational highway', that will:

- comprise of a mesh fence to a height of no less than 1.2 m and be dug into the ground to a depth of no less than 350 mm;
- include temporary fauna fencing during construction, but will conform to the standards required for permanent fencing;
- be designed to exclude the Southern Brown Bandicoot within the development envelope; and
- include escape gates to allow fauna trapped in the road reserve an exit route.²¹

2.20 Professor Hobbs commented that there had been many instances of this fencing being non-compliant with FEMP conditions:

Another obvious and persistent breach relates to the failure to correctly install fauna-proof mesh on the fences surrounding the areas. This failure

18 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 46.

19 Miss Phoebe Corke, *Additional Information No. 10*, p. 29.

20 See Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 6; Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 46.

21 *Fauna Environment Management Plan*, Table 7, p. 28

actually makes it impossible to categorically state that areas being cleared are free of bandicoots.²²

2.21 Ms Corke also provided evidence from Wetlands Watchers documenting several occasions when protective netting had not been dug into the ground, was missing from fences, or was clearly inadequate to keep animals out of areas being cleared.²³

2.22 Professor Hobbs conceded that many of the fauna experts onsite were doing the best job they could, but they were constrained by the protocols of the FEMP:

...I think the fauna specialists have had a tough job to do here, and at least some of them are doing the best job they can. But, having said that, there are many parts of the implementation—and you have heard about them during the day already, with the problems with the trapping and so on. The one I highlighted was the problem of not having mesh fencing put into the barrier fences. To me, that makes it very difficult to see how the trapping protocols can be called effective, because there is no way that you can keep bandicoots out, and so as soon as they are trapped, some are likely to move in.²⁴

Surveys of local bird populations, particularly black cockatoos

2.23 Some submissions and witnesses questioned the adequacy of bird detection and removal programs undertaken for the Roe 8 construction works, particularly surveys of potential nesting sites for the threatened Carnaby's black cockatoo and the vulnerable red-tailed black cockatoo.²⁵

2.24 Dr Hugh Finn, appearing in a private capacity, provided the committee with expert evidence based on his extensive field research into black cockatoos, and questioned whether there had been an adequate survey of potential nesting sites. In particular, he highlighted Condition 4 of the Commonwealth approval conditions for Roe 8, which states:

To avoid and mitigate impacts to black cockatoos, during the breeding season (August—December), within 7 days prior to clearing, the approval holder must ensure all potential nesting trees are investigated to detect the presence of black cockatoos using hollows. The investigation must be undertaken by a suitably qualified and experienced person.

22 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 42; see also Mr Logan Howlett, Mayor, City of Cockburn, *Proof Committee Hansard*, 23 February 2017, p. 15.

23 Miss Phoebe Corke, *Additional Information No. 10 and No. 11*.

24 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 46.

25 Ms Katharine Kelly, Save Beeliar Wetlands, *Committee Hansard*, 23 February 2017, p. 11; Dr Hugh Finn, Private capacity, *Proof Committee Hansard*, 23 February 2017, pp. 42–43.

If any black cockatoos are detected using a hollow in a tree or trees, the approval holder must:

1. clearly identify all such trees with fencing and signage that must be located within two (2) metres of the base of each such tree;
2. not clear any such tree or any vegetation within 10 metres of any such tree; and
3. undertake all reasonable measures to avoid any such tree from being cut down, felled, removed, killed, destroyed, poisoned, ring-barked, uprooted or burned until a suitably qualified and experienced person has verified in writing that the hollow(s) in each such tree are no longer being used by black cockatoos.²⁶

2.25 The committee notes the federal approval specifically defines potential nesting trees as:

Means those 38 trees specified in the list held by the Department and provided confidentially to the Approval holder.²⁷

2.26 Dr Finn expressed doubts whether adequate surveys meeting these conditions could have been undertaken in a single day, given the need to check every hollow big enough for nesting by using cherry pickers, drones, arborists climbing trees, or some kind of long-term behavioural observation undertaken by bird population experts.²⁸

2.27 This view was supported by the evidence given by Ms Corke, Wetlands Watchers. She noted that her organisation was onsite on the day when the cockatoo nesting site survey was completed, and had not noticed any teams moving through the area, or any equipment like cherry pickers or drones being used to inspect trees.²⁹

2.28 The Department of the Environment and Energy (the department) told the committee that surveys of black cockatoo nesting sites were undertaken on 14 December 2016, within the stipulated 7 days of work being commenced on 19 December 2016. The department went on to note that:

We did look further to satisfy ourselves that the condition had been met. We understand that ACON was engaged to do those. It does not specifically say surveys, it says an investigation of the tree hollows. ACON went on-site to investigate those hollows. They found, I think, 26 trees that had hollows in them. Of the 26 they said 24 of those hollows were not suitable habitat for the black cockatoos and two may or may not have been. What they have done is taken a precautionary approach and not felled any of the trees with

26 Dr Hugh Finn, *Submission 4*, pp. 2–3.

27 Department of the Environment, *Approval, Roe Highway Extension*, EPBC 2009/5031, p. 5.

28 Dr Hugh Finn, *Proof Committee Hansard*, 23 February 2017, pp. 42–43.

29 Ms Phoebe Corke, Wetlands Watchers *Proof Committee Hansard*, 23 February 2017, p. 5.

hollows during the breeding period. My understanding is that 24 of the 26 trees still remain standing on the site.³⁰

2.29 Concern over the checking of local bird populations prior to works beginning were not limited to cockatoos. Ms Kelly, Save Beelihar Wetlands, told the committee:

I am not convinced that all those trees were properly checked for chicks. We know, for example, that many rainbow bee-eater nests were just run over by the machines [clearing bushland]. We saw tawny frogmouths and owls fleeing trees as they were toppled.³¹

2.30 The department has undertaken to provide the committee with further details of the survey of bird nesting sites carried out on 14 December 2016.³²

Rates of wildlife mortality

2.31 Mr Dean Huxley, Manager, Native ARC Inc., outlined a number of concerns with the number of native animals left in the construction zone, many of which were injured or killed:

In my capacity at Native ARC, I am overseeing the care of the wildlife that are admitted to the centre, and, to date, we have received photographs of injured and/or deceased wildlife from the public... We have received injured or deceased animals found by the public adjacent to and on the fence line of the Roe 8 clearing. We have received written and verbal information from the public detailing displaced wildlife sightings in many suburbs surrounding the Roe 8 clearing site. We have received only one injured quenda, which was admitted via the Murdoch Pet Emergency Centre, which came via a Roe 8 contractor.

We understand that the animals targeted for capture and relocation are quendas, jewelled ctenotus, lined skink, black-striped snake and the south-west carpet python. Our concern is for all wildlife within the clearing zone and the outcomes of those animals not captured or relocated. We suspect there is a large number. These include, but are not limited to, obviously, possums, lizards, snakes, frogs, turtles and internationally protected rainbow bee-eaters.³³

30 Mrs Monica Collins, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 29.

31 Ms Katherine Kelly, Save Beelihar Wetlands, *Proof Committee Hansard*, 23 February 2017, p. 11.

32 See evidence given by Mr Dean Knudson, Deputy Secretary, and Mrs Monica Collins, Assistant Secretary, Department of the Environment and Energy, Environment and Communications Legislation Committee, *Proof Estimates Committee Hansard*, 27 February 2017, pp. 96–97.

33 Mr Dean Huxley, Native ARC Inc *Proof Committee Hansard*, 23 February 2017, p. 37.

2.32 Ms Diane Munrowd, Manager, Native ARC Inc., questioned what protocols were followed on the construction site for the care of injured animals:

We need to understand what the compliance is with the treatment and rehabilitation of animals that are actually injured as part of this clearing, and we have no idea about that at all. There are protocols for treatment, there are protocols for rehabilitation and there are none available. I have no idea where those animals go. I understand the ones that are not injured are put in a holding site and then they will go to the offset areas. But you cannot expect that there will be no animal that is injured in this process. So if they do not get killed on the site, where are those animals taken? What are the protocols? Because there are protocols that are required in terms of their treatment and rehabilitation.³⁴

Other concerns

2.33 A range of other concerns were raised by submitters including non-adherence to dieback protocols by contractors, the lack of protection for Banksia woodlands that were being cleared, the inadequate flora surveys undertaken before environmental approval was granted for Roe 8, and flaws in the environmental offsets for the project.

Banksia woodlands

2.34 The committee understands that the Beeliar Wetlands contain some Banksia woodlands that the construction work will destroy. Dr Bairstow outlined the importance of Banksia habitats to a range of native species, noting that their destruction would impact a range of plant and animal species.³⁵

2.35 The committee understands that the Roe 8 works are clearing a large area of Banksia woodlands, which is listed as threatened species that is protected under the EBPC Act. Moreover, the committee is aware that this woodland is vulnerable to diseases including dieback, which is discussed below.

2.36 Officers from the Commonwealth Department of the Environment and Energy explained that, as that Banksia woodlands scheduled for clearance for Roe 8 were listed as endangered on 16 September 2016, and so had not been considered as part of the environmental assessment for the project.³⁶ The committee was told that this:

...is a common thing that does happen. The list of species that is being protected and assessed over time is always evolving, and so are projects being referred to us. It is not uncommon to have a referral decision and then subsequently, not due to any malfeasance or anything like that, the listing levels for different species change over time as the scientific assessment develops.³⁷

34 Ms Diane Munrowd, Native ARC Inc, *Proof Committee Hansard*, 23 February 2017, p. 40.

35 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

36 Mrs Monica Collins, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 23.

37 Mr Dean Knudson, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 24.

2.37 The department made it clear that it was only able to consider currently listed species when making decisions, and could not retrospectively amend decisions on projects:

...the relevant legislative provisions in the act are set out in section 158A, which makes it quite clear that we are only able to make decisions about matters that are the subject of a listing at the time the referral is made. We are not able to factor in matters that are listed subsequent to that date.³⁸

2.38 The committee notes the independent review of the EPBC Act undertaken by Dr Allan Hawke (the Hawke Review) which was completed in 2009 recommended amendments to the Act to provide for emergency listings. In 2011, the Commonwealth government committed to implement those recommendations, but did not bring a reform package to the Parliament.

2.39 In 2011, the Parliament considered a private members bill, the Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011 which would have implemented those elements of the Hawke Review, and would have addressed the effect of section 158A. Section 158A of the EPBC Act prevents consideration of threatened species or ecological communities which are listed after the time a referral is made. This bill lapsed at the prorogation of the 43rd Parliament.

Flora management

2.40 Dr Bairstow pointed out the difficulty of undertaking surveys of the area's flora, when some species only flowered sporadically:

The thing with a lot of those species, especially the orchids, is that they are very sporadic when they are coming out. One of the issues we have had with this project is that the flora studies were done at inappropriate times and not sufficiently well, and so it is not surprising that they may not have found some of those orchids.³⁹

Offsets of land cleared for Roe 8

2.41 The committee understands that some of the Beeliam Wetlands cleared for the construction of Roe 8 will be offset with new or existing bushland. Professor Hobbs, the Beeliam Group, outlined the shortcomings of offset provisions for the Freight Link:

The problem is that the implementation of the offsets policies is complete rubbish. There is just no actual method for making sure that the offsets that are set are actually having any good impact at all, especially in the case of this Roe 8 offset, where we are allowing nearly 100 hectares of bushland to be destroyed completely and the offset is a simple designation change on existing bushland. There is no net gain in habitat, and so therefore it is a bit of a furphy, if you ask me. The offset does include other management activities to improve habitat around the Beeliam area, but you have to

38 Mr Simon Writer, General Counsel, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 24.

39 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

question how the decision was made that these offsets were actually going to compensate for the loss of the woodland.⁴⁰

2.42 Dr Bairstow was of a similar view and stated that:

The concept of offsets in general has developed into a system of nothing much better than smoke and mirrors. We are not creating new habitat. We are destroying habitat and trying to convince people that somehow by putting an area into a conservation reserve it becomes new habitat.⁴¹

2.43 Dr Bairstow went on to comment that many animal species such as the bandicoot are territorial and are not necessarily going to move to the offset area. Problems with cockatoos are emerging:

Every day we have reports of people with flocks of cockatoos in their backyards that are hungry. They are looking for food and they are looking for somewhere to roost. It is quite tragic. That offset, which is in Lake Clifton, is not going to provide any food or roosting habitat for those cockatoos.⁴²

2.44 Professor Hobbs also noted how long it takes for offset planting to provide environmental benefits:

The problem is that if you are destroying a banksia woodland with trees in it that are 300 or 400 years old [as in the Beeliar Wetlands], obviously it is going to take you 300 or 400 years to get back to that habitat. If it is replacing Carnaby's cockatoo habitat it is going to take the banksia trees 10, 20, 30 years to recover their ability to produce food for the cockatoos and so on. So there is a big lag between when the damage is done and when the reparation is made.⁴³

2.45 A further matter raised by Professor John Bailey, The Beeliar Group, related to the double counting of offset areas. He stated:

...I would like to draw your attention to the other offsets...A number of those in my view are actually double counted. They are commitments to do things that were already made, independently of Roe 8, and have just been listed again under Roe 8 offset requirements. One example is improved management of Thomsons Lake. The offset conditions there are drawn directly from the Thomsons Lake management plan that was prepared many years ago. So I think we have to be very careful in recognising what offset requirements are truly new and what are just the rebadging and double counting of existing commitments.⁴⁴

40 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 43.

41 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 39.

42 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 39.

43 Professor Richard Hobbs, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 44.

44 Professor John Bailey, The Beeliar Group, *Proof Committee Hansard*, 23 February 2017, p. 44.

Implementation of the Construction Environmental Management Plan

2.46 Some witnesses raised concerns about the way contractors managed dieback protocols, asbestos waste, dust produced onsite by clearance work, and the handling of other potential contaminants.

Dieback protocols

2.47 The committee received evidence that the CEMP's dieback protocols had not been followed by some contractors working on the site.⁴⁵ Miss Corke, Wetlands Watchers, outlined some examples to the committee:

We have seen workers, utes, police cars and horses, a cherry-picker, a water truck and a bulldozer drive between uninterpretable and unaffected sections of the site without any form of hygiene or wash down procedures, in contravention of dieback protocols in table 10 of the CEMP.⁴⁶

2.48 Dr Bairstow, appearing in a private capacity, described what dieback is, before outlining a number of potential violations of the project's dieback protocols:

Dieback is a fungal infection of certain species of vegetation and, once introduced to an area, it cannot be eradicated. There are standard protocols to be followed, and they have not been followed in this case. In particular, repeated movements of vehicles from uninterpretable dieback areas to uninfested dieback areas of native vegetation have been observed. On two separate days, I made reports directly to the [WA Office of the Environmental Protection Authority] regarding the lapse in protocols. On the second day, I rang back after several hours to find out what was happening. I was told that the auditors had reported back and there was no clearing taking place, to which I replied, 'I am watching a live stream of a video of clearing taking place across the road right now.' I was told, 'We will send him back in.'⁴⁷

2.49 Dr Bairstow suggested current conditions were ideal for dieback spreading, so a great deal more caution should be exercised by contractors:

This particular period has created a very, very favourable situation where we are still in summer, we have warm soil, the fungus is flourishing and we have summer rain. That could lead to a catastrophic transfer of dieback. If we were ever, anywhere, going to be careful about something like dieback protocol—and I am not saying that all the other bits of bush do not deserve to be looked after too, but if we cannot do it here, where can we do it?⁴⁸

45 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p.3; Mr Logan Howlett, Mayor, City of Cockburn; *Proof Committee Hansard*, 23 February 2017, p.15, Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38. The dieback protocols for the Roe 8 works are contained in the CEMP. See *Construction Environmental Management Plan*, pp. 11–15.

46 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 3.

47 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

48 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

2.50 Dr Bairstow also noted that dieback in some areas of vegetation could have serious repercussions for many species of local fauna:

The thing about the banksia woodlands and the wetlands through that area is that they are incredibly complex, integrated systems. So, when you start killing off a whole suite of plants, you are going to have a knock-on effect on many other plant and animal species.⁴⁹

Management of asbestos waste

2.51 Some witnesses and submitters were concerned that asbestos found in the clearance process had been handled poorly.⁵⁰ For example, Mr Bob Bryant, a retired technical specialist in occupational health and safety and a safety coach who was appearing in a private capacity, spoke of the flagrant disregard some contractors had for WorkSafe standards, including regarding:

...[the disposal of] asbestos; it is the emissions of dust, the control, the clean-up. For example, people have been observed picking up pieces of asbestos, breaking pieces of asbestos, and carrying them and putting them in the back of vehicles...[namely, the] contractors, supposedly the asbestos removal specialists. In the early days none of those people were wearing proper personal protective equipment. They subsequently have, in just very recent times, started to wear proper gear, but there is even evidence of noncompliance with that.⁵¹

2.52 Mr Bryant provided the committee with the results of laboratory testing of asbestos he had found on 'a random walk through some of the areas' on the construction site.⁵² This confirmed 42 samples of asbestos were found, including the most dangerous type, blue asbestos.⁵³

2.53 Ms Alison Wright, Coordinator, Coolbellup Concerned Residents, pointed to the uncertainty that poor asbestos handling practices created for local residents:

We have witnessed bulldozers tearing through the bush and then uncovering dumped asbestos materials. We are left wondering whether there was any missed asbestos left in the giant piles of mulch. We have requested and requested support from government agencies and we are still left wondering. We have voluntarily conducted asbestos surveys, tested these samples and found that 85 per cent of the samples were asbestos. From our cursory survey conducted by citizens, we have identified more

49 Dr Felicity Bairstow, *Proof Committee Hansard*, 23 February 2017, p. 38.

50 Mr Bob Bryant, *Proof Committee Hansard*, 23 February 2017, p. 7; Ms Alison Wright, Coordinator, Coolbellup Concerned Residents, *Proof Committee Hansard*, 23 February 2017, p. 8; Mr Logan Howlett, Mayor of the City of Cockburn, *Proof Committee Hansard*, 23 February 2017, pp. 14–15.

51 Mr Bob Bryant, *Proof Committee Hansard*, 23 February 2017, p. 7.

52 Mr Bob Bryant, *Proof Committee Hansard*, 23 February 2017, p. 9.

53 Mr Bob Bryant, *Additional Information*, Asbestos Laboratory testing results, p. 59.

than 100 pieces throughout the Roe 8 site, and yet the clearing has continued.⁵⁴

2.54 Ms Wright told the committee that the Western Australian government had undertaken tests for asbestos on the site, after concerns had been raised repeatedly by local residents over a long period:

I can tell you that we put a suspected contaminated site form into the Department of Environment Regulation on 16 December. I received some correspondence back from them just before early January saying, 'Thank you very much, but we can't see any reason to continue looking into that'. Yet, surprisingly, in early January I got another letter from the Department of Environment Regulation that said, 'Actually, we are looking into this'. I made a phone call to them and they have since examined the site and found that it is not contaminated.

Meanwhile, that is 52 days that people in Coolbellup had this sense of fear and anxiety about whether there is airborne asbestos.⁵⁵

2.55 Ms Wright expressed some doubts whether sufficient testing of the site had been undertaken, given the results of other surveys:

Despite the report back from the Department of Environment Regulation, I am sorry but I do not have confidence that they have been able to go through piles and piles of mulch that are really high and can tell me unequivocally that there is no asbestos in there. We found 100 pieces of asbestos throughout the entire site on a cursory survey.⁵⁶

2.56 Ms Wright also highlighted the anguish that had been caused to local residents, given the long uncertainty over asbestos contamination of the site:

It is quite extraordinary to see a group of people, who are entirely sensible people, so commonly brought to tears. In these meetings that I am convening, there are people who are often on the brink of tears because of the level of anxiety. I think that is mainly due to the fear and worry about what is going on across the road...⁵⁷

54 Ms Alison Wright, Coolbellup Concerned Residents, *Proof Committee Hansard*, 23 February 2017, p. 2.

55 Ms Alison Wright, Coolbellup Concerned Residents, *Proof Committee Hansard*, 23 February 2017, p. 8.

56 Ms Alison Wright, Coolbellup Concerned Residents, *Proof Committee Hansard*, 23 February 2017, p. 8.

57 Ms Alison Wright, Coolbellup Concerned Residents, *Proof Committee Hansard*, 23 February 2017, p. 8.

Dust management

2.57 The committee heard that many local residents and communities had been affected by the dust emanating from the clearance work undertaken by contractors.⁵⁸ Ms Corke, Wetlands Watchers, told the committee it was clear that good dust management practices, as outlined by the CERP,⁵⁹ were not being followed onsite, given surrounding homes and pools had been covered with 'films of dust':

The first, most obvious signs of noncompliance were with dust management. According to table 6 of the CEMP, water carts are to be operational at all times in dry and windy conditions. Throughout the clearing, if a cart has actually been on site, it has rarely been used and never effectively.⁶⁰

2.58 Mr Logan Howlett, Mayor of the City of Cockburn, noted the city had investigated around 50 complaints of ill-health from excessive dust pollution:

We have accounts of families, children and seniors being ill because of the dust impacts. There was one statement by a ratepayer who had been to their doctor saying that the result of their aggravation or their asthma was from the dust emanating from the clearing.⁶¹

2.59 Mr Howlett went on to stated that the city had raised a formal complaint with relevant state agencies:

On Tuesday, 17 January and Friday, 20 January 2017, in response to complaints from residents, city officers witnessed dust from mulching operations considered to be unreasonable, and under normal circumstances the city would issue instructions to a contractor to cease operating immediately. There was no evidence of any water trucks or any wetted sand in the cleared areas. The officers experienced dust settling on them and irritating their eyes. A request was sent to the Roe 8 project environmental manager about intentions to improve dust control without delay. The city contacted Main Roads WA, the OEPA and the DER about the unreasonable dust emissions from the works at the Roe 8 extension and requested that they investigate and take appropriate action without delay.⁶²

58 See Ms Alison Wright, Coolbellup Concerned Residents, *Committee Hansard*, 23 February 2017, p. 2; Miss Phoebe Corke, Wetland Watchers, *Committee Hansard*, 23 February 2017, p. 6; Mr Andrew Joske, Wetland Watchers; *Committee Hansard*, 23 February 2017, p. 6; Mr Bob Bryant, *Committee Hansard*, 23 February 2017, p. 7; Mr Logan Howlett, Mayor, City of Cockburn, *Committee Hansard*, 23 February 2017, p. 16; Ms Denise Crosbie, Cockburn Wetlands Education Centre Inc., *Proof Committee Hansard*, 23 February 2017, p. 37.

59 *Construction Environmental Management Plan*, pp. 10–11.

60 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 2.

61 Mr Logan Howlett, Mayor, City of Cockburn, *Proof Committee Hansard*, 23 February 2017, p. 14 and p.16.

62 Mr Logan Howlett, Mayor, City of Cockburn, *Proof Committee Hansard*, 23 February 2017, p. 14.

2.60 Mr Howlett also commented that this had led to the city undertaking its own sampling and analysis of dust samples from the vicinity of the Roe 8 works. Asbestos fibres had not been detected and he suggested that the results of similar analyses undertaken by contractors should be made public to reduce community concerns:

The results from an independent laboratory indicated that no asbestos fibres were detected in any of dust samples. While the city believes that these results give the community confidence that asbestos associated with the Roe 8 clearing works does not represent a public health risk, it is also aware that the contractor carried out dust monitoring. The city has formally requested a report, but the contractor is yet to provide the information. They have advised that asbestos fibres have not been detected in the dust samples collected. If that is so then the formal laboratory test results should be released to the public.⁶³

2.61 Ms Wright added that, as well as poor health outcomes for some locals, there was still lingering uncertainty over whether the dust also contained asbestos fibres:

But on top of [immediate impacts on health] there is the great unknown: are there asbestos fibres in the dust? It is very clear that the dust is there, because it is layering over people's houses. In fact, we were so worried about the dust that we as a group of residents conducted asbestos sampling off our own bat, because we just were not getting the evidence back.⁶⁴

Other contaminants

2.62 The committee was made aware that contractors were potentially treating other contaminants in a manner that was non-compliant with CEMP conditions. For example, Ms Corke told the committee that she had witnessed a barrel of 'unidentified contents' ruptured by a bulldozer, with its contents subsequently left to leak onto the ground. She argued that that clearing work had gone on around the leakage, which was in breach of CEMP conditions, which stipulate that all work should stop until any contaminant is contained, identified, and cleared safely.⁶⁵

Flaws with Management Plans for the project

2.63 The committee received evidence that argued the management plans for the Roe 8 implementation were badly written and difficult to understand. As a consequence, it was difficult for contractors to adhere to environmental and construction conditions. For example, Ms Kelly, Save Beelihar Wetlands, stated that:

In the beginning, the opinions of scientists and fauna experts whom we worked with to understand the stated protocols versus industry best practice, as laid out in the environmental management plans, told us that

63 Mr Logan Howlett, Mayor, City of Cockburn, *Proof Committee Hansard*, 23 February 2017, p. 15.

64 Ms Alison Wright, Coolbellup Concerned Residents, *Proof Committee Hansard*, 23 February 2017, p. 8.

65 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 3. Also see *Construction Environmental Management Plan*, p. 19.

their plans showed a lack of skill and expert advice in their construction. We believed that it may have been speed and a lack of skills in the authorship of those plans which were driving the noncompliance at that early stage.⁶⁶

2.64 Professor Hobbs also suggested that the plans showed signs of being completed in a rush. Additionally, he noted they have not been subjected to any independent review. These factors, he said, would make implementation very difficult for contractors:

The first problem was when the plan was completed, which was a few days after initial work started on the project and a few days before the initial clearing started. There was no opportunity for any outside review of this plan at all. The plan was viewed by people from the Department of Parks and Wildlife a year earlier, and presumably it was adjusted in relation to those discussions...It is all to do with the speed of the process, really. It is the rush of trying to get this happening that makes the implementation of the plan very difficult.⁶⁷

2.65 Ms Kelly also commented that the plans were only published a few weeks before the clearing work began on 18 December 2016, which may not give contractors sufficient time to engage with them.⁶⁸

Responses of the state and Commonwealth to potential breaches

2.66 The committee took evidence from several witnesses that suggested the Commonwealth and state governments had not been willing to acknowledge concerns about potential breaches adequately. For example, Ms Corke suggested that she had reported potential breaches to relevant authorities on a daily basis, and had not received a reply from the Commonwealth, and a single cursory letter from the EPA:

Every day we watch, and nearly every day I send an email to both the EPA and to the federal Minister for the Environment and Energy, who claimed on 15 February that neither he nor his department has received any reports of breaches on site. These emails contain photos that outline the breaches we have just observed and that try to prevent further breaches occurring. There have been 20 emails so far and about 50 breaches reported. To date, there has been one response from the EPA less than two pages long—one eight-paragraph letter—responding to around 125 pages of emails.⁶⁹

66 Ms Katherine Kelly, Save Beelihar Wetlands *Proof Committee Hansard*, 23 February 2017, p. 2. Note: the *Construction Environmental Management Plan* is dated the 29 November 2016 in the footer of the document; the *Fauna Environmental Management Plan* is dated 13 December 2016 in a similar location.

67 Professor Richard Hobbs, The Beelihar Group, *Proof Committee Hansard*, 23 February 2017, p. 46.

68 Ms Katherine Kelly, Save Beelihar Wetlands, *Proof Committee Hansard*, 23 February 2017, p. 12. Note: the *Construction Environmental Management Plan* is dated the 29 November 2016 in the footer of the document; the *Fauna Environmental Management Plan* is dated 13 December 2016 in a similar location.

69 Miss Phoebe Corke, Wetland Watchers, *Proof Committee Hansard*, 23 February 2017, p. 2.

2.67 Ms Kelly, Save Beeliar Wetlands, shared her experience with the committee:

On 20 December, the second day of clearing, we sent our first letter to Mr Kim Taylor from the EPA and other agency heads calling for Roe 8 to be halted whilst the issues with noncompliance were investigated. That letter was 22 pages long...We have still not received a letter in reply from the EPA, although later we did receive a letter from Minister Frydenberg which names the EPA as the only agency responsible for compliance issues.⁷⁰

2.68 Mr Howlett, Mayor of the City of Cockburn, noted the angst among the community that was caused when government agencies did not engage with people who had raised concerns about potential breaches:

Numerous emails copied to myself have clearly indicated to the state government departments responsible that they need to step in and take action. My understanding is that many of those emails have been not responded to, which, again, is a sad indictment of what is happening around this project...

When there is silence from the other end, you start to wonder...Those things are very powerful in terms of the perception in the community about a project and that the government and the relevant departments and/or the contractor seem to have little value for it in providing information back.⁷¹

2.69 The department provided the committee with evidence on the complaints it had received and stated that committee that it had received a 'large volume of correspondence' relating to potential breaches of the Roe 8 works. Given this, the department outlined several actions it had adopted to assess the validity of these claims:

We had officers on site on 16 January and again on 7 February this year. We have also spoken to Main Roads and asked them to provide information. We have also spoken with the EPA and asked them to provide information. We have also followed up on the qualifications where experts were required to do things.⁷²

2.70 In relation to compliance with Condition 4—the survey of trees during the breeding season—the department stated that it had satisfied itself that the condition had been complied with. It was also noted that those undertaking the tree survey had extensive experience in survey work. Ms Collins concluded 'what we found was that

70 Ms Katherine Kelly, Save Beeliar Wetlands, *Proof Committee Hansard*, 23 February 2017, p. 5.

71 Mr Logan Howlett, Mayor, City of Cockburn, *Proof Committee Hansard*, 23 February 2017, p. 17.

72 Mrs Monica Collins, Assistant Secretary, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 25; see also Environment and Communications Legislation Committee, *Estimates Proof Committee Hansard*, 27 February 2017, p. 103.

any potential nesting trees, even though they had been ruled out as suitable, were retained on the site'.⁷³

2.71 The department stated they had found no breaches of the conditions for the project's approval, apart from one area:

There is one area where there was a minor noncompliance in relation to reports being provided to the department later than the expected time, and the department did issue a warning letter to Main Roads in relation to that late supply of report. Other than that, we have looked into the allegations that have been made and we have not found evidence to demonstrate that matters protected under the EPBC Act or under this approval have been breached.⁷⁴

2.72 On this matter, Mr Matt Cahill added that some issues were still being investigated by the department:

We do still have allegations that have been put forward, and so while we have made some conclusions with regard to the material to date, we still have other material in front of us that we are still considering.⁷⁵

2.73 At the Environment and Communications Legislation Committee estimates hearing on 27 February 2017, the department indicated that the investigation report, which addresses all of the relevant conditions, was being finalised.⁷⁶

Timing of commencement of construction

2.74 A number of witnesses questioned the timing of the commencement of construction. With the state election scheduled for 11 March 2017, witnesses argued that construction should have been delayed until after that date.⁷⁷ The commencement of construction was seen as a rushed move to ensure that as much land as possible was cleared so that 'it cannot be undone'.⁷⁸

2.75 Ms Kelly, Save Beeliar Wetlands, also commented:

Given the proximity to the state election where a change of government will shelve this project, many in the community strongly question the need for bulldozing such an important spiritual, ecological and community place of

73 Environment and Communications Legislation Committee, Mrs Monica Collins, Assistant Secretary, *Estimates Proof Committee Hansard*, 27 February 2017, p. 95.

74 Mrs Monica Collins, Assistant Secretary, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 25; see also p. 26.

75 Mr Matt Cahill, First Assistant Secretary, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 25.

76 Environment and Communications Legislation Committee, Mr Matt Cahill, First Assistant Secretary, Department of the Environment and Energy, *Estimates Proof Committee Hansard*, 27 February 2017, p. 103.

77 Mrs Kim Dravnieks, Rethink the Link, *Proof Committee Hansard*, 23 February 2017, p. 3.

78 Dr Bradley Pettitt, Mayor, City of Fremantle, *Proof Committee Hansard*, 23 February 2017, p. 16.

great beauty with such an unnecessary amount of haste and proper oversight.⁷⁹

Committee view

2.76 This inquiry has heard incontrovertible evidence that the Roe 8 works have breached the Environment Management Plans repeatedly and in serious ways. These breaches have profound consequences, not only for the health of the natural environment of the Beeliam Wetlands and its flora and fauna, but also for the health of the communities that live near the Roe 8 works.

2.77 The RRAT committee inquiry last year showed that the Perth Freight Link was poorly conceived and badly designed. It compellingly made the case that the project would blow a once-in-a-generation opportunity to get infrastructure in Western Australia right, squandering around \$1.2 billion of Commonwealth funds at a time when the national budget is under increasing pressure. It also indicated the project would have disastrous environmental implications, and that it was characterised by poor consultation by the Commonwealth and state governments, and an unwillingness to communicate with communities that would be affected the most.

2.78 It is clear the implementation of Roe 8 has confirmed these findings. In particular, the committee considers that the Roe 8 works have followed a disastrous trajectory, and have been rushed and shoddily implemented by the Barnett administration before the shutdown period preceding the state election on 11 March 2017.

A disastrous environmental legacy

2.79 The work on Roe 8 has had disastrous environmental effects, not only from its destruction of part of the Beeliam Wetlands, one of Western Australia's most significant natural assets, but also from potential breaches of its CEMP by contractors.

2.80 The committee was concerned that the conditions to manage native fauna on the site seem to have been breached many times by contractors. Trapping plans for bandicoots and other species appear to have been badly designed and implemented, which has resulted in the needless trauma of animals being removed for relocation, and the deaths of many others.

2.81 It also appears that surveys of birdlife habitats in the Roe 8 area have been undertaken in a cursory way. This could put several species at further risk, particularly the endangered Carnaby's and red-tailed black cockatoos. The committee will look forward to receiving further information on these surveys from the department, especially regarding their compliance with section 4 of the environmental approvals for the project.

2.82 Additionally, the Roe 8 works have already cleared a great deal of the unique and protected Banksia woodland of the Beeliam Wetlands; this woodland is also threatened by contractors not following dieback protocols. The committee notes that

79 Ms Katherine Kelly, Save Beeliam Wetlands, *Proof Committee Hansard*, 23 February 2017, p. 5.

this woodland was listed as endangered on 16 September 2016, but can be cleared, as its listing occurred after the referral of the project.

2.83 The committee believes that the Environment Management Plans show signs of having been produced quickly, with insufficient independent oversight or monitoring of their contents before their release by Main Roads WA. As a consequence, contractors have had insufficient time to engage with, understand, and to work to meet the environmental standards they are legally bound to adhere to under the Plans.

2.84 The hurried implementation of Roe 8, the lack of appropriate oversight of contractors by the Commonwealth and state governments, as well as the poor drafting of the Environment Management Plans, has meant that an invaluable part of the natural heritage of Western Australia—and, indeed, our nation—has been destroyed for the initial stages of a project that is fundamentally flawed and should be scrapped.

Poor health outcomes for local communities

2.85 The hurried implementation of the Roe 8 works has also meant that many communities who live near the Roe 8 works have had real and potential health impacts caused by non-compliance with dust and asbestos management plans.

2.86 It is evident that the site contains a great deal of hazardous asbestos, and that local communities have been able to collect and identify dangerous material from mulch produced in the clearance process.

2.87 Moreover, the committee is concerned about poor health outcomes that can be caused by poor dust management practices, even if the tests that have been done on dust from the site have not contained asbestos fibre. It seems that a number of locals have had health complications caused by the dust, including those with asthmatic or sensitive respiratory conditions. Dust also impacted a school with 250 children, just 100 metres from the construction site.

2.88 It is apparent that communities have commissioned their own asbestos testing, given that contractors and the state governments have shown unwilling to release the results of their own analyses. The committee considers that the results of tests undertaken by government agencies and contractors should be made public, so as to reassure local communities.

Conclusion

2.89 The evidence the committee received overwhelmingly showed that, since the Roe 8 works commenced only a few months ago, there have been a number of potential breaches of the legally binding conditions contained in the project's Management Plans approved by the state government. Moreover, the committee has heard serious allegations about violations of conditions attached to the environmental approvals granted by the Commonwealth for the Roe 8 project, in particular Condition 4 related the survey of black cockatoo nesting trees.

2.90 The committee notes that the Western Australian government's project approval assessment was carried out under the bilateral assessment arrangements. The department stated that the Western Australian government has been 'accredited to

meet our environmental requirements under the EPBC Act'. While the Western Australian government has made a number of recommendations related to state matters these are also subject to Commonwealth scrutiny. The department commented:

What we do then is look at those recommendations. We reference and assess those against our requirements in making an approval or not. What we will do is try to reduce duplication. Where there are management plans that are covered already by the state, we will try to reflect that in our approval.⁸⁰

2.91 The committee acknowledges that the Commonwealth's regulatory role is confined to the extent to which the management plans relate to matters of national environmental significance. However, the Carnaby's black cockatoo is listed by the Commonwealth as a threatened species while the Red-tailed black cockatoo is listed as vulnerable. The committee considers that the failure to undertake adequate surveys of nesting tree raise significant concerns about whether condition 4 has been satisfied.

2.92 The committee therefore considers that the Commonwealth should act to suspend approval for the project. The Commonwealth Minister for the Environment has the power, under subsection 144(2A) of the EPBC Act, to undertake this action and should do so immediately.⁸¹

Recommendation 1

2.93 The committee recommends that, pursuant to subsection 144(2A) of the *Environment Protection And Biodiversity Conservation Act 1999*, the Minister for the Environment suspends the Roe 8 construction works until he has ascertained that all the conditions of the approval issued for the Roe 8 works have been met by the Western Australian government and by relevant contractors.

Recommendation 2

2.94 The committee recommends that—whatever the outcome of the Western Australian state election taking place on 11 March 2017—the Commonwealth works with the state government and other stakeholders to develop productive and economically viable infrastructure projects in Western Australia that incorporate rigorous environmental assessments and conditions.

Recommendation 3

2.95 The committee recommends that the Commonwealth government act urgently to amend the EPBC Act to provide for emergency listings of threatened species and ecological communities, and to consider addressing the effect of section 158A of the EPBC Act which currently prevents consideration of threatened species or ecological communities which are listed after the time a referral is made.

80 Mr Bruce Edwards, Assistant Secretary, Department of the Environment and Energy, *Proof Committee Hansard*, 23 February 2017, p. 24.

81 *Environment Protection and Biodiversity Conservation Act 1999*, s.144(2A).

Recommendation 4

2.96 The committee recommends that the Australian National Audit Office (ANAO) conduct an audit of the Perth Freight Link project including in relation to:

- whether appropriate steps were taken to protect the Commonwealth's interests and obtain value for money in respect to the \$1.2 billion in Commonwealth funding committed to the Western Australian government for the Perth Freight Link project;
- the effectiveness of federal environmental protection laws, in particular the extent to which the Department of the Environment and Energy:
 - complied with its own policies (specifically including Offsets policy and protection of species with Recovery Plans),
 - adequately assessed impacts on matters of national significance during the assessment process,
 - adequately investigated and enforced compliance with approval conditions,
 - adequately responded to evidence significant and systematic breaches with management plans were being ignored by the state government;
- the adequacy of penalties to the approval holder for non-compliance under federal environmental protection laws; and
- political interference with the environmental assessment and compliance process.

Senator Peter Whish-Wilson

Chair