Our Future is the Natural World

"Biodiversity loss is the most significant environmental problem facing Australia"
Professor David Lindenmayer. (2007) *"On Borrowed Time"*

This Submission is made in response to the:

Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012
The Senate has referred the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012* (Cth) to the Environment and Communications Legislation Committee for inquiry and report by 25 February 2013.

The Bill prevents the Commonwealth from handing responsibility for approving proposed actions that significantly impact matters protected under the EPBC Act to a State or Territory.

Public submissions to the inquiry are invited until **18 January 2013**. Click here for more information and to have your say.

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The submission analyzes Federal Government's need to retain full powers provided by the *EPBC Act*, looking at:

(1) State ignorance and arrogance in relation to biodiversity conservation.
(2) Bending land-use planning legislation and why States ignore biodiversity.
(3) A track record of carelessness and irresponsibility toward the future - yet about to be handed more power.
(4) No statutory way of defining or identifying environmentally sensitive areas (ESAs) in States.
(5) Other State system failures, flaws and gaps cumulatively (in space and time) damaging biodiversity.
(6) Environmental destruction by *statist developmentalism* (artificially assisted growth).
(7) False argument to remove legal protectors of environment - to allow assisted and unfettered growth.
(8) Federal Government should look at this case study and listen to ENGOs with experience in fighting extinction.

Conclusion: The best advice to the Federal Government comes from a letter signed by UNEP Global 500 Laureates. [1]

Dot point summary
Article

[1] A letter, signed by *UNEP Global 500 Laureates (Refer Humane Society International)* speaks with greatest understanding, when it says to the Australian Prime Minister, *"The experience globally in federated states shows that when national governments retain key powers to protect the environment, far better ecological and economic sustainability outcomes can be expected."*

Summary:

Australia's rare and un-repeatable biodiversity is depleting rapidly – through bushfires, climate change and careless State actions. Major 21st century survival problems, such as protection of biodiversity corridors, aquifers, catchments, ecosystems and habitat-dependent species are "wicked" issues which do not recognize state borders. From an ecological perspective, States in the Australian Federation are proving to be colonial relics…. neither reliable nor viable for national environment protection in the long-term ….as shown by non-protection for biodiversity and native vegetation in the NSW Strategic Regional Land Use Policy (SRLUP). Each State is in pursuit of artificially assisted growth. This leads to competition between States with close partnership between State governments and business sectors. Multiply growth by number of States, then by number of individual projects: and mounting removal of original habitat - seed-bank, soil and vegetation - in the borderless and fragile Australian environment means extinction rates are certain to increase. Removal of Federal environmental control and oversight will exacerbate biodiversity loss in each State. The submission analyzes and demonstrates: loss of biodiversity under existing Legislation designed to protect, assumption of greater powers by ecologically un-informed land-use planning departments, non-enforcement of compliance, systemic flaws and failures, irreversible ecological **cumulative effects**, removal of those who protect the environment (attack on the EDO) and dangerous reliance on *"Not buying and selling, but building"*. Speculative construction, unnecessary mining and logging in threatened species habitats are not in the national interest. As biodiversity does not understand borders, Federal control and oversight are essential to the proper functioning of the *EPBC Act*.

Questions to calculate the consequences of NOT retaining federal environmental control:
1. When bush-fires are destroying thousands of acres of high quality natural environment, is it criminal to raise awareness of an open-cut mine in a State Forest or is it criminal to allow an open-cut mine in a State Forest?
2. Is fragmented State legal jurisprudence keeping abreast with accelerating loss of national life-supporting biological diversity?
3. Is *state developmentalism* out of control in its search for economic growth?
4. Is it necessary to include biodiversity as new critical infrastructure?
5. Is biodiversity loss primarily caused by the States?
6. Are State policy-makers ecologically aware?

Introduction:

At local, state and national levels irreversible environmental destruction, of forests (urban and regional), habitat and ecosystems, is happening under *statist developmentalism*. [2]The State push to devolve and dilute federal environmental laws is happening because each state is in search of profits through artificially assisted growth. This leads to competition between States and an inevitable close partnership between State governments (elected and un-elected segments) and business sectors.

The need for federal government to act in the National interest and stop the push by individually motivated States is urgent. Equally urgent is the need for the general public to understand a 2012 CSIRO report Implications for policymakers: Climate change, biodiversity conservation and the National Reserve System (pdf - 1.47mb). Major 21st century problems like protecting biodiversity corridors, aquifers, catchments, ecosystems and dependent species, all of which are human survival problems too, are "wicked" issues – unable to recognize state borders.

Biological diversity is basic to life on earth. Australia's biodiversity has suffered irretrievable losses in 200 years and conservation laws have been hard-won in the last 50 years. Currently, each State purports to apply "excellence" in environmental assessment and protection. Since that is seldom delivered, as development projects multiply across the country, *in situ* biodiversity[3] (the most essential form of conservation) will be incrementally lost, even under the current regime.

If Federal oversight is removed, each State's individual pursuit of competitive and self-motivated growth means Australia's total environmental loss will silently, steadily and then swiftly increment.

Since States already cause environmental loss - the cumulative impact of which is not assessed - the need for Federal oversight is essential: to provide protections for the environment which are subtly being further removed.

The NSW government's attack on the Environmental Defenders Office shows that false arguments are made and deceptive distinctions drawn, to remove protection for those who would protect the environment.[4] To then push to remove federal controls as well is sheer callousness towards the future.

Shedding the State-tier of government for land-use planning might be the answer to a vanishing environment.

As things stand State Planning Legislation does not accept responsibility for biodiversity conservation in land-use planning nor does the planning professional qualification and supporting association require or equip it to be fully informed ecologically. Yet, the urban and regional planning system makes major decisions relating to urban renewal and land-use which irreversibly changes, damages and destroys rare urban biodiversity or existing regional biodiversity.

There is a clear argument for further fettering and indeed removing some of the current State environmental decision-making powers – if the unique environment which has evolved in Australia is to survive into the future.

Species extinction is irreversible. An ethical issue, it should be taken seriously by all – including by those demanding ridiculous certainty in the face of certainty and by those who still deny climate change.

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2 In "Environmental Policy Failure The Australian Story" (2012) editors Crowley and Walker describe what they call " Statist developmentalism" saying it is a form of development "in which government takes a major, often dominant role in development and economic management"…. "based on ingrained nineteenth century attitudes and ideas".

3 http://pubs.cif-ifc.org/doi/abs/10.5558/tfc68720-6 In an article in The Forestry Chronicle, 1992, authors Rong-Cai Yang, Francis C. Yeh say, " We conclude ….., ex situ conserved populations would retain less genetic diversity than in situ conserved forest populations. While ex situ conservation is operationally convenient for the short-term gains …., we believe in situ conservation is essential for renewing the genetic diversity to meet the changing environments of an uncertain future. Genetic consequences of in situ and ex situ conservation of forest trees.

4 See Media Release by Greg Smith NSW Attorney General and Minister for Justice dated 20th December, 2012.
By not mentioning environmental legal protection in this Media Release, the AG draws a dubious division between "social and economic disadvantage" and protection of environment. That sleight of hand (or speech) means the environment is either placed at the same level as social and economic disadvantage, or fully ignored. However, he does mention "the public interest". The AG should have mentioned the environment if he was honest in his concern for "the public interest". Indeed environmental protection must be considered a public interest. The environment belongs to all – not only the socially and economically disadvantaged. Further, the environment also belongs to voiceless entities, like other species and the intergenerational future. It should be kept on a plane above society – humans cannot survive without the environment. The inability to understand that fundamental dependence on Nature is a neoliberal phenomenon – old conservatism understands the primacy of Nature protection. It is a distinguishing feature of neoliberalism that the disempowering of environmental departments and legal protectors of the environment is necessary and motivated by the need to weaken legislative controls to protect the environment. That then permits unmitigated grabs for more power, assisting interests which would profit at the expense of environmental loss. To then push to remove federal controls as well should be seen as sheer callousness towards everything.

(1) State ignorance and arrogance in relation to biodiversity conservation.

From an ecological perspective, States in the Australian Federation are colonial vestiges …… neither reliable nor viable for national environment protection in the long-term and increasingly costly to maintain.

The development push[5] by State governments and commanding industry lobby groups, to acquire powers which should, for the future safety of the National environment, remain in Federal control, is potentially disastrous. Rather than move biodiversity conservation into a 21st century context it will take environmental protection backwards.

The CSIRO report Implications for policymakers: Climate change, biodiversity conservation and the National Reserve System (pdf - 1.47mb) clearly demands stricter controls rather than loosening the tenuous controls that exist.

Competitive and corruption ridden States should not be handed some of the most critical powers in the *EPBC Act*. The potential handover is deeply concerning since NSW has experienced the most spectacular collapse of native species anywhere in the world. See http://www.youtube.com/watch?v=CFWR-whqtEg

The glaring omission of biodiversity from the NSW Strategic Regional Land Use Policy (SRLUP) shows there are serious doubts that bureaucrats holding land-use planning power can actually define or correctly understand biodiversity.[6] It is highly unlikely that the Department of Planning & Infrastructure (DP&I) even looked at the important report from CSIRO, let alone use it as an urgent guide for 21st century land-use planning before writing the Green Paper.

The borderless nature of environmental problems and complex new problems never faced before, is a two headed monster called "uncertainty". "Uncertainty" requires the acceptance of the Precautionary Principle. In the midst of increasing uncertainty, some politicians and their supporters, persist in demanding "certainty"- demonstrating either arrogance or ignorance.

The demand for, and attempted delivery of certainty is as ridiculous as the denial of climate change in the face of changing climate. Both groups (certainty demanders in business and climate change deniers in politics) close their eyes to **biodiversity depletion**. Lack of understanding of the meaning of biodiversity, (as demonstrated in the NSW SRLUP) has necessitated new NSW legislation. [7]

Ignorant /arrogant blindness towards biodiversity and demand for certainty in uncertain times permits unfettered economic activity. Witnessed in New South Wales and States where economic development is allowed, predicated on environmental destruction, the result of ignorance and arrogance which demands certainty in uncertain times: is habitat loss, extinction and biodiversity depletion.

(2) Bending State land-use planning legislation and why states ignore biodiversity.

Under the Planning Review in NSW an Issues Paper under the overarching objective of ecologically sustainable development (ESD) was produced by commissioners Tim Moor and Ron Dyer. This was "bent" to produce a Green Paper which was substantially different to the Issues Paper. The reason for the change is obvious.

Environmental policy failure is a necessary corollary of forced growth. Since State motives are to grow, the artificial assistance of speculative construction, by real estate sales to overseas investors to fill State coffers through stamp duty and land tax, means State

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5 The editors of "Environmental Policy Failure" say *statist developmentalism* " embodies a series of assumptions, among which the most important are: (1) that development is imperative, (2) that development is popular and (3) that development has self-evident advantages." They say environmental policy must consider four ecological characteristics - invisibility, irreversibility, indivisibility and urgency – yet with statist developmentalism, "Undifferentiated, 'cancerous' economic growth, careless of ecological impact, remains a tenet of faith.."

6 http://www.planning.nsw.gov.au/slurp The Department of Planning website statement introducing the policy shows the only concern is with protecting agricultural land and water "resources". There is no understanding of the importance of conserving in situ biodiversity found in forests. It says, "The Strategic Regional Land Use Policy identifies and protects more than 2 million hectares of strategic agricultural land, protects valuable water resources and provides greater certainty for companies wanting to invest in mining and coal seam gas projects in regional NSW.

7 The *Responsible Mining (Protecting Land, Water and Communities) Bill 2012* introduces no-go zones where mining and gas and other extractive industries will not be permitted. These areas include: Urban areas; National Parks, Nature Reserves, State Conservation Areas and other reserves managed by the Office of Environment and Heritage; State Forests and Travelling Stock Routes; Productive agricultural areas; and Drinking water catchments, rivers and productive ground water sources. As the Greens Jeremy Buckingham says, NSW is currently suffering a death by a thousand cuts when it comes to mineral and gas exploration, mining and gas production. Many developments on their own may not have catastrophic impacts but the cumulative effect of project expansions, new green field developments and the layering of coal seam gas development next to coal mine has shown the ability if left unchecked for these industries to dominate landscapes, communities and the environment. *http://www.jeremybuckingham.org/wp-content/uploads/2012/08/br120820_Framework-for-Responsible-Mining-Protecting-Land-Water-and-Communities-Bill-2012_Briefing-Note.pdf*

developmentalism must be careless of ecological protection. The NSW Department of Planning has consistently appeared to be ecologically un-aware, un-informed and un-interested in the conservation of biodiversity. Growth is a powerful motive to ignore biodiversity conservation, but systemic reasons explain State failure to protect biodiversity.

Unless cross border, environmental issues in the national interest, such as biodiversity conservation receive formal definition, identification and assumption of responsibility for protection – *in NSW land-use planning legislation itself* - there is plenty of evidence to show that 2010 findings of the New South Wales Parliament Legislative Assembly Standing Committee on Natural Resource Management (Climate Change) "Return of the Ark" are negated by reforms proposed by the Green Paper, and eventually the 2013 White Paper. The Standing Committee on Natural Resource Management (Climate Change) "Return of the Ark" sat in 2010. It "sought to investigate the adequacy of management strategies to address the likely impacts of climate change on biodiversity." http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/9dea10fccd2704b5ca25768700241496/$FILE/Return%20of%20the%20ark.pdf

Findings of the Standing Committee in 2009 appear to be in quite deep conflict with planning reforms being proposed, or not proposed, in the Green Paper by the Department of Planning, leading to the White Paper in 2013.

There may be more, but some systemic problems are identified below. They are reasons for the continuing downward spiral of Biodiversity in NSW and Australia:

(1) The land-use planning process/system while having power to make decisions impacting biodiversity, is not held directly responsible for biodiversity loss and indeed does not define, recognize or properly understand Biodiversity within its own governing legislation as administered by the DP&I under the *EP&A Act*.

(2) While the land-use planning process/system is assuming more power to make decisions which impact directly and cumulatively on biodiversity, the Department itself is not held responsible by legislation, for biodiversity conservation – ex situ or in situ.

(3) Environmental Legislation responsible for Biodiversity conservation and the Department / Office responsible for administering that legislation are both weaker than the *EP&A Act* and the DP&I - seeking to achieve their conservation outcomes within the same planning process which does not fully understand cumulative impact, biodiversity corridors, seed-bank, soils, etc.

(4) Thus a system and process which is un-aware, un-interested and un-likely to act in the interests of biodiversity conservation nonetheless has powers to make decisions which negatively impact the strategies for conserving biodiversity. It also has powers to override protections relating to biodiversity. In other words the Department and its Legislation, responsible for decision-making for land-use planning, do not statutorily recognize or intellectually comprehend Biodiversity Conservation and associated concepts.

(5) As the PIA website says*, The Planning Institute of Australia is today the only National organisation representing qualified urban and regional planners in Australia…*. http://www.planning.org.au/policy/policy-platform However the same National land-use planning organisation does not have a biodiversity policy platform or a position statement on biodiversity conservation!

(6) The serious omission of biodiversity from the NSW Strategic Regional Land Use Policy (SRLUP) suggests grave doubts that bureaucrats possessing decision-making powers over land-use planning can actually define or understand biodiversity correctly.

Another example: The issue of cumulative impact is a major consideration for future protection and sustainability of environment and society. Yet the Green Paper shows on page 8 that it does not understand the concept, confusing it with other issues when it says, *"Cumulative impacts and corridor protection will secure improved conservation outcomes, better integration with catchment management and better protection of valuable agriculture land."* That statement is not right and the two issues are completely different: Cumulative impacts will NOT secure improved conservation outcomes, better integration…and better protection of valuable "agriculture land". Agricultural land and biodiversity corridors are two different entities. http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=fUggrUzDe3A%3d&tabid=68&language=en-US:

(7) Cultural attitudes towards environmental matters and ignorance of the vital connection between biodiversity conservation and land-use planning in the 21st century may be due to an incomplete planning degree.
(8) Did the Department of Planning & Infrastructure (DP&I) even think to look at the important report from CSIRO regarding policy implications of climate change on biodiversity conservation, let alone use it as an urgent guide for 21st century land-use planning, before writing the Green Paper?

(3) A track record of carelessness and irresponsibility toward the future - yet about to be handed more power.

Elected and Un-elected government (NSW DP&I) is waiting for 'approvals bilateral' to happen with glee. In Planning Circular PS12-003 6th June 2012, controls on Biodiversity and Riparian areas are already being weakened to 'improve housing supply'. While media releases keep up the spin while undermining protection in reality, at the same time the NSW Government adds to its track record of irresponsibility towards the future by, among other things, removing 'legal aid' for the environment by cutting the Environmental Defenders Office off at the knees, thus removing real community power.

Shown below is the careless arrogance of environmental controls being diluted even before the "hand over" or in anticipation of it. See http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=ObEPljTM2Bw%3d&tabid=81&language=en-AU

(1) Disempowered NSW OEH is being made to go for the environmental weak point, by making Bio-banking the easiest option. BioBanking is the weakest way of protecting Biodiversity as it allows the offsetting of non-like for-like species (for example, lose acres of one type of species for acres of another type, or take up vague unsubstantiated promises to turn desert into forest) and there have been anomalies like the same block of land being used more than once as an offset.

The circular says*, Through the Council of Australian Governments (COAG) review process, the NSW Government is continuing to work with the Commonwealth Government to secure endorsement of state environmental assessment processes to remove the need for an ongoing Commonwealth role in detailed development assessments. In the interim, Office of Environment & Heritage (OEH) and DP&I will commence work immediately to:*

• *identify impediments to the slow take-up of BioBanking and make it more efficient and easy to use.*

(2) There is a mistaken & weak (or non-existing) understanding in DP&I of what Biodiversity means – Major policy SRLUP protected agricultural land and acquifers but failed to protect forests, habitat, reserves, etc. Despite this glaring omission, DP&I is assuming more powers in the area of biodiversity management – to enable cost and economic benefit. The same circular says,

- *test the Biodiversity Certification methodology on a priority land release site to ensure it is effective, identifies appropriate outcomes and is cost efficient*

- *prepare biodiversity offsetting principles to provide greater certainty for developers and infrastructure providers*

- *prepare an application to the state and Commonwealth Threatened Species Scientific Committees to make the threatened species lists consistent in high growth areas*

(3) In the same Planning Circular ***RIPARIAN CORRIDORS*** are being re-defined and re-arranged as follows

The size of corridors and types of uses allowed in them affect housing supply by impacting on the amount of land available for development and on the type of infrastructure located within or crossing the corridors.

The NSW Office of Water (NOW) has developed a new, flexible approach for regulating controlled activities in riparian corridors. Providing greater flexibility in the uses permissible in the riparian corridor can result in significant savings while maintaining water quality and other environmental outcomes. To provide certainty and shorten approval times, outcomes should be decided as part of the rezoning process.

Forgetting ecological functions of riparian corridors the new "improved" measures empower DP&I even more:

o enabling works and activities to be offset along the length of a riparian corridor

o providing greater flexibility with watercourse crossing design

o removing the need for vegetated buffers in addition to a riparian zone

Assumption of more powers by authorities un-informed in concepts supporting biodiversity is dangerous, yet it is happening already. The same authorities write policies which simply forget urban/rural/regional wildlife habitat protection from coal and CSG mining.

(4) No statutory way of defining, identifying or protecting environmentally sensitive areas (ESAs) in States.

The same Planning circular:
http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=ObEPljTM2Bw%3d&tabid=81&language=en-AU
appears to say it will do the right thing and, "*strengthen the rezoning gateway process to direct housing development away from highly sensitive environmental locations"* but there is no specification of how protection will be achieved.

Protection must be identified and gazetted in the same land-use planning system with decision-making power to make change. Protection must not simply lie in some weaker legislation which the *EP&A Act* then can overpower or ignore and waive. For instance all LEPs should include strict biodiversity protection clauses – with specifications regarding local flora and fauna species, special soil characteristics and/or geographical uniqueness.

Currently, in NSW while controls are being "simplified" to provide "certainty" for developers, there is no certainty for protection of biodiversity. Thus for example: In NSW environmentally sensitive areas (ESAs) in the Sydney Basin and rural, coastal, semi-rural or regional areas appear to be excluded from consideration in the Green Paper.

ESAs are supposedly protected in the "strategic planning" phase (Green Paper) but questions which are unanswered are:

- How will ESAs be defined, identified or protected?
- Will there be no-go areas for development based on environmental criteria?
- If so what criteria?
- How will they be decided (what is mapping integrity, strength, what about corridors)?
- How will they be protected (zoning, policies, statutory strength)?
- How did the SRLUP get it wrong for forests, wildlife habitat, native vegetation?

With a proven track record of irresponsibility toward the future should Federal Government allow any handover of *EPBC* powers? Instead, land-use planning legislation itself (eg. the *NSW EP&A Act*) ……needs to formally define, recognize and be made responsible in a statutory way for the protection of biodiversity or systemic failures and flaws in the current system will ensure ESD is a dream.

(5) Other State system failures, flaws and gaps cumulatively damage borderless and fragile environment (in space and time).

Currently, in NSW Biodiversity is protected under weaker legislation and regulated by a disempowered department, now 'under' the Premier's Office. However, decisions made by the Department of Planning can change the intent of regulation to protect in effect. For example: NSW Government's Response paper to the 2010 Standing Committee's "Return of the Ark: The Adequacy of Management strategies to address the impact of climate Change on Biodiversity" says,

> Forests NSW has Ecologically Sustainable Forest Management (ESFM) Plans in place for each forestry region in NSW. Biodiversity considerations and enhancement strategies are incorporated into each ESFM Plan. Staff are professionally trained, and also receive ongoing training in aspects of forest management affecting biodiversity.

http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/9dea10fccd2704b5ca25768700241496/$FILE/ATT67306/NSW%20Government%20Response.pdf

The reality is:

- "considerations and enhancement strategies", training and ESFM Plans are to no avail if the Department of Planning approves mining or signs approvals for logging in forests as is happening currently[8].
- While it has no responsibility for biodiversity, the DP&I has power to delay, reduce or set aside protection of biodiversity.
- NSW SRLUP had supposed regard for Agricultural Land and acquifers but simply forgot about protecting biodiversity!
- OEH would also be unable to oppose zoning for development in an ESA, if Urban Renewal in an ESA is approved by DP&I.
- There is no gazettable biodiversity strategy to precede the action of zoning for development – which action and decision is the deciding factor for biodiversity loss.
- Lucrative Zoning for development in areas of listed vegetation is considered a 'paper process' - not an 'action' which can trigger activation of the *EPBC Act.*

8 http://www.smh.com.au/environment/conservation/mining-plans-spark-fears-for-states-last-wild-frontiers-20111121-1nr1d.html

- The system does not assess cumulative impact, seed-bank removal in areas of listed vegetation or known sensitive soils!
- This is not to mention other systemic faults and failures with the land-use planning system which the NSW Green Paper will either exacerbate or fail to rectify
- Finally the Green paper does not specify how biodiversity will be protected.

From Case study (page 10, section 6): Based on the experience of trying to protect Ku-ring-gai's critically endangered ecological communities (CEECs) which had not been given any status for protection (either via critical habitat listing in the *TSC Act* or via Biobanking Amendment red-flag), it is known that the powerful, highly motivated yet ecologically uninformed planning system can negotiate around the current environmental protection system. A quick list of more weaknesses in the NSW State environmental protection systems (other states may be the same) proves cross border, environmental issues like biodiversity conservation, the protection of which is in the national interest, <u>need formal definition, identification and assumption of responsibility for protection – in State land-use planning legislation itself.</u>

- If Local Environmental Studies (LES) are waived or there is no LEP to protect the environmental values of a local government area, then currently there is no gazetted/statutory way to protect Biodiversity (Reserves, Forest, Riparian habitat and wildlife dependent on that) in land-use planning.
- There is a Local Council Biodiversity Strategy but this is not a gazetted instrument and is often done way after rezoning for development – instead of pre-ceding the zoning for development
- Generally any environmental protection comes in the form of the *NSW TSC Act* and *Native Veg Act* etc in NSW which are all outside the land-use planning instrument and much weaker than *the EP&A Act*.
- Planning has ways to override environmental protection, for example the DP&I can determine "there is no need for an environmental study" and then happily claim, "threatened species are protected under such and such Act."
- Yet it is in writing from DECC (2008) *that "conservation outcomes are sought within the planning process".* To what avail?
- Compliance request to Canberra (2009), requesting Ku-ring-gai's critically endangered ecological communities be assessed for cumulative impact by multiple zonings for development on seed-bank soils met with little sympathy or enquiry.

(6) Environmental destruction by powerful and ruthless *statist developmentalism* (artificially assisted growth).

Statist developmentalism and adverse environmental impact escapes in-depth scrutiny because it provides short-term and outmoded jobs resulting in many empty apartments and many wealthy investors[9]. Whereas new ecologically sustainable, long-term jobs are needed for intergenerational equity, current "old resource-based jobs" are perpetuated profiting only the few:

- selected un-elected government and associated sectors (eg. infrastructure, supporting agencies etc.)
- business industry lobby groups (construction industry, mining, logging etc.) and
- selected elected government (deal making to entrench power)

The concern is that NSW Green Paper planning reforms (and White Paper to come) will embed structures forming the basis for future unhindered development. This will not be in the national interest as statist development is careless of ecological impact. As "development at any cost" moves into regional areas the impact on biodiversity corridors, water catchments and acquifers will be multiplied.

The link between markets, politics and state assisted "urban renewal" is clearly visible where ESA recognition is suppressed to achieve its aims in urban forest areas of unrecognized critical habitat (eg the case study Ku-ring-gai in NSW) is repeated in mining and logging in regional NSW. The article received below[10], refers to the same phenomenon in Victoria.

Cumulatively, state assisted growth is potentially disastrous, costing huge environmental damage and long term un-sustainability – blocking the search for new jobs (not just construction, mining and logging) and renewable energy investment.

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9 http://www.dailymail.co.uk/news/article-2005231/Chinas-ghost-towns-New-satellite-pictures-massive-skyscraper-cities-STILL-completely-empty.html Transcript: And despite pictures last year showing some of the reported 64 million empty homes, Chinese authorities have since erected masses more buildings. Gillem Tulloch, an aanlyst for Forensic Asia Limited, described one of the areas in Chenggong, as a 'forest of skyscrapers'. …….When asked what has happened in the past six months since the ghost cities were built, he said: 'China built more of them. 'China consumes more steel, iron ore and cement per capita than any industrial nation in history……He added: 'People there were joking that no one in Denaya could afford to live there. If these apartments sell at all, it is to speculators.'

10 *"Melbourne property market grim in 2013, but there's more to Victoria than Melbourne":* Terry Ryder Tuesday, 18 December 2012 (see article at end of submission)

State developmentalism generates its own demand – it does not need a market when speculative investors drive development as is happening in Ku-ring-gai in NSW. A long list of public assets is up for sale including the Town Hall – which is now one of the only distinctive architectural elements remaining on the Pacific Highway in Ku-ring-gai. No other LGA has a Town Hall like it – yet the developmentalists have found reason to seek its disposal.

In many areas in NSW important for heritage and environment, land-use planning appears to be geared to government reliance on construction, mimicking the experience of other countries eg. USA, Ireland and China[11].

Re Apartments: Searching reveals a connection between Australia and other countries (see footnotes 8, 9 and 10) with over-supply. "If these apartments sell at all, it is to speculators.' This is not really affordable or sustainable construction and first home buyers are unable to compete with speculative buyers from overseas.

Re Housing: An article sent to the Better Planning Network by Sustainable Urbanism was shown to someone who confirmed that there is not a great "housing shortage". LandCom analysis of dwelling demand shows that it releases enough land to meet projected demand. When forecasting "housing shortages" the method of calculation needs investigation.

Re Ecological and Economic Sustainability: In NSW some areas have received plenty of construction (over-development) in support of "future growth". But is this "future growth" simply speculative construction? While construction is supported by property expos in Sydney, free seminars, flights to assist the "property boom" ……..some responsible and reliable analysis of figures in NSW is needed of the following:

- What is NSW Premier's/Ministers' "future growth" prediction supported by?
- Number of empty new apartments and numbers of sales to overseas investors
- Reliable use of census data to calculate exact need for construction of apartments and houses and …
- Why the lack of clear statistics …….can/does that lead to vague predictions and manipulation of data ?

Creation of transient jobs and the illusion of an economic helps to retain political power. Transient jobs, unsustainable use of resources, creating a dependence on Stamp duty revenue into state coffers, a few benefiting by speculative construction on a large scale, and Politicians dependent on the above: massive statist development puts pressure on public land as well.

Public assets, town halls, reserves and open air car-parks go up in value (falsely to keep up with speculative construction) as Councils find reasons for divesting themselves of public assets, using the example set by States of divesting themselves of state public assets. There is pressure, then, on parks and reserves for use as open space, instead of protecting them as part of 100 year ahead future urban forest and local communities lose their future amenity.

Statist developmentalism abandons truly Ecologically Sustainable Development (ESD) and fails to investigate jobs that don't rely on digging up, cutting down or speculative construction. Instead vital public assets are taken from the future to provide land for 'construction'. Once gone public lands and public assets are never regained. Serious problems are buried in the future.

In NSW it seems a serious inquiry is needed to investigate: (1) the efficacy of the White Paper being proposed for biodiversity conservation[12], (2) the phenomenon of state assisted development in full depth and width – across logging, mining and speculative construction and (3) the impact of all of these on the future of biodiversity in Australia before the NSW White Paper becomes Legislation.

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11 http://www.abc.net.au/foreign/content/2011/s3145891.htm Transcript: Ireland was forced to go cap in hand to the international community for a one hundred billion dollar bail out – all down to its obsession with real estate. For most of the past decade, Ireland has been in the grip of a housing boom. Not buying and selling, but building. Construction got so big it employed one in four workers. Estates like this one began springing up everywhere – not only in the cities but in places like this where houses soon outnumbered families. Now the boom's over, there are three hundred thousand houses empty. At this development in the capital, the advertising boards promised a luxury lifestyle. Homes that were for sale in 2006 for half a million Euros, five years later can't attract buyers at even half that price. They've been dubbed ghost estates. They're a haunting reminder of how Irish banks binged and how the government lost all sense of proportion. …….It's as if Ireland's bankers and politicians were playing from the same rulebook – fantasy property plays and funny money for everyone.

12 The editors of "Environmental Policy Failure" say environmental policy must consider four ecological characteristics - invisibility, irreversibility, indivisibility and urgency – yet for Statist developmentalism, "Undifferentiated, 'cancerous' economic growth, careless of ecological impact, remains a tenet of faith.."

(7) Removing legal protectors of the environment and community - to allow assisted and unfettered growth.

The attack on the EDO - Playing social and economic disadvantage against environmental protection is a shallow means of reducing power to the community, to give free rein to artificially assisted growth benefiting the development industry.

The EDO is the only legal outfit which has developed a unique expertise in dissecting the law as it stands and showing how the law has been either violated or regulation is deficient in protecting ecologically sustainability - something which is fundamental to human survival. The "justice gap" which the NSW AG speaks of relates to social and economic justice not environmental justice.

This false argument is dangerous. It encourages the belief that the economy is able to survive without ecosystems and environment – which is ridiculous. It is astonishing that the AG believes that the economy comes before ecology.

The community and environment need the assistance of the EDO, Further the EDO has acted on behalf of Australia's fauna and flora and unique environment – unable to speak for themselves. This is not difficult to understand.

The attack on the EDO is designed clearly to reduce to zero the community's power to challenge legalities of approvals given by States to major projects favouring very few against the very many and the voiceless environment.

State moves to disembowel the EDO represent a move that could take the environment back to lawless days when protection of the environment by the EDO did not exist and the environment was open to abuse by human impact.

It demonstrates the anti-environment stance taken by the current NSW government by making false distinctions between organisations that provide free legal services to address the specific needs of disadvantaged people and not the environment. This not-so-clever ploy of playing of the social and economic against the environmental draws false distinctions.

Community Legal Centres other than the EDO are not equipped to deal with environmental matters – most are geared to social and economic causes. As is shown by this "cut and paste" section sent to the protesting public from the Premier and other government ministers the bland statement "so the disadvantaged do not miss out" suggests that the work of the EDO is a social/economic function, whereas the organisation is **an Environmental Defender**.[13]

The removal of this function and service leaves the gates open to permanent environmental damage and harm.

(8) Federal Government should look at this case study and listen to ENGOs with experience in fighting extinction.

"Monitoring Our Own Extinction" is a case study to show biodiversity continues to be lost right under the nose of Legislation to protect. The case study looks at local, state and federal causes of biodiversity loss.

The case study of Ku-ring-gai where the ESA status was suppressed to allow development re-zoning, show there are serious doubts that State land-use planners can define biodiversity or understand the implications of its disappearance. The omission of biodiversity from the NSW Strategic Regional Land Use Policy (SRLUP) confirms a systemic problem demonstrated above.

The following is the History of environmental protections withheld to allow zoning for development in the case study of an ESA.

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13 Cut and paste section from letter sent to members of public protesting to the Premier of NSW showing false argument made and dubious divisions drawn by comparing social and economic disadvantage to environmental protection, "*Regarding the EDO, it is one of a 36 publicly-funded Community Legal Centres (CLCs) that provides legal advice to citizens who might otherwise go without. They are intended to be independent, non-profit organisations that provide free legal services to address the specific needs of disadvantaged people. CLCs obtain funding from the Public Purpose Fund, NSW and Federal Governments and other sources. Funding CLCs has become more challenging in recent times as there has been a decline in revenue in the Public Purpose Fund, which is sourced from the interest earned on solicitors' trust accounts. The trustees of the Public Purpose Fund and the Government are committed to ensuring the fund is not exhausted and that the money available is directed to those in the community who are most in need. In NSW there are significant and increasing levels of unmet demand for legal assistance services. Requests made to Government over the past 25 years to fund CLCs have always outstripped the available source of funding. The high level of unmet demand across the legal system is concerning. It has led to a considerable 'justice gap' whereby socially and economically disadvantaged people are unable to access the legal system. The Attorney General is absolutely committed to ensuring improved access to justice in NSW. The Department of Attorney General and Justice is currently undertaking a review of legal assistance services, including community legal services, to ensure that funding is directed to those who need it most. This review will look at the best way of delivering legal services, so organisations which act for the disadvantaged do not miss out on funding. The NSW Government is committed to supporting the continued operation of CLCs and wants to ensure funding is delivered so the disadvantaged do not miss out.*"

- The 2000 Environmental Baseline Study " http://www.kmc.nsw.gov.au/resources/documents/Environmental_Baseline_Study1.pdf recognized Ku-ring-gai's *"unique combination of soils, topography, vegetation and fauna habitat"* but was ignored at the time the inappropriate and destructive LEP 194 was gazetted. Critical habitat, seed-bank and sensitive soils are now being cumulatively removed by massive incrementing construction. For example see Lamond Ave, and Duff to Finlay St. Turramurra - the Deferred Matter area. FOT ecologist identified it as ESA worthy of protection as "critical habitat" but will disappear by cumulative effect.
- 2002 – National Biodiversity Audit - Ku-ring-gai mapped 39.9% of land area within the Cumberland Plain – promise of a Recovery Plan – both abandoned in Approved Cumberland Plain Recovery Plan January 2011
- 2003 – LEP 187 Environmentally Sensitive Areas was dropped and not gazetted – why?
- 2004 - LEP 194 rezoning now in full swing as the 5 storey development incrementing along the Highway and inside Ku-ring-gai. This LEP was gazetted without proper acknowledgement of Ku-ring-gai's environmental sensitivity.
- 2006 - Department of Planning puts further pressure on Ku-ring-gai - especially its Public Land and Hillview Heritage Conservation Area – allowing anomalies like more than 16 massive lookalike developments by one developer alone!
- 2007 – dLEP 212 (Beechworth to Warragal) – the attempted rezoning of this BGHF area averted by community - Friends of Turramurra paid for an independent ecologist report - rezoning dropped as a result of challenge by community and another environmentally sensitive area was saved …… but is still under background pressure and gradual tree removal.
- 2008 – Town Centre LEP had Local Environment Study (LES) waived – when objection was raised by community a hastily drawn up study was authorized by the Planning Panel – Turramurra Deferred Matter begins to destroy rare urban remnant by multiple oversized developments.
- 2009 – Draft Cumberland Plain Recovery Plan excludes Ku-ring-gai – leaving Ku-ring-gai without the promised formal Recovery Plan for its critically endangered ecological communities (now covered by Priority Actions below?)
- 2011 – Community and Councillors demand and receive Draft Riparian and Biodiversity Study and a special clause inserted in proposed LEP to protect biodiversity.
- 2012 - Local Centres LEP and Biodiversity and Heritage LEP – this is before the Planning Minister now – but where is the authority of the Environment Minister?

Lessons learnt from unrecognized ESA case-study suffering multiple rezonings in undeclared critical habitat (quick list):

- Preempt / Challenge the waiving of LES
- Ask for independent ecological reports
- Create a Biodiversity / Heritage LEP to put statutory protection and specially worded and tailored Biodiveristy and Riparian Clauses to protect the environmental attributes of LGAs (eg wetlands, particular habitats, species of plants or animals, heritage features etc) Note: Ku-ring-gai recently passed *LEP 218* to be sent to the Minister to protect Heritage Conservation Areas with a special Biodiversity and Riparian Clause worded to protect in development assessment.
- Have an updated Biodiversity Strategy for the LGA … identifying listed threatened species and declare critical habitat.
- 3xlisted critically endangered ecological communities are found in Ku-ring-gai but critical habitat has not been declared under the weaker *TSC Act*
- Keith Muir of Colong Foundation has said, *"Federal environmental laws must be strengthened…. for future generations."*

Conclusion: The best advice to the Federal Government comes from a letter signed by UNEP Global 500 Laureates. [14]

"We have been concerned to hear however that there are proposals in train to weaken the EPBC Act and to allow the states and territories to approve developments affecting Matters of National Environment Significance without any Commonwealth oversight. We believe this would be a retrograde step in relation to the development of environmental law in Australia, with significant and negative implications for the conservation of biological diversity and achieving ecologically sustainable development.

"We are also well aware of course that your country is one of a very few biologically mega-diverse developed countries on the face of this Earth. The array of natural ecosystems and their component species is simply breathtaking, making Australia one of the most important and exciting places in the world for the long-term conservation of biological diversity.

14 A letter, signed by UNEP Global 500 Laureates (Refer Humane Society International) speaks with greatest understanding, when it says to the Australian Prime Minister, "The experience globally in federated states shows that when national governments retain key powers to protect the environment, far better ecological and economic sustainability outcomes can be expected."

"A number of your Government's recent initiatives, including Australia's Biodiversity Conservation Strategy 2010 – 2030, the billion dollar Biodiversity Fund, other 'Green Carbon" provisions contained within the Clean Energy Future policy package, the National Wildlife Corridor Plan, the protection of 19 million hectares of the West Kimberley under National Heritage laws and the announced dedication of marine reserves over one third of Australia's EEZ, have succinctly highlighted the pressures facing your nation's natural resources, and laid out solutions and goals for going much of the way towards attaining true ecologically sustainable development.

"One of the key tools for maintaining biological diversity integrity and ecosystem health throughout Australia is your Government's critical role in assuming an oversight for protecting Matters of National Environmental Significance recognised under the EPBC Act.

"The individual and organisational UNEP Global 500 Laureates below would like to offer our support for a continuation of your Government's efforts to develop best possible policies and practices for the conservation of biological diversity through the maintenance of the current powers contained within the EPBC Act, and to avoid, at all costs, the devolution of such powers.

"The experience globally in federated states shows that when national governments retain key powers to protect the environment, far better ecological and economic sustainability outcomes can be expected. Similarly, we have been made aware that the implementation of the EPBC Act over the last 12 years has resulted in a large number of first class environmental decisions that have ultimately benefited Australian society. We commend your Government for the range of far-sighted environmental initiatives that have been implemented in the last five years but urge your continuing and strong adherence to effective and national environmental law."

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Summary of this submission:

- Volunteers who have given decades to various environmental protections were astounded to learn that the Federal Government in Australia is on the brink of handing hard-fought commonwealth laws over to states.
- *The framework for the handover is "on hold" but the potentially disastrous move could mean that the plan for the handover could be completed by March 2013.*
- The *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012* – has been introduced to the Senate by Senator Larissa Waters.
- The Bill would it make it unlawful for the Government to hand-off its environmental responsibilities to the states. The Senate Environment and Communications Committee is holding an inquiry into the bill and is accepting public submissions.
- A letter, signed by *UNEP Global 500 Laureates (Refer Humane Society International)* speaks with greatest understanding, when it says to the Australian Prime Minister, *"The experience globally in federated states shows that when national governments retain key powers to protect the environment, far better ecological and economic sustainability outcomes can be expected."*
- As things stand, most people are unaware of the biodiversity crisis in Australia, and its link with climate change. In particular people are unaware of the disastrous cumulative effects and the unpredictable negative implications of handing federal environmental laws to careless, competitive and outmoded states.
- Re the emergency for Australian biodiversity, Prof. Tim Flannery says, *"Such is the depth of public ignorance about Australia's extinction crisis that most people are unaware it is occurring", ...* He says, *" … national parks exist explicitly to conserve biodiversity, and their failure to do so is a failure both of government policy and our collective will to protect our natural heritage".* http://www.smh.com.au/national/dead-and-dying-our-great-mammal-crisis-20121116-29hi9.html
- In the final 2012 Quarterly essay he says, *"… our governments are not being held to account for their responsibility to protect our biodiversity."*
- In various States, under the nose of current laws and regulations, forests are being logged, biodiversity is being destroyed and ecosystems and habitat are being lost forever.
- Man-made disasters increment the losses from natural disasters, such as bush-fires, floods and extreme weather events.
- In NSW the glaring omission of biodiversity from the NSW SRLUP shows there are serious doubts that DP&I can define biodiversity or understand the implications of its disappearance. This will be demonstrated below in areas of policy making.
- In NSW the Green Paper has hijacked the Issues Paper, and is being rushed into a White Paper with no confirmation of what controls for biodiversity protection will be. It is doubtful if the land-use planning system understands what biodiversity is.
- Industry lobby groups with endless resources are manipulative of government and relentless in pursuit of profit. When CEO of the Business Council of Australia (BCA) Jennifer Westacott spoke on The National Interest, BCA lobbying to cut green tape was not mentioned. http://www.bca.com.au/Content/101924.a Yet this is what is aggressively advanced now.

- In *"Environmental Policy Failure The Australian Story"* (2012) editors Crowley and Walker describe what they call *" Statist developmentalism"* saying it is a form of development *"in which government takes a major, often dominant role in development and economic management"…. "based on ingrained nineteenth century attitudes and ideas".*
- They say, "*It embodies a series of assumptions, among which the most important are: (1) that development is imperative, (2) that development is popular and (3) that development has self-evident advantages."* This epitomizes the BCA view.
- The editors say environmental policy must consider four ecological characteristics - invisibility, irreversibility, indivisibility and urgency - yet*, "Undifferentiated, 'cancerous' economic growth, careless of ecological impact, remains a tenet of faith.."* This clearly describes the current state of the construction, logging and mining industries.
- Experience shows Statist developmentalism is currently in operation in many States and LGAs, defying environmental policy regulation, where zoning for development is lucrative especially when governments in Victoria, NSW and Queensland encourage speculative construction, selling investment opportunities to overseas buyers at the cost of protection.
- In environmentally sensitive areas (ESAs) zoning for development becomes a powerful key threatening process (KTP) for threatened species - as ESA status is waived for speculative construction - sold into a bottomless pit of overseas investors.
- Such is the power of statist developmentalism that community dissent is eventually futile for environmental protection.
- Statist developmentalism is never far from risk of corruption and environment & community needs legal help.
- The attack on the Environmental Defenders Office (EDO), in NSW for example, is also an attack on environment & community – since State Government moves to remove those who protect the environment - effectively stifling environmental legal assistance to communities seeking to protect environmentally sensitive lands for fauna and flora.
- Each State acts individually, but together the impact is cumulatively destructive of national environmental commons: federal environmental laws are essential to maintain national control over a borderless, irreplaceable ecological asset.
- Keith Muir of Colong Foundation has said, *"Federal environmental laws must be strengthened…. for future generations."*

Article demonstrating statist developmentalism. (see page 8)

"Melbourne property market grim in 2013, but there's more to Victoria than Melbourne": Terry Ryder Tuesday, 18 December 2012

Prospects for Melbourne property in 2013 are grim. I expect Melbourne to be the weakest of the capital markets market next year. But fortunately there's more to Victoria than Melbourne.

Melbourne has two problems: oversupply and a state government that's lost the plot. Melbourne already has too many apartments in its inner-city market, but developers are intent on building more, and the state government seems hell-bent on helping them. It also has too much residential stock for sale in the outer suburbs – and with the same problem of developers and politicians seeking to add to the surplus. It's a bad sign for any market when developers offer generous incentives to attract buyers. Rebates, discounts, free holidays, free cars – if developers can't sell products without bribes, the market's in trouble. It's an even worse sign when developers are running seminars in Asia, with financiers and solicitors in attendance to sign up foreign investors on the spot, to try to flog their product.

Developers like Central Equity, one of the big builders of high-rise units in central Melbourne, are staging events they like to call "Australian property expos" in Asian cities like Singapore.

Why are they up there? Because there is little local demand for their apartments. The distortions created by incentives and overseas marketing are making its difficult to valuers to determine the true worth of apartments and house-and-land packages. Financiers are becoming increasingly suspicious of contract prices. Lots of contracts are falling over. One research source suggests a third of residential land purchases in Melbourne's outer suburbs are failing because valuations are not supporting contract prices. This is a market in serious trouble. But it's likely to get worse. Premier Ted Baillieu and his government are behaving as if they believe there's a shortage. Like developers, government representatives are up in Asia courting investors to facilitate more high-rise development in Docklands and the new urban renewal precinct at Fishermans Bend. Baillieu recently launched a new suburb in Wyndham City in Melbourne's south-west, the region with the biggest oversupply problem in the mortgage belt. State government land will be carved up into another 7,000 home sites. Clearly, Baillieu is listening to the wrong people. It feels like policy is being driven by mates and political donors who happen to be developers. Thank goodness for the regions. While the Melbourne market is imploding, there are good prospects for investors beyond the capital city.

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Submission submitted by:
Janet Harwood.

Our Future is the Natural World

"Biodiversity loss is the most significant environmental problem facing Australia"
Professor David Lindenmayer. (2007) *"On Borrowed Time"*