

RIPARIAN VALUES AND MISSING LINKS

So often something vital is missing between good intentions and sound outcomes. When it comes to land, especially public land, this gap often arises from inadequate instruments of governance.

Community goodwill, professional commitment and even market economics could all help deliver a better environment, if only statutory law, organisational structures and administrative systems would permit them.

Sometimes the instruments of governance do not need fundamental revision: they are not malign or perverse, but merely overdue for a bit of reinvigoration. And when we're thinking about *real-politic* (as we must with something like the Biodiversity White Paper) there's another reason for advocating evolution rather than revolution – it's more likely to actually happen. Unlike the Dubliner's journey, start from where you're at, not from somewhere else.

To illustrate this philosophy, we offer a fourteen point strategy for reforming the governance of land along rivers. It's taken from the *'Review of Riparian Land Management in Victoria'* which we recently completed for DSE. You'll find the full report by going to www.dse.vic.gov.au then to [water](#) then to [river health](#) then to [publications](#).



Proposals relating to riparian land status

1 Reserve all unreserved riparian Crown land under the Crown Land (Reserves) Act

- Reserve all the riparian Crown land omitted from the 1881 'Public Purposes' reservation *To establish that riparian Crown land is a biodiversity resource rather than a service utility*
- And - change the purpose of the reservation to 'Public Purposes – Protection of the Riparian Environment.' *To confirm that, in the main, riparian Crown land is not available for alienation*
- Shift water frontage provisions from the *Land Act 1958* to the *Crown Land (Reserves) Act 1978* *To give riparian Crown land the same degree of legislative protection as applies to all other Crown reserves*

2 Simplify methods of changing riparian land status

- Rationalise the range of procedures available for transactions involving riparian Crown land *To extend and simplify the range of land dealings available to support desirable riparian environmental outcomes*
- Facilitate the reconfiguration of riparian freehold, where necessary, through Planning Scheme Amendments; modernise the Restructure Overlay (RO) in the Victorian Planning Provisions (VPPs) for this purpose *To provide adequate tools for dealing with land along rivers which have changed course*
- Facilitate the acquisition of 'lesser interests' in riparian freehold, including easements and covenants *To exercise conservation-related controls over riparian freehold without becoming its owner*
To devolve responsibility for site-specific riparian reconfigurations from Parliament to executive government

Proposals relating to riparian planning and management

3 Adopt a suite of tools to manage stock access to streamside land

- Adopt a suite of complementary legislative and regulatory tools relating to fencing, livestock management, and stock-related water pollution *To provide DSE, CMAs, the EPA and municipalities with better powers to regulate stock on riparian land and to keep stock out of waterways*
- Review and clarify the 'Private Rights' to water in waterways for stock and domestic purposes *To remove economic impediments currently mitigating against the introduction of off-stream stock watering*

4 Introduce new status-neutral Riparian Agreements

- Introduce new legally binding Agreements which may be applied to any riparian land under a landholder's control, whether it is Crown land or freehold *To facilitate good riparian outcomes independently of the often arbitrary distinction between Crown and freehold land*
- Design the Agreement to replace both Crown frontage licences and CMA grant agreements *To enable riparian fence-lines to be determined by environmental rather than cadastral criteria*
- Through the new Agreements, provide for payment for ecosystem services; 'give-and-take' fence-lines; and 'one-stop-shop' compliance with riparian regulations *To provide legal protection for CMA-funded works on both Crown and freehold riparian land*
To simplify landholder dealings with government agencies and compliance with various other riparian regulations

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5 Improve the recognition of riparian land in regulatory regimes, including Planning Schemes

- Adopt a Code of Riparian Practice under the CF&L Act *To provide agencies and landholders with a uniform benchmark for riparian land management best practice*
- Recognise the Code under Planning Schemes, Water Act by-laws, Licence conditions, CMA grants etc *To have best practice legally recognised across the regulatory regime*
- Amend Planning Schemes to bring riparian land under the PPRZ zoning and ESO Overlay *To promote a best practice culture for riparian management by engaging stakeholders in the development of the Code*

6 Enable the application of existing, but latent, legislative powers to riparian problems

- *Conservation Forests & Lands Act* – make the extensive powers of this Act available to CMAs by nominating the Water Act as a 'relevant law' *To access wider powers for the management of riparian land and protection of riparian environmental values by:-*
- *Water Act* – allow CMAs to use the extensive powers of this Act by 'designating' riparian land, as is already the case for Melbourne Water *To empower CMAs to make binding agreements, to adopt codes of practice, to issue PIN notices, and to recover enforcement costs under the CF&L Act*
- *Crown Land (Reserves) Act* – open up management and regulatory options available under this Act by reserving all unreserved riparian Crown land *To empower CMAs to make and enforce by-laws and regulations for riparian land in addition to designated waterways*
To empower DSE to appoint committees of management, make and enforce regulations, and enter into management agreements under the CL(R) Act

Proposals relating to Crown water frontage licences

7 Adopt a 3-stage strategy to review all Crown frontage licences

- Before 2009 – extension program to familiarise licence-holders with the policy; immediate renegotiation or cancellation of highest priority cases *To ensure a transition from grazing-focussed culture to a conservation-focussed culture*
- At 2009 – cancel some licences, change conditions of others, renew the remainder for a conditional term: '5 years, or until transfer of parent property, or until acceptance of a CMA grant' *To bring every water frontage licence in the State up to a minimum environmental standard*
To cancel or re-assign those licences which cannot be brought up to standard
- After 2009 – progressively review all remaining licences; reviewed licences to be for 10 year term; replace with new status-neutral Riparian Agreements where possible *To provide tangible, localised links between government policy and on-the-ground outcomes*
To gain landholder support by linking the review to financial incentives and the introduction of new, rationalised status-neutral Riparian Agreements

8 Use market-based approaches to setting Crown licence rentals

- Offer payments for ecosystem services on riparian Crown land, where their provision goes beyond a landholder's basic duty of care *To encourage landholders to retain management responsibility for Crown frontages, even when grazing is removed*
- Consider raising Crown licence rentals to remove hidden subsidies *To promote a cultural shift towards landholder provision of ecosystem services*
To remove economic disincentives currently working against the conservation of frontages

9 Reform and streamline the administration of Crown frontage licences

- Streamline DSE records systems to link data relating to frontage licences to data relating to their 'parent' freehold titles *To support riparian environmental programs by establishing and maintaining effective landlord-tenant relationships*
- Recognise and utilise (where appropriate) the option of issuing no licence, or issuing the licence to a tenant/manager other than the abutting owner *To enable immediate liaison with new property owners to ensure they understand their responsibilities as frontage licensees*
To help ensure that the abutting landowner does not assume automatic or monopoly control of the Crown frontage

Proposals relating to Aboriginal rights and values on riparian land

10 Recognise native title to riparian Crown land

- Seek to negotiate a State-wide 'Alternative Procedure Agreement' under the Commonwealth *Native Title Act* 1993 for all riparian Crown land in the state *To formally acknowledge the rights of Aboriginal people in relation to riparian Crown land*
- As a fall-back, negotiate a series of Area Agreements and Body Corporate Agreements *To provide certainty about the native title status of riparian Crown land*
To establish firm rules for all future actions which may affect native title

11 Protect Aboriginal heritage on riparian land

- Fully comply with the letter and intent of the *Aboriginal Heritage Act* 2006 *To ensure protection of Aboriginal heritage values in accordance with government objectives as adopted in the Aboriginal Heritage Act 2006*

- Adopt due-diligence procedures, standards and protocols for riparian works which respect Aboriginal heritage.
- If necessary, make new regulations under the AH Act specifically for riparian conservation works.

To ensure that all riparian conservation programs can proceed without the inadvertent commission of criminal offences

To reduce the burden of compliance costs under the current Aboriginal Heritage Regulations 2007

Proposals relating to riparian roles and responsibilities

12 Retain, strengthen and expand the roles and responsibilities of agencies with riparian roles

- Aim to have a designated land manager appointed for all high-priority unlicensed riparian land – Parks Victoria, the relevant municipality, community-based Committees of Management or the CMAs themselves
- Allow the CMAs to evolve as regional 'caretakers of riparian condition' through an incremental program of role expansion:-
 - engage CMAs to monitor Crown frontage licences on behalf of DSE
 - empower CMAs to undertake works on high-priority unmanaged and unlicensed riparian land
 - Appoint CMAs as the formal landlord for Crown frontage licences
- Adopt a Service Agreement between the CMAs and DSE under which DSE will continue to provide centralised services including Crown licence administration

To ensure that all high priority riparian land has a clearly identified manager

To build on the established community goodwill towards the CMAs as 'caretakers of riparian condition'

To allow CMAs to evolve through a staged, evolutionary, manageable process of attaining skills, developing systems and building budgets

To recognise the principle of subsidiarity – or the assignment of roles to their correct level in a hierarchical system

To retain state-level responsibility, control, policy coordination, and accountability to the electorate

To benefit from economic efficiencies through provision of centralised specialist support systems

To remove inefficiencies arising from duplications of functions, poor role definition, and cross-agency referrals

To recognise and engage local government as a key provider of riparian outcomes at the local level

13 Further develop the partnership model for engaging the private sector in riparian management

- Encourage responsible landholder involvement in riparian management through:-
 - payment for the provision of ecosystem services, particularly on abutting Crown frontages
 - simplification of regulatory compliance through status-neutral Riparian Agreements
 - deterrence of mismanagement through the withdrawal of benefits or imposition of cost penalties
- Develop avenues for responsible community involvement in riparian management through:-
 - Expansion of support programs for riparian-focussed community groups
 - Promotion of three models of community involvement, under the *Crown Land (Reserves) Act*, the *Catchment and Land Protection Act*, and the *Associations Incorporations Act*

To encourage and build on widespread community support for sound riparian environmental management

To use market-related mechanisms to influence landholder decision-making in favour of good riparian management

To build on the positive aspects of the well-established Crown water frontage licensing system

To utilise voluntary inputs for riparian management in circumstances where taxpayer-funded resources would otherwise be limited

To be able to offer a range of sound legal frameworks for community-based riparian management in a range of circumstances

A proposal for the reform of riparian-related legislation

14 Implement legislative change through an omnibus Act

- Introduce all the recommended legislative changes through a single Riparian Land Reform Act which will amend six or eight existing Acts, and can then be repealed.
- As a provision of the Riparian Land Reform Act, introduce a single public consultative process for the making of subordinate legislation (regulations, bylaws and codes under various Acts, and amendments to the VPPs under the *Planning and Environment Act 1989*)

To provide a clear platform for the expression of government policy objectives for the riparian environment

To maximise the gains for riparian management by ensuring that legislative reform occurs simultaneously and holistically

To establish a suite of complementary riparian legislation, but without adding another layer of complexity

To provide stakeholders and the public with a single, clear and comprehensive opportunity to participate in the implementation of riparian policy

To ensure that subordinate riparian legislation is consistent, complementary, and is made expeditiously.

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Professional Development July-August 2008



PUBLIC LAND FOR STRATEGIC PLANNERS

Thursday 3 July Maddocks, Melbourne

**THE ABORIGINAL HERITAGE
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Tuesday 24 June Mildura
Wednesday 30 July Bendigo
Tuesday 26 August Melbourne



**LAND LAW FOR MANAGERS
OF ROADS AND LANES**

Thursday 17 July VicRoads Hallam
Tuesday 24 July Melbourne
Tuesday 12 August Colac
Thursday 28 August Bendigo

**THE LAND, ITS TRADITIONAL
OWNERS AND THE LAW**
(FULL DAY COURSE)

Tuesday 1 July Preston
Tuesday 21 August Melbourne



**LAND LAW FOR
SERVICE UTILITIES**

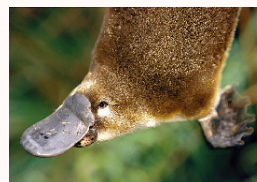
Wednesday 16 July Melbourne

VEGETATION AND THE LAW

Thursday 17 July Melbourne

**LAND LAW FOR COASTAL
AUTHORITIES**

Tuesday 24 June Melbourne
Tuesday 26 August Geelong



**LAND LAW FOR MANAGERS
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Thursday 10 July Colac
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Tuesday 19 August Sale

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