



Land Policy Victoria's Maturing Landscape

Victoria's Biodiversity White Paper, released in mid-December, attracted zero attention in the media. Perhaps the journalists were all out to lunch.

Why was it so profoundly un-newsworthy? Minister Gavin Jennings might point approvingly at the Government's extensive pre-publication consultation; others might point critically at the Paper's measured, even hesitant approach to issues which, they would argue, demand a far more headline-generating set of responses.

For our part, we suspect that conservation policy has reached a degree of maturity and consensus – at the Victorian state level at least. The big controversies have moved to the federal and international arenas – and have taken the media commentators with them.

Towards Land Policy Maturity

Just think: if we ever achieved policy stability, we could abolish parliaments – and half the bureaucracy. But MPs' and public servants' jobs are safe: the White Paper may mark the end of a three-year consultative process, but it's also the start of a five-year program of legislative reform, a much longer program of on-the-ground implementation, and yet more policy development.

In truth, Victoria has dumped the traditional Whitehall process under which one paper ('green') explores options and a following paper ('white') enunciates the determined policy. Instead, we are seeing a far more

realistic (although less newsworthy) rolling program of analysis, objective-setting, policy development, implementation and review.

Within this rolling program three laudable themes seem to be emerging: cross-tenure land law, organizational maturity, and a converging, non-adversarial conservation culture.

Towards Cross-Tenure Land Law

For 200 years non-Indigenous law-makers have drawn arbitrary boundaries across the land, and tried to impose tenure-specific land management regimes within them. This bit is a 'park' and must be managed in a certain way; this bit is 'freehold' to be treated altogether differently; this bit is 'coastal Crown land' and so forth. At many points the White Paper transcends the cadastre, reflecting instead the underlying landscape – the topography, hydrology and ecosystems which steadfastly refuse to be defined by metes and bounds.

Epitomising this approach are thirteen 'Flagship Areas' – some centered around existing National Parks, but others being a mix of public and private land tenures. Connecting them are biolinks (often riparian) whose core is public land but, again, crossing a wide mix of land tenures.

It remains to be seen how administrative instruments will enhance and protect these areas: priorities and objectives will, we are told, be articulated in the Victorian NRM Plan and reflected in Regional Catchment Strategies but, as we know all too well, plans and strategies don't actually make anything

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Land Policy – continued...

happen – for that you need education, money and political courage.

Speaking of courage – the Paper promises new natural resources legislation by December 2011, new biodiversity and conservation legislation by December 2012, and consolidated public land legislation by 2014. The task will be immense – but so will the benefits: just imagine the insights which will emerge from any value-based and holistic analysis of a dozen *ad-hoc* public-land Acts, many of which, despite being enacted in the Twentieth Century, reflect a view of the environment straight out of the murky depths of the Nineteenth.

Towards Organisational Maturity

All too often, organisational reform is avoided in favour of mere organizational restructure – the reshuffling of the deck-chairs in support of some managerialist agenda – with greater implementation costs than resulting benefits. One exception (perhaps not universally appreciated) was the restructure of the State's 210 municipalities into 78 – a recognition that Victoria has moved on from the horse-and-buggy era of civic systems. The time has now come for both reform and restructure of the State's land management organizations.

The White Paper envisages that fifteen Catchment Management Authorities (CMAs), Regional Coastal Boards and Melbourne Water will be consolidated into five Natural Resource and Catchment Authorities (NRCAs). At a central level the Victorian Catchment Management Council (VCMC), the Victorian Coastal Council (VCC) and the Victorian Environmental Assessment Council (VEAC) will be consolidated into the Victorian Natural Resource and Catchment Council (VNRCC). At least we'll be eliminating a few acronyms.

Implied in the White Paper is a substantial re-engineering of agency functions and powers. It flags the alignment of "policy, decision-making, investment and regulation within an adaptive management context." We're not too sure what that phrase means, but it sounds good.

At the least, this should be an opportunity to resolve a legacy of structural oddities: at present CMAs have *functions* under the CALP Act, but *powers* under the Water Act; the VCMC is perhaps a peak body for the CMAs, but then again perhaps it's not; VEAC's role is arbitrarily limited to Crown land; Coastal Boards have functions under the Coastal Management Act, but no powers; neither the Central Coastal Board nor the Regional Coastal Boards have any responsibility over actual coastal managers; and Crown land managers (whether coastal or inland) are accountable to DSE even if the land they manage is of purely local significance.

Local government is structurally unaffected by the White Paper proposals, but there will be some transfer of powers to the new NRCAs. We can expect Councils' planning schemes to better reflect Regional Catchment Strategies (for instance, through more consistent use of the Environment Significance Overlay), and the NRCAs to become Referral Authorities for a wider range of zones and overlays.

These reforms, if they survive the State Upper House, could have huge and beneficial repercussions for land management. They offer the prospect of embracing the information and technological revolutions, and reaping both efficiencies of scale and the effectiveness of subsidiarity.

A Converging Conservation Culture

The Biodiversity White Paper both reflects and promotes the de-politicisation of land management. We are all too familiar with those ideologues who relish an adversarial 'them-and-us' approach to land policy – but they are increasingly being relegated to the periphery of the policy debate. Although party politics is alive and well (Barnaby Joyce: 'clearance controls are communism') it seems that drought, bushfire and economic downturn are transforming yesterday's battleground into today's common ground – at least in Victoria.

One of these increasingly de-politicised debates surrounds the role of Indigenous peoples. The 'history wars' of recent decades have petered out into mere skirmishes, and native title claims are now resolved by consent determinations rather than adversarial litigation. In this maturing cultural context the White Paper anticipates a widening role for Aboriginal peoples in land management – particularly public land management.

An equally profound cultural shift is surely the diminishing gap between the farming and conservation communities. In Queensland we still see farmers up poles on hunger strikes, but in Victoria the headline-writers of the Weekly Times are finding it increasingly difficult to sustain their shock-horror approach to environmental policy.

Again, the White Paper both reflects and promotes this shift, employing the terms 'landholders' and 'community' almost interchangeably. *Landholders* will be encouraged to access new ecosystem markets trading in environmental goods and services attractive to government and private sector investors; the *community* will be encouraged to participate in natural resource management through an enhanced Landcare system. As any country town already knows, they're the same people.

Altogether, it's quite a story – although not for the journalists. They're still out to lunch. ■

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Q & A - 1

What exactly is Public Land?

A question asked by students at a recent 'Planet' workshop

A real 'back to basics' question, this one!

A first response is to say 'it's obvious, isn't it?' This is the approach taken by various lobby groups and politicians who want to cast their nets wide, without any arbitrary restrictions. It's also an approach found in the *Public Health and Wellbeing Act 2008*, which refers to public land without attempting any definition.

At DSE, they often equate 'public land' with 'Crown land' – and you'll find numerous such references on their website. Sorry DSE, there's plenty of public land which is freehold.

Statutory Planners would no doubt give an answer in terms of the 'public land zones' in the Victorian Planning Provisions (VPPs) – including the Public Use Zone (PUZ), Public Park and Recreation Zone (PCRZ) and so forth. We don't find this a very useful answer, because planning zones need not reflect land ownership, control or current usage.

You might expect the *Safety on Public Land Act 2004* to offer a definition, but it doesn't. The only public land to which that Act applies is Reserved Forest, so perhaps it should have been called the *Keep Protesters out of Logging Coupes Act*.

The *Cultural and Recreational Lands Act 1963* attempts definition of recreational land (but not cultural land) – and we'd all agree that public land, whatever it may be, is more extensive than just recreational land.

Another interesting definition occurs in both the *Victorian Environmental Assessment Council Act 2001* and the *Land Conservation (Vehicle Control) Act 1972*. Here, public land includes Crown land and freehold vested in public authorities – but omits land owned by municipalities. This approach has also been taken in the newly-proclaimed *Major Transport Projects Facilitation Act 2009*.

Maybe we'll just stick with the 'it's obvious, isn't it' answer. ■

Q & A - 2

What's wrong with the term 'road easement'?

Question asked by a senior DSE officer attending a recent 'roads' course

At times we need to distinguish between physical roads (you know: bitumen, gravel, line-markings and so forth) and land whose legal status is 'road.'

Usually the two things go hand-in-hand, but often they don't. It's the same with the law: some uses of the word 'road' are references to physical roadways; other references are to the strip of land which may or may not have a physical roadway on it. How best to distinguish between them?



Well, we might call the strip of land a 'road reserve' – after all, it's land set aside (reserved) for the purpose of a road. But why not call it a road *easement* – many people do!

An easement has a special meaning in law. It is part of one ('servient') parcel of land, over which rights are held by the owner of another ('dominant') parcel of land – or in some cases by a service utility. Each easement has its own specific purpose or purposes, one such being 'carriageway.' A carriageway easement may indeed contain a physical roadway – but it would be for the use of the 'dominant' landowner, not for the public at large.

So our proposal is – if we're talking a physical trafficable surface – kerb to kerb – then to avoid ambiguity let's call it a *roadway*; if we're talking about a strip of land – fenceline to fenceline – whose legal status is road, then to avoid ambiguity let's call it a *road reserve*.

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Unfortunately many road reserves created in old freehold subdivisions still appear on titles office documents as 'easements' – even though they are open to the public, not just to the owners of 'dominant' parcels. Perhaps this will be remedied by the Victorian Law Reform Commission, which has just commenced a review of the law relating to easements and covenants. ■

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