

My Colouring Book is Better than Your Colouring Book

Marks for Colouring In:-
Geologists **10**; Planners **0**.

We can't imagine anyone putting a Planning Scheme map in a frame and hanging it on the living-room wall. The Geological Survey of Victoria, on the other hand, includes stunning works of art worthy of the National Gallery. These masterpieces will soon be getting more exposure, courtesy of the *Aboriginal Heritage Regulations 2007*.



North-west of Ararat

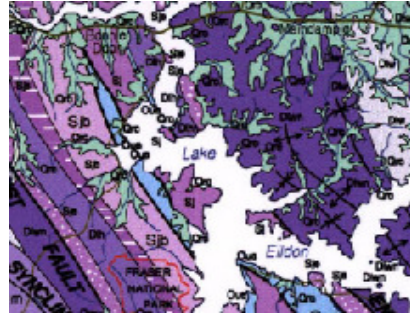
Every council in the state must now come to grips with *prior waterways, ancient lakes, greenstone outcrop areas, source-bordering dunes*, and so forth. Under the Regulations these are 'Areas of Cultural Heritage Significance.' These words are not mere descriptions, but statutory terms with defined meanings: definitions which take you to the spectacular colours of the geological maps.

Only trouble is – how is some poor council officer supposed to know whether the application in front of him or her lies inside one of these coloured shapes?

Take a proposal to realign a road somewhere near Hamilton: will it run through an area marked 'Qrl' on the 1:250,000 map sheet J54-7? If so, it's impacting on a *lunette*, and will require a Cultural Heritage Management Plan.

Take an application for a three dwelling development in Rosebud: is it inside or outside the area marked 'Qpd' on the 1:250,000 map sheet numbered SJ55-9? If it's inside, than it's within a *sand sheet* – as defined by the Regulations, and will also require a CHMP.

Here's where the planners' maps are superior to the geologists' maps. Although less pretty, they do show property boundaries: the council officer using them has a fair chance of relating the applicant's parcel of land to the rules governing its use and development.



Around Lake Eildon

We guess there will be a few cartographers hard at work somewhere busily transposing the geologists' beautiful (but amorphous) ink-blob abstracts onto the planners' less pretty (but hard-edged) geometric maps.



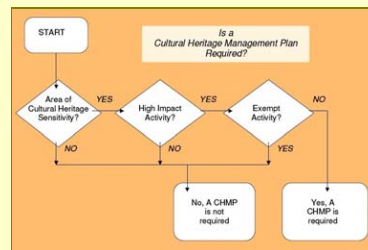
The Aboriginal Heritage Regulations 2007 Our Expert Analysis

Megan Goulding summarises what the
new Regulations will mean for councils
and developers

Page 2

INFORMATION SESSIONS

Aboriginal Heritage Act 2006
Aboriginal Heritage Regulations 2007



Full details – Page 4





A Parliamentary Inquiry,
Taiwanese style

Public Land, the Arguments and the Numbers

“Bugger the arguments; I’ve got the numbers.” This was the debating strategy made famous by the ALP’s late Senator Pat Kennelly. It is a strategy which has stood the test of time, having been employed by many governments in many parliaments.

The Victorian Upper House, where proportional representation has deprived the Bracks Government of the numbers, is now the scene for the latest application of the Kennelly doctrine.

The Liberals, the Nationals, the Greens and the DLP have joined forces to set up a select committee to inquire into:-

- a) *the sale or alienation of public land for development;*
- b) *the sale or alienation of public open space for private development; and*
- c) *the sale and development of public land and the relationship to the Melbourne 2030 policy and green wedges*

It’s hard to imagine a less coherent reference. It is an inquiry into public land, or public open space, or the green wedges? Is it an inquiry into sale for *any* purpose, or just for development, or for *private* development? Who cares? When you’ve got the numbers, such niceties are immaterial.

The debate setting the scene for the inquiry will be found in Hansard for Wednesday 2nd May 2007. Here the real purpose of the inquiry emerges: it is a chance to rake over every land-related grievance of the last decade, from Kew Cottages to the Commonwealth Games Village to Devilbend Reservoir. And it’s not just the Opposition attempting to score political points – for the Government it’s a chance to revisit all the school closures of the Kennett era, and the Mont Park Hospital, and the tourism developments mooted for Wilsons Promontory and the Twelve Apostles.

Will this fiasco result in anything useful? That possibility is as about as remote as the two sides agreeing to kick the Grand Prix out of Albert Park and reinstate a Committee of Management under the chairmanship of Senator Pat Kennelly. ■

The Proposed Aboriginal Heritage Regulations 2007

Our Expert Analysis

By Megan Goulding

The proposed Regulations have now been published, together with a Regulatory Impact Statement (RIS). This analysis is provided as a follow-up service for the 100+ people who have attended our training course “*The Land, its Traditional Owners and the Law*”

- Cultural Heritage Management Plans (CHMPs) will be a requirement for sponsors when they seek statutory authority for specified ‘High Impact Activities’, where they are to occur in ‘Areas of Cultural Heritage Sensitivity’ (AsCHS). The regulations define AsCHS, but it is understood that these represent the minimum areas to receive such protection. Under the currently defined AsCHS, some heritage surveys currently being undertaken may not be required. However, as noted above, it is envisaged that more heritage impact assessments will occur as the legislation establishes consistent triggers that require compliance before planning permits can be issued. I understand that AAV will be working with local government to better define AsCHS through local heritage studies (there may be funding from government to support this).

- Statewide, a larger number of Aboriginal heritage surveys (termed CHMPs) will be required than are currently being undertaken. Aboriginal Affairs Victoria (AAV) estimates an additional 121-220 CHMPs p.a. This is likely to be an underestimate, as the RIS notes that no CHMPs will be undertaken in most Melbourne municipalities, including those where significant greenfield development is likely to occur over the next 10 years like Brimbank and Greater Dandenong, areas which have been associated with significant Aboriginal heritage issues over the last few years.

- It is clear from the RIS that local government will function as a trigger for identifying when a CHMP is required. As the flow chart on page 22 of the RIS states:

- *Proponent assesses whether plan required and applies to Municipal Council;*
- *Council considers application against new legislation and regulations, which will specify circumstances in which heritage management plan is required. The new legislation will be linked to the VPPs;*
- *Council notes that application requires a heritage management plan and informs proponent.*

... continued

- ❖ Sponsors should undertake a heritage due diligence study prior to commencing a project or acquiring an interest in land. This will enable them to evaluate their risk and compliance costs prior to financial commitment
- ❖ Sponsors should always seek the best possible independent advice on Aboriginal heritage issues, as they will be held liable for mistakes in Cultural Heritage Management Plans (CHMPs)
- ❖ Sponsors should initiate evaluations as early as possible in the planning process, as detailed excavations or recording cannot be deferred to a later stage
- ❖ Successful completion of CHMPs will to a large extent turn on the sponsor's working relationship with Registered Aboriginal Parties (RAPs)

in brief...
**Our Advice
to Land
Developers**

Continued... **The Proposed Aboriginal
Heritage Regulations 2007**

- The cost of a CHMP will on average be higher than a heritage survey undertaken at present, including a higher level of rigour in excavation and testing programmes. All evaluation tasks associated with a CHMP must be completed before a statutory authority can be issued.
- The validity of a CHMP will be based on its compliance with the standards in the Regulations. Under the new Act, the Registered Aboriginal Party/Parties (RAPs) are responsible for approving a CHMP. They can only approve a CHMP if it meets the standards set in the Regulations. However the onus will remain with the sponsor to ensure that their CHMP is valid. As such a statutory authority may be deemed invalid if a CHMP, even one approved by a RAP does not meet the standards. It is unclear how this lack of compliance will be established although AAV asserts that it has this role.
- Irrespective of whether a CHMP is required for a statutory authority or not, a sponsor still has duty of care for the protection and management of Aboriginal heritage values. This may result in the need for a voluntary CHMP, if a proponent's risk is not met by the criteria for an ACHS, as defined in the regulations. A good example would be Aboriginal scarred trees, which may occur throughout the landscape irrespective of whether it falls within an area of cultural heritage sensitivity. Cultural Heritage Permits will be available for such instances, however a sponsor will still have an obligation to undertake an evaluation in order to prevent a breach of the legislation.
- Cultural Heritage Permits will be issued by the Secretary of the Department for Victorian Communities (ostensibly AAV). AAV will be required to obtain RAP input into the permit. It seems that the permit system will be used in instances where a sponsor wishes to

destroy a site. In addition, for those areas of land exempt from the CHMP process a sponsor may wish to do a voluntary CHMP or apply for a permit. AAV has suggested that the application for a permit can be made even when no known site is present as it will provide the sponsor with some certainty when progressing with a development that may still impact on Aboriginal heritage. An example provided by AAV is where a sponsor wishes to develop under 3 lots – exempt from a CHMP – but chooses to apply for a permit to protect their interests (e.g. to avoid prosecution for negligently harming Aboriginal cultural heritage). It should be noted that in this instance the Secretary may ask for investigation of the area (e.g. desktop, survey, excavation).

- The Aboriginal Heritage Council can take up to 4 months before deciding on whether an applicant for RAP status is successful. It is understood that some Aboriginal groups have already submitted their applications. However it is likely that in the shorter term at least, AAV will function as the approval authority for much of the State. ■

Megan Goulding is Principal of Goulding Heritage Consulting, interim CEO of the Wurundjeri Council, and a member of the Victoria Heritage Council Archaeological Advisory Committee



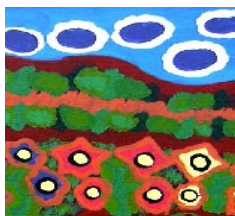
Happy Snaps

'Birrarung Marr' means river of mists in the Woiwurrung language of the Wurundjeri people

The Public Land Consultancy was pleased to be engaged by the City of Melbourne to advise on the governance and regulatory regime for this Crown land precinct.

Readers of Terra Publica should not act on the basis of its contents which are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. They do not, nor are they intended to, constitute legal or specific advice. The Public Land Consultancy is available to provide advice on public land matters and will, on request, arrange legal advice for clients from its associate Maddocks, of 140 William Street, Melbourne.

FULL-DAY TRAINING COURSES



The Land, its Traditional Owners and the Law

An introduction to Native Title and Aboriginal Heritage in Victoria

Presenter: Megan Goulding

*Interim CEO, Wurundjeri Land Council;
Principal, Goulding Heritage Consulting*

Aboriginal Heritage: the old legislation

- The Victorian *Archaeological and Aboriginal Relics Preservation Act 1972*
- the *Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act 1984*

Aboriginal Heritage: the new legislation

- The Victorian *Aboriginal Heritage Act 2006*
- What it will mean for Aboriginal people
- What it will mean for developers
- What it will mean for municipalities

The Aboriginal Peoples of Victoria

- Their original association with country
- their fragmentation and dispersal
- their current groupings
- Aboriginal organisations and their roles

Aboriginal Artefacts and Places

- Tangible and intangible heritage
- Case study: the Convincing Ground
- Past land-related measures, including Tyers, Coranderrk, Framlingham, Condah

Native Title

- Terra Nullius, Mabo and Wik
- The *Commonwealth Native Title Act 1993*
- Extinguishment; Valid Future Acts
- Indigenous Land Use Agreements

Native Title Claims

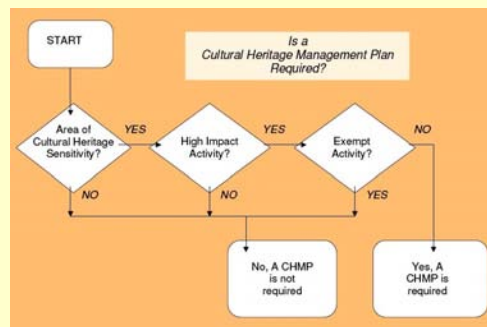
- The Federal Court; the Native Title Tribunal
- The Yorta Yorta claim for the Barmah Forest,
- The Wotjobaluk, Noongar, & Gunditjmara claims
- Unresolved claims elsewhere in Victoria

Cost: \$440 per student
*including GST, Course Notes
and Working Lunch*

Maximum Class size: 10

HALF-DAY INFORMATION SESSIONS

Aboriginal Heritage Act 2006 Aboriginal Heritage Regs 2007



Tues 29 May	9:00-12:00	Dandenong
Tues 5 June	1:30-4:30	Camperdown
Wed 6 June	9:00-12:00	Hamilton
Tues 12 June	1:30-4:30	Wodonga
Wed 13 June	9:00-12:00	Benalla
Tues 19 June	1:30-4:30	Box Hill
Tues 26 June	1:30-4:30	Sale
Wed 27 June	9:00-12:00	Bairnsdale
Tues 3 July	1:30-4:30	Shepparton
Wed 4 July	9:00-12:00	Bendigo

Cost: \$250 per student
Maximum Class Size: 20

Your Presenter

Megan Goulding

- *Principal, Goulding Heritage Consulting;*
- *Interim CEO, Wurundjeri Council;*
- *Member, Victoria Heritage Council Archaeological Advisory Committee*

Enquiries and Registrations

For both the half-day Information Sessions and the One-day Training Course, please contact –

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Training Course Co-ordinator

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Phone (03) 9579 2635

*For full details of all our courses, go to:-
www.publicland.com.au/professional
development*