



2016 REGIONAL CONFERENCE

Horsham

10 September 2016

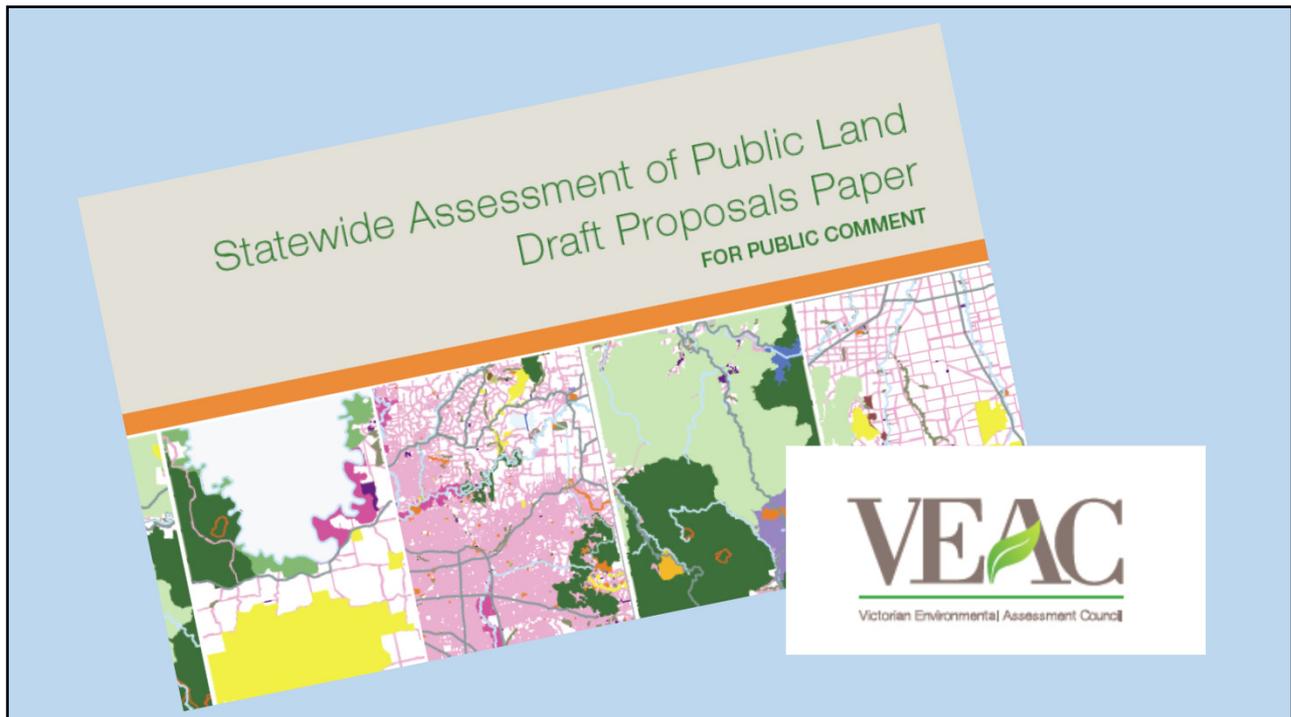
## What's happening on Crown land

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The Public Land Consultancy

### What's happening on Crown land

1. The VEAC Statewide Assessment of Public Land
2. The proposed Coastal and Marine Act
3. The Ministerial Advisory Committee on the Yarra River (Birrarung)
4. The Bi-Partisan Working Group on Caulfield Racecourse
5. *What's not happening but should be...*



Victorian Environment Assessment Authority (VEAC)  
1. Statewide Assessment of Public Land

- Commenced Sept 2014 ... Final report due Feb 2017
- Terms of Reference. To provide:
  - an assessment of the current system of public land use categories
  - an assessment of the current reservation status of public land,
  - an inventory of the types of values on public land.
- Community Reference Group of 13 agencies (surveyors not represented)
- Draft proposals published August 2016; Now on exhibition; Submissions are open until 7 November 2016

Victorian Environment Assessment Authority (VEAC)  
The Public Land Consultancy Engagement

- TPLC was Engaged by VEAC to liaise with 9 representative municipalities. Findings...
- Municipalities' perspective on public land is quite different from that of State government agencies
- A council's portfolio will be a mix of Crown and freehold land; the distinction is of little relevance to users
- The dual system of Crown / freehold governance is unduly complex, irrational, and cumbersome
- Governance of Crown land reserves is unduly bureaucratic, archaic and opaque

Victorian Environment Assessment Authority (VEAC)  
The Public Land Consultancy Submission

- Totally rewrite the Land Act 1958 and the Crown Land (Reserves) Act 1978
- There should be no unreserved Crown land
- Crown reserves need a new conceptual framework
- Recognise levels of significance (national, state, regional, or local)
- Abandon the temporary / permanent designation
- Grant 'local' reserves to local government in freehold

VEAC Statewide Assessment of Public Land

## Draft Findings

- There are currently 18 primary terrestrial public land categories, four marine categories, six public land overlays, and some 30 sub-categories.
- A strength of the Victorian system is that, unlike most jurisdictions, all public land (parks, forests, Crown land) has been systematically reviewed and assigned to a land category.
- A weakness of the system is that it is not completely aligned with the legislation reserving land, and some categories are not well understood or are confusing to the public.
- Conditional Crown grants to trustees – for many, the legal and governance framework for management is outdated

VEAC Statewide Assessment of Public Land

## Draft Findings

- Implementation of LCC / ECC / VEAC recommendations is uneven
- All recs for national, state and wilderness parks, marine national parks marine sanctuaries and alpine resorts have been implemented.
- recs for regional parks, state forests, wildlife areas, historic and cultural features reserves - 40 to 70 per cent implemented
- A much lower proportion for land reserved under the *Crown Land (Reserves) Act 1978* or the *Forests Act 1958*
- 'well-known deficiencies in the information systems for Crown land that require urgent attention... Features of the Crown Land (Reserves) Act are slowing down implementation of recs...'

VEAC Statewide Assessment of Public Land  
Draft Recommendations

- Short Term:
  - Series of amendments to CLR Act
  - Standardise regulations for categories of public land
  - OSG consider simplification of gazettal plans implementing VEAC recs
- Longer Term (5 years):
  - Land Act, CLR Act, Forests Act be totally re-written
  - National Parks Act be amended to cover all protected areas

VEAC Statewide Assessment of Public Land  
Proposed amendments to CLR Act

- Simplify the list of reserve purposes
- Reassign the 1300+ existing gazetted reserve purposes
- Remove the permanent / temporary distinction, but retain parliamentary approvals for certain categories of revocation
- Provide for the declaration of a reserve to automatically revoke previous status - including roads and reserved forest
- Rationalise leasing and licensing, including Ministerial approvals and parliamentary scrutiny
- Transition 'trusts' to some more modern system of delegated management



## 2. Proposed Coastal and Marine Act

- 2015 - Minister for ECCW appointed an Expert Panel of academics, planners, politicians
- Consultation Paper August 2016. Submissions close 23 October 2016.
- Proposes a new Coastal and Marine Act to replace the Coastal Management Act 1995
- Proposes abolition of Coastal Boards; transfer of functions to CMAs
- Proposes phasing out of smaller Committees of Management in favour of larger CoMs (e.g. GORCC, PINP) or Councils

Proposed Coastal and Marine Act

## Marine Planning

“While the VCS has been considered largely successful in delivering clear land-based coastal policy and planning guidance, It has not been successful in solving challenges that cut across jurisdictional sector boundaries in the marine environment.

“Planning for marine and coastal areas needs to integrate statewide, regional, local and site-specific mechanisms that cross boundaries and apply to public and private land when needed. Ideally, spatial planning for coastal and marine areas would be integrated, co-ordinated and transparent.”

Proposed Coastal and Marine Act

## Doctrine of Accretion

- “In other states, the common law doctrine of erosion and accretion has been amended through legislation, such that erosion events caused by sudden storm surges result in the boundary of land moving and reverting to the Crown. Similarly, the doctrine of accretion can also be amended to ensure public access and ownership.
- **“Question 3:** *Other jurisdictions have made legislative changes to better deal with the impacts of accretion and erosion. Are there any aspects of the approaches used in other jurisdictions, for instance NSW and Queensland, that would be relevant for Victoria to help achieve the above improvements?”*

Proposed Coastal and Marine Act  
**Ambulatory Boundaries**

- The paper makes no mention of ambulatory boundaries, other than in the context of doctrine of accretion
- Municipal boundaries are generally at Low Water Mark, wherever it may be from time to time
- The Coastal Crown reserve is often bounded by HWM *as it was in 1865-66*.
- Is the freehold boundary also ambulatory? See Chelsea Lands Act 1981
- Proposal to ISV: the Surveying profession should use this opportunity to reform the law on coastal boundaries



### 3 The Ministerial Advisory Committee on the Yarra River (Birrarung)

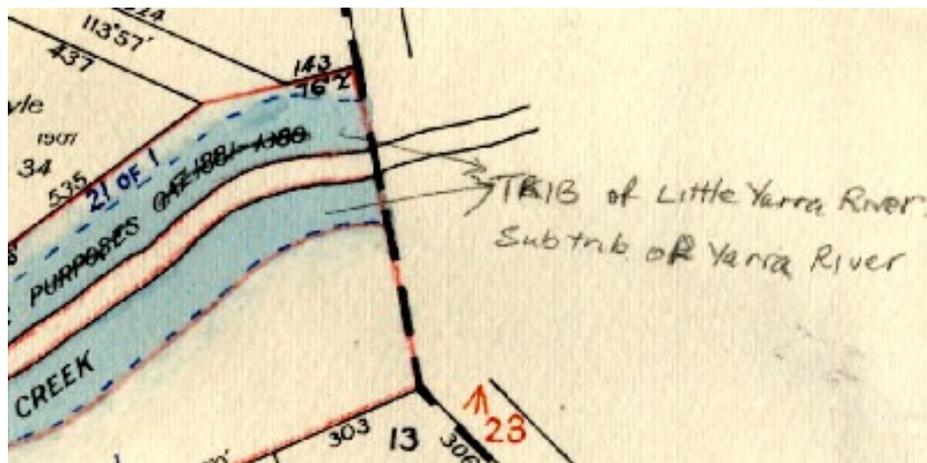
- Terms of Reference:
  - what are the current and emerging issues?
  - can the powers and functions of existing agencies be reworked?
  - should there be a new coordinating entity?
  - do referral authorities have sufficient say in planning applications?
- Not Asked:
  - is the inherited pattern of land status and ownership working?
  - are (reactive) planning controls adequate for good outcomes?
  - why the Yarra? Plenty of other rivers need attention!!

#### Ministerial Advisory Committee on the Yarra A New Management Model

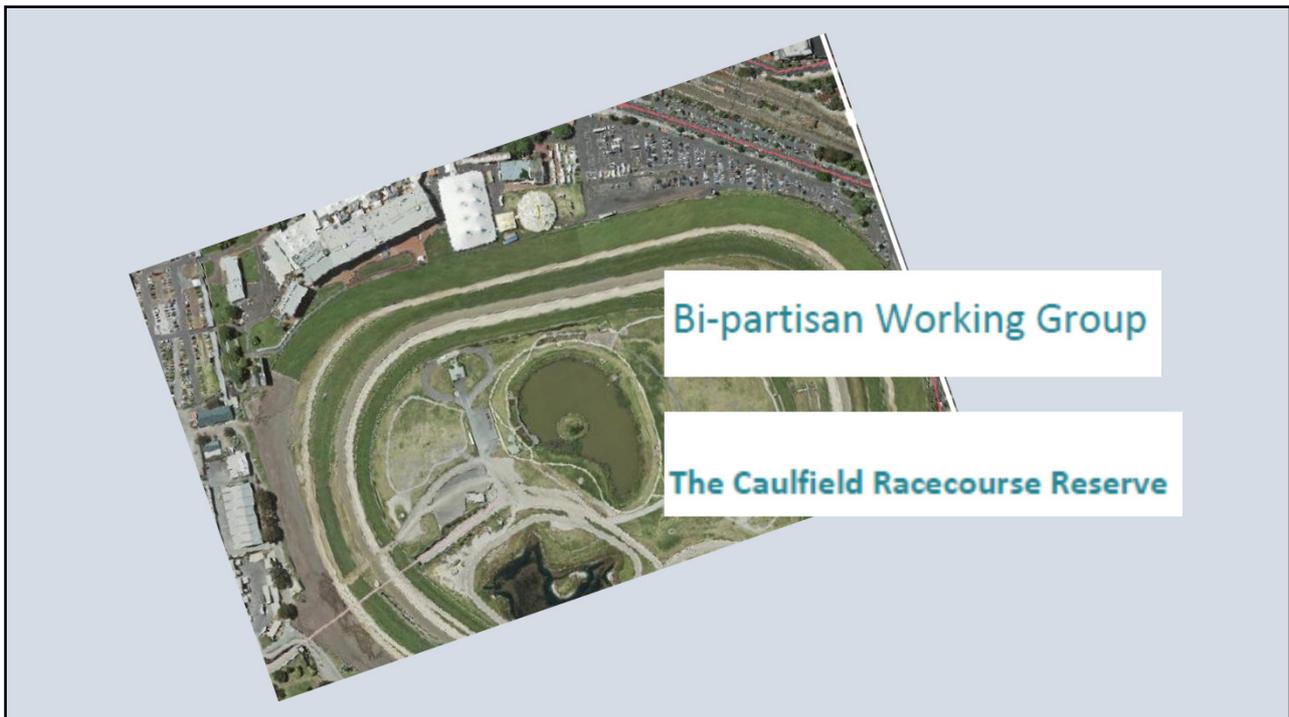
- A 'community vision' ... A Yarra strategic plan...
- A Yarra (Birrarung) Protection Act to...
  - require a strategic plan
  - establish a new entity OR require an existing entity to develop and implement the plan
  - involve Traditional Owners and 'the community'
  - require 'relevant agencies' to contribute to and abide by the strategy
  - etc, etc, etc...

## Ministerial Advisory Committee on the Yarra The Sub-Tributaries Anomaly

- The 1881 permanent reservation of Crown frontages included 'the Yarra and all its tributaries'
- In the 1980s some smart-arse in DSE pronounced that 'tributaries' did not include tributaries of tributaries
- Britannia Creek is a tributary of the Little Yarra; the Wandin Yallock is a tributary of the Woori Yallock; Chum Creek is a tributary of the Watts River
- The land along them was de-reserved at the stroke of a blunt pencil...



- This smart-arse interpretation could have been nullified by another OinC in the government gazette. At the same time the land between the (ex)reserve and the freehold boundary could have been reserved



## 4 Caulfield Racecourse

- 54 ha reserved for three purposes (racing, public park and recreation) but used only for racing
- Restricted grant to trustees (15); trust dominated by racing interests
- Long term dissent in local community, political pressure, Auditor-General's investigation...
- Bi-partisan Working Group established by Minister ECCW
- No consideration of underlying economics of racecourses
- Recommends revocation of grant; new legislation; new trust similar to MCG trust, State Sports Centre Trust etc

Moving from Caulfield Racecourse to...

## Other archaic trustee arrangements

- Quambatook: Public Park and Recreation Ground ... 330 acres ... (*Caravan park, Golf course, Football ground, Netball courts*) ... Trust established 1925 ... Now registered under *Religious and Successory Trusts Act 1958* ... 5 persons... now down to 2... in practice managed by Shire
- Childers: Abandoned tennis courts ... 0.5acres ... Restricted Crown grant to five trustees for purpose of 'Recreation Reserve / Tennis Court' ... all 5 deceased ... neighbour claims under adverse possession ... Shire wants land for CFA depot ... land value < legal costs ... land abandoned

## 5. What's not happening but should be...

- All Crown land should be regarded as 'reserved'
- The Land Act should be repealed; the CL(R) Act should be rewritten and vastly simplified
- Crown land should be categorised not only by purpose, but also by level of significance
- Crown land of National, State and Regional importance should be retained; land of local significance should be granted in fee simple to municipalities
- Most restricted Crown grants to trustees should be revoked

## What's not happening but should be...

- Committees of Management should be amalgamated / rationalised; any remaining 'local' Committees should be answerable to the municipality, not to DELWP
- The law relating to Crown land river frontages should be rewritten; allowing cadastral rationalisation where rivers have moved
- The 4 or 5 separate laws relating to road discontinuations should be rationalised; The law relating to unused government roads should be rewritten
- The law should recognise easements over Crown land

## What's not happening but should be The Surveying Profession's contribution?

- How the doctrine of accretion should be reformed in statutory law
- How the 1905 expropriation of river beds should be interpreted and reformed
- How easements should be recognised on Crown land
- How conditional Crown grants to trustees should be modernised ...

