

**Submission  
No 61**

**INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN  
PLANNING FRAMEWORK**

**Organisation:** Parks Victoria

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Environment and Planning Committee  
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Dear Environment and Planning Committee

### **Inquiry into the protections within the Victorian Planning Framework**

Thank you for the opportunity to make a submission to the Legislative Council's Environment and Planning Committee Inquiry to examine the *Planning and Environment Act 1987*.

By way of background to this submission, Parks Victoria is a government agency of the state of Victoria and was established in December 1996 as a statutory authority, reporting to the Victorian Minister for Environment and Climate Change. The *Parks Victoria Act 2018* updates the previous act, *Parks Victoria Act 1998*.

Park Victoria manages approximately 4.1 million hectares of public land and waters across Victoria or 18% of the state, including 70% of the Victorian coastline, 71 national and state parks managed under the *National Parks Act 1975*, and 90 metropolitan and other parks and 2,700 natural features and conservation reserves under the *Crown Land (Reserves) Act 1978*, *Forests Act 1958* or *Land Act 1958*.

These areas are managed according to an established legislative and policy framework, including the specific land-based legislation under which each park or reserve is established, government approved recommendations of the Victorian Environmental Assessment Council or its predecessors, approved park management plans, government policy and other various acts and legislation. We manage this public land in partnership with Traditional Owners, government and non-government organisations, park neighbours, volunteer groups and the broader community.

Section 7 of the *Parks Victoria Act 2018* defines Parks Victoria's Objects. In performing its functions, exercising its powers and carrying out its duties, Park Victoria must have regard to the Objects. These focus on conserving Victoria's special places, connecting people and parks and providing benefits beyond park boundaries.

Victoria's parks are a key drawcard for staging events, art spaces, business tenancies, restaurants and cafes, retail, accommodation, education and training. We facilitate short-term commercial activities such as mobile vendors and events through to long-term tenancies contributing millions of dollars in capital investment. The parks make a significant contribution to the Victorian economy, tourism and community wellbeing.

To assist Parks Victoria manage its estate effectively we suggest consideration be given to the following matters:

- A Tailored Victorian Planning Provisions approach for public land management
- Victorian Planning Provisions and Joint management arrangements on public land
- Application of the planning provisions and protection of Aboriginal and Non-Aboriginal Cultural Heritage
- Victoria Planning Provisions and the application of the Public Land Zones, Overlays and Land Use Terms

These matters are described in detail below:

### **Tailored Victorian Planning Provisions (VPP) approach for public land management**

Section 16 of the Planning and Environment Act 1987 provides that planning schemes are “binding on every Minister, government department, public authority and municipal council except to the extent that the Governor in Council, on recommendation of the Minister for Planning, directs by an order published in the Government Gazette.”

On 10 February 1988, a Ministerial Direction was published in the Victorian Government Gazette which provides that “planning schemes shall not be binding on the use and development of land carried out by or on behalf of the Minister for Conservation, Forests and Land, the Minister for Health or the Minister for Education” except where the land is within the Yarra and Maribyrnong Area or the Port Phillip Area.

The successor to the then Minister for Conservation, Forest and Land is the current Minister for Energy, Environment and Climate Change (the Minister).

To date Parks Victoria has not operated under this Ministerial Direction and as such undertakes its activities consistent with planning scheme requirements. To facilitate this compliance and to limit such matters as duplication and resource costs, it is suggested that the level of planning control applied to Parks Victoria’s parks and reserves via planning schemes is proportional to need.

One tailored approach already in existence is the *Procedure for the removal, destruction or lopping of native vegetation on Crown Land for DELWP and Parks Victoria*. This procedure takes into account the role and responsibility of these two public land managers with respect to vegetation protection under existing land management legislation.

### **Traditional Owners: Joint managed and co-operative managed public land – Revise the Victorian Planning Provisions (VPP) to address**

In Victoria, joint management is established through agreements under the *Traditional Owner Settlement Act 2010*. The Act recognises the ongoing connection of Traditional Owners to their traditional Country, and empowers them, in partnership with the Victorian Government, to actively participate in the management of land and natural resources within their traditional Country. In most cases, joint management applies to land that has been handed back to Traditional Owners as Aboriginal Title.

A joint management plan is developed by a Traditional Owner Land Management Board, which is established by the Minister for Environment and Climate Change and comprises a majority of Traditional Owners. The joint management plan replaces any prior park management plans.

Joint management arrangements are currently in place with four Traditional Owner groups across Victoria, with others currently under negotiation. The effect of this is that there are many parks and reserves that Parks Victoria partners with Traditional Owners to care for Country, with work Parks Victoria undertakes guided by the joint management plans and directions set by the Traditional Owner Land Management Boards.

In addition to joint management there are also co-operative management agreements. There are presently three formal agreements between the State of Victoria and Traditional Owners to facilitate cooperation between Traditional Owners and the State to manage designated areas of Crown land, for much of which Parks Victoria is the designated public land manager.

With this progression of public land to effective joint and co-operative management it is timely to now update the Victorian Planning Provisions (VPP) to address the changes required for public land management.

Parks Victoria suggests the role of Traditional Owners be recognised within the VPP beyond vegetation removal, and an examination of the potential to amend the Public Conservation and Resource Zone (which applies to much of the land that is jointly managed) to include Traditional Owners within the entities that do not require a planning permit to undertake particular uses (and associated buildings and works) that are consistent with the management agreements.

In examining this, targeted and tailored engagement with Traditional Owners and consultation with the Victorian Aboriginal Heritage Council (VAHC) is recommended.

## **Heritage – Aboriginal and Non-Aboriginal Cultural Heritage**

### **Aboriginal Cultural Heritage**

Managing cultural heritage (both Aboriginal and non-Aboriginal) is a core park management function and is governed by various acts, including the *Heritage Act 2017* and the *Aboriginal Heritage Act 2006*.

Parks Victoria is the custodian of the largest and most diverse range of known heritage places on public land in Victoria.

In relation to Aboriginal cultural heritage, the *Aboriginal Heritage Act 2006* provides protection to all Aboriginal cultural heritage whether it is registered or rediscovered during an activity. As many activities may impact on such heritage Parks Victoria has detailed policies and procedures to comply with the Act, Regulations, best practice and expectations of Traditional Owner partners.

It is noted that the *Aboriginal Heritage Regulations 2018* rely heavily on the land use definitions within the Victorian Planning Provisions where it defines 'high impact activities' under these regulations. Terms used in sub-regulation R. 46(1)(b) & R.47(1) have the same meanings as they have in the Victorian Planning Provisions. However not all 'high impact activities' are covered in the VPP definitions. A review of the VPP terms that are generally applicable to public land use and assets would assist with clarity of terms referred to under the *Aboriginal Heritage Regulations 2018*.

### **Other Cultural Heritage**

In relation to other cultural heritage, Parks Victoria is responsible for managing hundreds of heritage places, many of which are included on Local (Local planning scheme 'Heritage Overlay'), State ('Victorian Heritage Register' and 'Victorian Heritage Inventory'), National ('National Heritage List'), and/or World ('World Heritage List') heritage lists. There may be others that are of significance to the community, but may not yet have formal statutory heritage protection, while all historic archaeology over 75 years of age is automatically afforded protection under the *Heritage Act 2017*.

New heritage places are recognised and added to registers regularly, and existing heritage places are sometimes modified or removed.

Assets and other features within a heritage place may include:

- Buildings and structures (interiors and exteriors)
- Significant trees, gardens, and cultural landscapes
- Archaeological sites (both known and unknown)
- Objects (moveable and immovable collections)

- Shipwrecks.

In many situations a place may have both Aboriginal and non-Aboriginal cultural heritage significance. The Heritage Council of Victoria (HCV) and the Victorian Aboriginal Heritage Council (VAHC) have worked together to ensure our heritage systems better reflect a holistic view of Victoria's history.

Traditionally, the systems of heritage recognition and management have separated places with 'Aboriginal' and 'non-Aboriginal' values. However, HCV and VAHC recognise that many places hold significant history to Aboriginal and non-Aboriginal people, and very often this history is a shared one. For example, places of early contact, exchange, conflict and interaction between Aboriginal and non-Aboriginal people do not fit neatly into either the Aboriginal or non-Aboriginal system.

A more inclusive approach would seek to recognise that every place in Victoria has an Aboriginal history, and acknowledge places with a shared history, recognising that stories and memory about events and places may sometimes be divergent or conflicting. Whilst this work has been applied to 'state level' places on the Victorian Heritage Register, particularly in acknowledging in statements of significance the shared values where appropriate and consistent with the HCV's guidelines for adding places to the Victorian Heritage Register (e.g. H2348 Nerre Nerre Warren, Dandenong Police Paddocks managed by Parks Victoria and added to the Register in 2016) and ongoing work in acknowledgment of Traditional Owner groups, this work has not been applied to places on the heritage overlay. Planning Practice Note 1: The Applying the Heritage Overlay (PPN-01) requires that a statement of significance must be incorporated in the planning scheme for each heritage place included in the schedule to the Heritage Overlay after 31 July 2018. The joint work of HCV and VAHC should be extended to new places proposed for inclusion on the heritage overlay, and the PPN-01 updated to include this requirement.

Acknowledging these different layers of a place is important, as is meeting all legislative obligations. Opportunities to recognise that interactions between the different systems may assist.

### **Victoria Planning Provisions – Public Land Zones**

There are several planning zones applying to parks and reserves managed by Parks Victoria. The two most common are Public Conservation and Resource Zone (PCRZ) and Public Park and Recreation Zone (PPRZ). Both zones identify specific uses that are allowed and where a permit is not required (Section 1 uses), uses where a permit is required (Section 2 uses) and uses that are prohibited (Section 3 uses).

Several Section 1 uses under PCRZ and PPRZ currently include a specific condition that the use be undertaken '*by or on behalf of*' Parks Victoria or specified in an Incorporated Plan (which requires a planning scheme amendment process to enable).

Parks Victoria considers '*by or on behalf of*' is unnecessarily limiting and the VPP would be more consistent and simpler to follow if the special condition was expanded to allow Section 1 and 2 uses to be undertaken, for example, if a licence, lease or permit has been issued by the land manager under the land legislation governing the land. The special condition could be expanded to include 'a use under a licence, lease or permit issued by the public land manager or Parks Victoria or at its consent.' Several municipal councils in their role as responsible authority have already applied this principle by stating that a proposed use on public land is permitted by virtue of it being '*by or on behalf of Parks Victoria or at its consent.*'

While this is at times helpful, it has created a level of inconsistency in the way the zoning controls are applied across Victoria, creating confusion for those people and organisations who wish to undertake activities in various locations across the state, managed by Parks Victoria.

This enhancement would also help to resolve the conflict that currently exists sometimes between the enabling land legislation and the prohibiting planning provisions. By enabling this change the VPP would

better reflect contemporary circumstances whereby government agencies often lack the capital and agility for innovative, yet appropriate uses and development on public land that could be provided by organised groups or the private sector.

Reform of the *'by or on behalf of'* condition could better enable Parks Victoria to deliver appropriate services in parks and reserves, many of which are currently prohibited under the VPP even though they can be permitted under the legislative and policy framework under which the parks and reserves are established.

### **Victoria Planning Provisions - Overlays**

The Practitioners Guide to Victorian Planning Schemes provides guidance on the application of an overlay to public land which relates to the nature of overlay and the land management legislation of the public land manager. There is merit in reviewing which overlays have been applied to the Parks Victoria estate and the drafting of the VPP overlays and associated schedules to ensure what is applied is appropriate and necessary for public land managers.

Within some planning schemes the Environmental Significance Overlay and Significant Landscape Overlay is broadly applied across landscapes and consequentially covers parks and reserves with little or no perceived benefit.

For local heritage places covered by the Heritage Overlay, Parks Victoria suggests that, given our large role and responsibility in managing and protecting heritage, the VPP Heritage Overlay could be reviewed and revised to streamline what buildings and works benefit from requiring a planning permit on Parks Victoria managed land.

In addition, for the Heritage Overlay, there is limited and inconsistent application of the 'allow prohibited use' provision. For Parks Victoria this largely prevents adaptive reuse and activation of heritage places. Parks Victoria recommends that the default position be to 'allow prohibited uses' for public land, except where there is a specific reason not to do so.

The prohibited uses column in the schedule to the heritage overlay is incredibly useful and specifically deals with a common situation with heritage places in parks, where there is inconsistency between the underlying zoning (generally PCRZ) and the specific conservation and activation needs of heritage places. Reactivation of a heritage place is often stymied by the zoning, despite historical commercial uses of the place. An example of this is the Mount Buffalo Chalet, which is ideally suited to apply the 'allow prohibited use' provision. It would also be beneficial at Westerfolds Manor at Westerfolds Park in Templestowe. The real problem is the lack of consistency in the application of the provision. HCV could make a recommendation at the time of adding to the register, but it ultimately falls to the Responsible Authority.

It is noted that DELWP is presently undertaking a review of the Bushfire Management Overlay, which is commended. This overlay applies to much of the Parks Victoria estate and as such how it is crafted is particularly relevant to Parks Victoria managing its estate.

### **Planning and Environment Act 1987 definitions**

Section 3 includes definitions that are relevant and applicable to all planning schemes.

Parks Victoria suggests a review of these definitions is timely. A good example of one that could be modernised is "Road".

"road" includes highway, street, lane, footway, square, court, alley or right of way, whether a thoroughfare or not and whether access ble to the public generally or not

In relation to land that is zoned Public Park and Recreation Zone (PPRZ) or Public Conservation and Resource Zone (PCRZ) it is understood that walking trails would fit within the definition of "Road" as footway, but this is not always common practice among planning practitioners (see below).

### **Victorian Planning Provisions – Land use terms – Clause 73.03**

Including a definition for 'Public land use' would be beneficial. At present there is no definition in the Planning and Environment Act 1987 nor the VPP. The effect of this is that the VCAT case *Teasdale v Surf Coast SC* [20016] VCAT 1224 (22 July 2016) had to give consideration to what 'Public land use' meant. The result was that a commercial pop-up tavern on PPRZ land was permitted, not prohibited.

There would also be benefits to reviewing the range of land use terms to support contemporary visitor economy, recreation and tourism uses on public land. For example, the term 'Informal Outdoor Recreation' is characterised by non-paying users rather than the nature of the activity itself or its impact on the land. Parks Victoria notes that there are many forms of outdoor recreation – formal/organised, passive, active, intensive – which can be managed on public land without detriment to other values, irrespective of whether a fee applies to its use. In some cases, applying a fee is an appropriate mechanism to manage demand and ensure environmental values can be adequately protected.

Similarly, walking trails would benefit from a definition, as many municipal councils consider walking trails fall under the *Planning and Environment Act 1987* definition of "Road", whereas others include the walking trails under bicycle pathway and trails.

Parks Victoria would welcome the opportunity to participate in a review of land use definitions applicable to the public land zones, noting as mentioned earlier, the implications of VPP definitions extends beyond the VPPs and planning.

Noting the Victorian Government is proposing a new Public Land Act to replace the *Crown Land (Reserves) Act 1978*, the *Forest Act 1958* and *Land Act 1958*, any new public land management legislation, together with changes recommended in this submission, should effectively support appropriate new uses and development within the Parks Victoria estate.

Should you require further advice on this matter please contact Monique Reinehr, Strategic Initiatives Assessment Planner [REDACTED]

Yours sincerely

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