

## **Jim Walker submission VEAC State-wide Assessment of Public Land**

We can survive without money, but we can't survive without natural environments. Unfortunately, financial forces have so captured governments, media, public opinion, education and legal systems that it has become accepted that more money is the most worthwhile goal, or even the only goal. Clean land and water are abandoned to pollution and waste, as these 'free' resources are replaced with expensive industrial alternatives. Now all land is exposed to plunder as the world's population booms and blind consumerism prevails, and we undergo a major extinction event and global warming.

All land is public land in the sense that the "public" is an ongoing entity that can manage land in perpetuity, whereas an individual can only meaningfully own and manage land so long as that individual lives. It is also the "public" that ultimately arbitrates the nature of whatever kinds of individual land ownership and management are allowed. The "public" has absolute control over land, whereas the individual has limited control.

In practice land management is not as clear cut as that description suggests. An individual person is born (or created, in the case of a corporation) into an already structured system of land ownership and management. In Victoria we have, mostly arbitrarily, inherited European systems of both land ownership and land management, irrespective of its appropriateness. Indigenous systems of land tenure existed prior to 1788.

Public 'land' should include waterways and marine areas as ecosystems are joined.

### **Native Title**

In the first place it is not clear that anyone who came to Victoria after 1788 has good title to any land. There is no legitimate chain of title. The Crown of England purported to become owner of the land, but how was the land acquired by the Crown? Was the land bought or leased from Aboriginal people in a contract of trust and mutual understanding?

Our governments are well aware of the tenuous nature of title, but selling things they don't own has never been a problem for them. They are just managing things for the Crown and they prefer not to think about it.

Lack of substantial and just resolution of native title issues is an impediment to improved management of public land. Public land, particularly Crown land, is most susceptible to Indigenous land title claims.

### **Government/business links**

In the second place, management of "public" land is also by government agencies, whether it is designated "Crown" land, State Government land, or is land quasi-owned or leased by State Government. Management normally consists of business/government deciding what it wants to do with a piece of land, and then perhaps consulting the public, but inevitably ignoring them. The only recourse the public has is to sue the government where there are grounds, or vote them out. These options have obvious difficulties and limitations.

Successful court cases have been waged against the Victorian government where the government has clearly breached the prescriptions of the Flora and Fauna Guarantee Act, and the logging codes. The arrogant pursuit of the East-West Link project was a major factor in the recent defeat of the Victorian Liberal Government. This is small compensation for the massive ongoing assault on environment and public lands. Most of the time the public has no say.

For major proposals, such as burning of native forests for energy production under a new RET scheme, the public has not been consulted. If the proposal passes Federally, the logging industry will seize the opportunity to push for further entrenchment of subsidised logging of native forests. Nothing appears to have been learned from the excesses of the woodchip industry.

The consequences of indigenous people and the general public having little or no say in public land management are serious. Governments can rightly claim increases in short-term economic efficiency in that industrialists, miners, developers, graziers and the like can 'get on with the job' without having to bother about rules and regulations or the enforcement thereof. The bureaucrats will still be paid for rewriting rules and finding excuses for not enforcing them, and the public conscience will be allayed by some well-paying jobs. But at some time, someone will have to clean up the mess, and all will ultimately suffer the unfixable problems left by ungoverned industries on public land.

### **Unfixable consequences**

The unfixable problems include loss of species, because many if not most threatened species persist on public lands. Victoria has a long list of extinct species. There are many more extinct species that remain unlisted. The FFG Act mandates government action to protect threatened species, but the major political parties, in power, are extremely reluctant to carry out the requirements of the legislation. We can only imagine why.

Denhurst's copper mine in State forest near Benambra declared bankruptcy in the late 1990s, after only four years operation, leaving the public to foot a clean-up bill of around \$7million. The Victorian Premier of the time is reported to have been a shareholder in the company. The tailings dam, sited on an irreplaceable area of montane swamp vegetation, threatens the Tambo River and the Gippsland lakes with acid water and heavy metal pollution, yet another company is proposing to reopen and expand the mine and the tailings dam. The former planning minister Mathew Guy claimed that a post-closure trust fund of \$5.5 million would account for catastrophic failure of the dam despite an official report recommending a \$264 million bond. According to the environmental assessment, the toxic waste in the dam must remain covered by two metres of water for at least a thousand years.

Loss of the volunteers who hold the core of local historical knowledge and perform much of the basic ongoing maintenance of public land is another problem caused by lack of consultation. Volunteers treated as dispensable slave labour tend to become disillusioned and go away. People able to make input may not bother. Decades of volunteer labour were wiped away when urban grasslands were rezoned for urban development in Melbourne.

### **Native Vegetation Framework and the Net Gain policy**

The Native Vegetation Framework and the Net Gain policy are good in theory but they are clearly not working to protect the small amount of remnant native vegetation that is left. Protection is fudged in favour of development by ingenious interpretation of the rules. For example, rare plants are shifted from a development site on public land to another place that may not be suitable, but is the best alternate site available. Or if no offset can be found, a compensatory sum can be paid to government, as if that benefits the environment. Or an exclusion fence is put around plants in an area to be given over to total urbanisation.

The refrain of commercial interests is for free access to public land, no impediments to resource exploitation, and no requirements for restitution, so these are the bargaining chips

used by developers with governments. Corporations can afford large donations (tax free) to political parties to get them into power, unlike private citizens whose resources are usually limited. So governments listen to corporations, not to citizens.

The primary objective for national parks and reserves is to protect what is left of natural areas and the resources they contain. Business supposes land (air or water) has no value unless it generates cash revenue (for business of course). Governments spend less than the minimum required to maintain public reserves.

Special rules for maintaining/restoring urban biodiversity need also to be made. Glen Eira Council which has the least remnant indigenous vegetation of any Melbourne municipality claims that because there is little remnant there is nothing much to be done.

### **Access to information**

A contract, theoretically, is an exchange between equally well-informed parties. The contract between government and people is far from equally informed. It can be extremely difficult to get useful information from any tier of government in relation to public land, its management or dealings relating to it. On the other hand, governments are increasingly disinterested in local history, or culture or archaeology. It might interfere with a development proposal. Most, if not all, departmental libraries are now closed, or have restricted access, or require payment for service. As departmental staff have retired or moved much of the historical knowledge of staff has disappeared. Land management based on ground truthing has largely been replaced by computer modelling based on theory e.g. if habitat is right and it is 'x' years since a fire event then a particular animal or plant is deemed to be there or not there.

A particular case relates to management of Caulfield Racecourse Reserve. This is land designated under Crown grant for use for a racecourse, public park and recreation, managed (sic) by Caulfield Racecourse Reserve Trustees (CRRT), a board comprising 15 members, six of whom are Melbourne Racing Club members, six are State government appointees, and three are local government representatives. Notoriously, use of the reserve has been dominated by the Melbourne Racing Club, largely unaccountably. The CRRT signs contracts with the MRC without observing conflict of interest rules, meets irregularly, and most recently has failed to sign a lease with the MRC. The public has extremely limited information about the operation of the CRRT, the nature of leases or why State governments consistently avoid requiring the CRRT to perform its duties in an accountable manner.

### **Planning**

To challenge a planning application is to be engaged in Catch22. Local government councils and VCAT apply the rules in an arbitrary fashion. Ordinary people are at a distinct disadvantage when opposing a corporate or state development applicant, both as to costs and expertise. The original purpose of VCAT, which was to provide a free and accessible non-legalistic forum for ordinary people has been lost. Money rules. Third party rights of appeal should be allowed in the case of public lands.

The corporate structure of councils appears to hinder open government. The CEO appoints council staff, so staff become beholden to the CEO. The powerful position of the CEO can lead to the CEO dominating decision-making by council, and loss of democratic process. Councillors are often completely uninformed when they arrive in office. All councillors should undergo a substantial induction course in planning law and council operations before beginning to represent the community.

### **Public open space**

In the inner and middle suburbs of Melbourne at least, the ratio of public open space per resident has been in decline. This is compounded by loss of private open space as new multi-story buildings are built boundary to boundary. Glen Eira has the least public open space of any Melbourne municipality, and some small redress is currently underway, but whether this will lead to an adequate ratio of open space per resident is doubtful. A useful measure would be to have no net loss of open space. Another useful measure might be to set an ideal standard for the amount of public space needed for each urban resident.

### **Chemicals: Land and Water**

Pollution and erosion of land means pollution of waterways and ultimately estuarine and marine environments. Herbicides and pesticides applied on land are spread across the planet in air, streams and oceans. There have been colossal increases in application of artificial chemicals to land in the last few decades. No-one knows, and few want to know, the consequences. None of the chemicals are tested in Australian environments for impacts on flora and fauna.

### **Public and Private**

Public land has to be managed in conjunction with private land as nature does not stop at a boundary fence. Polluted water from industries and farms runs to public land in estuaries. Weeds and animals escape from farms to public land, and back again.

### **Conclusion**

Overpopulation of the planet must be recognised as a problem. All the signs are there. Good farmers know not to overstock land. Land managers in general are bound by the same rules. Victoria and Australia in general is hamstrung by colonial and racist attitudes. Management of public land in Victoria has been poor. Many species have been lost since 1788 and an increasing number are under threat. Quarantine continues to be very poor, with large numbers of exotic pest plants and animals still available for sale in shops, or coming via illegal trade. Better quarantine and better public education is needed. Fragmentation of public land by developments, and pest plant and animal invasion are major issues. The incremental effects of developments should be addressed. Introduction of sustainable land management would be a good idea e.g. urban and peri-urban farms c.f. Japan; e.g. consider whether exotic stock have a place on marginal lands. Recognition should be given to the economic value of natural environments including on public land e.g. water production, carbon storage, genetic resources, soil stabilisation, etc. Better funding is needed for maintenance of national parks and other nature reserves. Management of National Parks and reserves could be partly funded by payment for carbon storage and water production in those areas. Triple bottom line accounting should be required for governments managing public land as well as companies using public land. Full public access is needed to information regarding public land. The public should be armed with third party rights and resources to legally challenge development proposals for public land. The structure of State and local government should be rearranged to improve accountability, transparency and effectiveness in management of public land.