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21 June 2015

Ms Joan Phillips
Executive Officer
Victorian Environmental Assessment Council
PO Box 500
East Melbourne
VIC 3002

Dear Ms Phillips

RE: STATEWIDE ASSESSMENT OF PUBLIC LAND

Wyndham City Council welcomes the opportunity to submit for VEAC's consideration, a brief response highlighting various issues which we believe should be addressed as part of your investigation into public land in Victoria. Wyndham has extensive tracts of Crown land within its boundaries and, as a consequence of the vesting of reserved land to Council, or its appointments as a Committee of Management for various Crown Reserves, has a direct involvement and interest in the management and usage of much of that land. Our experience in this field over many years has led us to the conclusion that there should be a complete restructure of the arrangements applied to the management of Crown land reserves, particularly those which are locally significant. This restructure would create many challenges including the requirement to substantially amend, if not repeal and rewrite all relevant legislation relating to the management and public use of reserved Crown land including the Crown Land (Reserves) Act 1978.

We also observe that the approach which has historically applied to the categorisation of public land in Victoria may have passed its "use-by" date. Most Victorians are familiar with the concept of freehold Torrens title land but have far less understanding of the concepts applicable to public land i.e. unalienated and alienated land, reserved and unreserved Crown land, temporary and permanent reserves, etc. let alone the relevant statutory framework which applies to Crown land, the vast majority of Crown land in Victoria having been reserved for specific purposes. In other states there are substantial areas of Crown land with no specific designation set down for their use. In addition we understand that a process of divesting Crown land to local government is currently underway in NSW.

The Crown Land (Reserves) Act 1978 has been extensively amended since it was originally drafted. The Act is now an unwieldy, overly complicated and occasionally confusing document which adds to the disincentives for individuals and organisations to become involved in public land management. While we acknowledge that public land has generally been set aside, retained and/or reserved to protect it from inappropriate development or use, blanket restrictions on use of the land in many cases limit the ability to derive sufficient income or other benefit to justify or enable investment of time and resources to properly manage it. This situation is compounded by difficulties in receiving meaningful assistance from DELWP whose own limited resources often cannot be focussed or utilised on matters which might be deemed to be "local" issues, but which

require higher level involvement than can be provided by a locally based committee under the current system. The opportunity exists for the Development of a new Act which addresses the above issues.

In practical terms a hierarchy applies to public land, with some being of national significance, some of state or regional significance, and some of local significance. If that same hierarchy was applied to management of the land, formal arrangements could be included in the legislation to enable issues to be dealt with at the level deemed to be most relevant to the problem.

We believe that a new framework should be developed into which every Crown land reserve would be transferred, without adversely affecting the status, control, or protections afforded by the current system. The parameters of this framework would be:

- a) the parcel's generic type or purpose;
- b) its level of significance (national, state, regional or local); and
- c) its degree of protection from change.

Development of a new framework would also provide impetus to enable significant amendments and simplification of the legislation relating to the governance of Crown land reserves.

If a new framework was to be developed, the opportunity then exists for a better alignment of land governance with the characteristics of the land to which it is being applied. Any new framework for Crown reserves should address two of the less purposeful features of the current system, being:

- the gazetted purposes of Crown reserves; and
- designation of Crown reserves as either temporary or permanent.

Section 4 of the Crown Land (Reserves) Act lists 32 public purposes for which Crown land may be reserved. We understand that gazettals out to in excess of 1,000 individual gazetted purposes ranging from archaic or obsolete to very specific with some so absurd, that they are pointless. An urgent examination of these arrangements is required or the stated purpose of many reservations could become irrelevant.

Another area worth investigating is the relationship between Crown land and the statutory planning system. When planning schemes were first introduced, they did not apply to Crown land. Throughout subsequent decades the planning system has become the main focus of land-use decision-making for Crown land as well as for freehold. The planning system has evolved and adapted, but unfortunately the Crown land reserves system has not. However, if there is an inconsistency, the Crown land reserves system prevails. It is questionable as to whether the system of Crown land reserve purposes has any current relevance. The categorisation of Crown reserves as either 'temporary' or 'permanent' should be realigned with contemporary understanding of land usage. Across the state, however, a multitude of Crown reserves exist with 'permanent' designations which serves only to impede orderly change of land use (where it is in the public interest) and to clutter up the parliament due to the statutory requirement to obtain parliamentary or Ministerial approvals for relatively minor proposals which are hardly of state significance.

Every Victorian municipality contains public land which is significant from a local perspective including public halls, tennis courts, ornamental gardens, playgrounds etc. These parcels have similar characteristics and uses – the major difference being that some are located on Crown land and some are freehold land. Councils obviously have virtual autonomy with regards to decisions regarding the use of their freehold land, but have virtually none when it comes to decisions regarding Crown land. We suspect that as both types of land can be administered by "Committees of Management" (but appointed under different legislation) this contradictory environment confuses the public, and in turn can distort management decisions. One way of eliminating this situation would be to provide freehold status for locally significant Crown Reserves and transfer them to local government.

Under the current arrangements, if a municipality identifies a freehold asset as being surplus, it can reinvest the asset's value elsewhere, often to the benefit of the local community; conversely if it disposes of an identical Crown land asset nearby it receives no benefit as the proceeds are

directed to the State Treasury. A community group managing a local municipal reserve is answerable to the local council; the same group managing a Crown reserve is answerable to DELWP. An asset which has delivered benefits for its community for a long period, but has never produced any revenue for its nominal owner (i.e., the Council as the Committee of Management or the beneficiary of a vesting instrument) is regarded nevertheless as having a capital value which cannot be accessed by the community, but by the State government.

The truth is that many councils, including Wyndham, would prefer not to have the responsibility for managing Crown land reserves under the current system, because they receive no financial benefit from them, and are unable to dispose of them but are obliged to maintain them at a substantial cost. In many instances those costs are beyond the council's capacity to pay yet it is almost impossible to gain financial support from the government to maintain the government's asset. One glaring example of this is the foreshore reserve at Werribee South which has been subject to extensive storm damage and erosion which is endangering boatsheds and has rendered parts of the shoreline unsafe. As the Committee of Management, Council is responsible for maintenance and public safety in the reserve but does not have the resources or the expertise to carry out the necessary remediation works. However, repeated requests to DELWP for assistance have not been successful. Situations such as this lead us to conclude that unless realistic support from government for Committees of Management is forthcoming; and /or Councils are given full control and autonomy over Crown land of local significance by its conversion to freehold status and subsequent transfer, we are more likely to resign from our roles as CoM for the various reserves than continue to accept the responsibilities, liabilities and potential financial and legal exposure associated with these appointments.

Summary and Recommendations

1. By reference to the issues described above, we believe that VEAC should:
 - document the many purposes for which Crown land has been reserved;
 - analyse the relevance of those purposes;
 - compare the Crown reserve system to the corresponding apparatus of the planning system;
 - open a discourse on their continued relevance;
 - critically examine the permanent / temporary designation of Crown reserves;
 - analyse the cases which the current system has caused to come before parliament;
 - develop new non-parliamentary processes for allowing changes of status to occur in an orderly manner.
2. For any given parcel of Crown land, an objective methodology should be developed which could be applied to ascertain its level of significance: national, state, regional, or local. VEAC should develop and float a tentative set of criteria to support this methodology, and engage the municipal sector in a dialogue to explore this proposal. To better inform this dialogue, VEAC should circulate a commentary on developments in NSW, where we understand a parallel process of divesting Crown land to local government is under way.
3. We believe that all locally significant Crown land should be granted freehold status and its ownership transferred to local government.
4. VEAC should now float the concept of a new Act to replace both the Land Act 1958 and the Crown Land (Reserves) Act 1978.

The above is simply a short summary of the many issues associated with Crown land management, and there are many other matters which could be examined. We look forward to further participation in your investigations, and to a positive outcome.

Yours sincerely

Tony Petersen
Property Management Coordinator