

Municipal Council Consultation

Statewide Assessment of Public Land

A report for the Victorian Environmental
Assessment Council

January 2016
The Public Land Consultancy

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1 INTRODUCTION

The Public Land Consultancy (TPLC) has been asked to consult with the local government sector on their use and management of Crown land reserves to inform the Victorian Environmental Assessment Council (VEAC) Statewide Assessment of Public Land investigation.

Specifically, VEAC has asked TPLC to consult with nine Victorian municipalities on the management of Crown land reserves, which generally form a significant component of a municipality's reserve portfolio. That consultation is to focus on the efficiency and effectiveness of the councils' existing management arrangements in terms of management outcomes, administration and accountability and the relationship with Crown land reserves of a similar nature that are managed by committees' of management reporting directly to the Department of Environment, Land Water and Planning (DELWP) as the representative of the Minister for Environment, Climate Change and Water.

This report does not assign comments or views to specific councils as the discussions were with council officers and may not reflect a formal council position.

2 BACKGROUND

The Minister for Environment, Climate Change and Water requested VEAC to carry out an investigation into public land in Victoria, considering the recommendations of the council and its predecessors. For this particular investigation, Council has been asked to investigate and provide an:

- assessment of the current system of public land categories, including options for changing or consolidating the existing categories
- assessment of the current reservation status of public land; and
- inventory of the types of values on public land.

Public land is defined in the Victorian Environmental Assessment Council (VEAC) Act and includes (broadly) unreserved and reserved Crown land, State forest, national state and other parks under the National Parks Act and land vested in public authorities (not including municipal councils).

One of the categories of public land that is the subject of the current investigation is 'community use' which includes land that is used for activities such as show-grounds, race-courses, swimming pools, recreation and camping areas, parks, gardens, playgrounds, halls and galleries.

A significant proportion of public land categorised as community use will be managed, under delegation, by a municipal council as Committee of Management. Municipal councils are also the owners of a significant additional parcels of freehold land, that are indistinguishable from Crown land community use reserves in terms of use, management arrangements and level of significance to their local communities. These are areas that have been purchased, had vested in them through the subdivision process, or been gifted by the community. VEAC's mandate does not include making recommendations on freehold land owned by municipalities.

In the first phase of this current investigation, VEAC noted these similarities and is wishing to better understand the relationship between Crown land within this community use category and council freehold land of a similar type. To do so, and to consider issues related to local councils' management of Crown land reserves, VEAC commissioned the services of TPLC, which has a strong working relationship with municipalities across Victoria.

2.1 TERMINOLOGY

For the purposes of this report, the following terms mean:

- Local Committee of Management (Local CoM) means a community-based committee of management appointed by the Minister for Environment, Climate Change and Water and working through DELWP as agent of the Minister.
- Section 86 Committee (Sec.86 C'tee) – a special committee established by a municipal council under Section 86 of the Local Government Act 1989.
- Community Use reserve – Crown land or Council freehold land of local significance used for activities such as show-grounds, race-courses, swimming pools, recreation and camping areas, parks, gardens, playgrounds, halls and galleries or similar.

2.2 RELATED MATTERS

In relation to community use reserves, the management of both CL and freehold owned by Councils have been the subject of relatively recent audit activities.

2.2.1 Victorian Auditor General's Office (VAGO) report - *Oversight and Accountability of Committees of Management* (Feb 2014)

The Victorian Auditor General's Office (VAGO) report - *Oversight and Accountability of Committees of Management* (Feb 2014) assessed the governance and oversight

of Local Crown land CoM, (nearly 1,200 Local CoMs managing 1,500 odd Crown land reserves) and whether CoMs had sufficient support to effectively and efficiently manage Crown land reserves.

The AG found significant shortcomings in the governance and oversight of Local CoM, including a lack of a strategic approach to supporting and overseeing CoMs and failure to take adequate steps to ensure the sustainability of CoMs into the *future*. The report noted that the former DEPI had acknowledged that historically it had not had an overarching rationale for determining which Crown land reserves are best managed by CoMs or other bodies, with the result that reserves may not be managed by the most appropriate land manager. DEPI stated that it was developing criteria to guide determination of the most appropriate manager for a Crown land reserve, and seeking to reassign to municipal councils reserves with local-level values. The AG recommended that such work be undertaken.

2.2.2 Local Government Investigations and Compliance Inspectorate *Information Bulletin No. 3* (November 2011)

Local Government Investigations and Compliance Inspectorate Information Bulletin No. 3 (November 2011), noted that the Inspectorate had conducted audits at more than half of Victoria's 79 councils and had identified that the management of special committees, established under Sec. 86 of the *Local Government Act 1989*, presented 'opportunities for improvement'.

The Bulletin noted that when a council delegates powers, functions or duties to a special committee, it hands over the power to make decisions on behalf of (or acting in place of) the council itself. These committees had been used widely by councils as a means of spreading the workload and involving the local community in the management of local assets, including community use reserves.

Key management issues the Inspectorate found during the audits included:

- Councils being unaware of the number of special committees in place and/or the names of office bearers;
- Councils unaware of the reason each special committee was established, especially those that have been in place for a long period of time;
- No register of delegations and delegations not adequately reviewed;
- No schedule of meetings or terms of reference;
- Meeting minutes not sent to council or signed by the special committee Chair; and
- No funds reconciliation provided to council.

3 METHODOLOGY

Initially, TPLC provided VEAC officers with a list of 15 Councils considered representative of municipalities across the State (coastal, urban fringe, regional, rural and geographical spread), together with rationale on which Councils TPLC considered most appropriate to meet. VEAC confirmed the following nine municipalities to be contacted to participate in the consultation process:

- Wyndham City
- Gannawarra Shire
- Greater Bendigo City
- Indigo Shire
- Mornington Peninsula Shire
- Mansfield Shire
- Surf Coast Shire
- Wellington Shire
- Horsham Rural City

VEAC sent a formal request to those councils outlining the Investigation and seeking each council's agreement to participate. All nine councils contacted agreed. Follow up information was provided (Appendix A) and face to face meetings were conducted with all councils except Indigo, in which case the Council officers were contacted by phone.

Participation ranged from single officers at the City of Wyndham and Surf Coast Shire to nine officers in the case of the Mornington Peninsula Shire. The meetings were of approximately 90 minutes duration, with standard questions used to guide the discussion. VEAC officers attended meetings with the Mansfield and Mornington Peninsula Shires.

TPLC prepared notes from each meeting and provided them to the Council contact to confirm or make changes necessary to ensure they accurately represented the views expressed. Those notes will be provided under separate cover. The views expressed will, to some degree, reflect the relative roles within council of those participating in the meetings.

The views expressed in those interviews are summarised in Section 4 below.

4 COUNCIL FEEDBACK

Feedback received from the nine sample councils has been grouped under a suite of themes that emerged through the process. Not all comments provided have been included. Those listed below reflect matters on which there was general consensus or which are of particular relevance to the task at hand.

4.1 PUBLIC LAND – ASSOCIATED WITH COMMUNITY PERCEPTIONS OF COMMUNITY USE LAND

- ‘Public land’ as seen by councils is broader than ‘public land’ as defined by the VEAC Act. Councils confirmed that community use reserves may be either Crown land or council freehold, with the broader community not knowing the difference (and generally not caring).
- Some believed that, as freehold will often make up the majority of community use reserves within a municipality, it is appropriate that Crown land and freehold of this type should be considered as a whole – both at the state level (through VEAC) and by Council in developing open space (or similar) strategies.

4.2 SHOULD A RESERVE’S LEVEL OF SIGNIFICANCE FORM PART OF THE PUBLIC LAND CATEGORIZATION SYSTEM?

- Most councils considered that ‘local significance’ could add some value to the public land categorisation system. Municipal councils are, in the eyes of the community, the level of government responsible for community use reserves (both Crown land and freehold) and are the first point of contact in relation to such areas, often providing financial and in-kind resources.
- Some councils believed that the system needs to be simplified and a reduced number of categories may achieve this. Any new categories should provide guidance and clear signals on what is permitted within such reserves; i.e. either passively or for some commercial enterprise (where such use is appropriate).

4.3 EFFECTIVENESS OF EXISTING CROWN LAND RESERVATION SYSTEM

- There was a mixed response as to whether councils were aware of the formal reservation status of Crown land reserves under their control.
- The Crown land reservation purpose was generally not considered important. A number indicated that not much attention is paid to the official gazetted purpose of the reservation, other than when some administrative or land use decision action (particularly change of use) was being considered.
- One council indicated that some reserves may be used for purposes outside their gazetted use, but no audit has been undertaken to determine whether such may be the case.
- Many examples were provided of existing Crown land reservations (with its specific designated land use purpose) getting in the way of sound land

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management decisions, creating administrative problems, limiting actions or adding time to administrative processes.

- The view of most respondents was that the management of public land needs to progress from engaging passionate and committed volunteers (often with extensive local knowledge), in recognition that the increased complexity of public land management requires professional managers.
- Most councils are moving away from the use of Sec.86 C'tees (increasingly they are used as community advisory committees to council rather than management committees) to manage either council freehold land or Crown land reserves for which Council is CoM. Lessening interest and an ageing population means there are fewer people available to undertake such roles. Land management is also more complex.
- Some councils are now using Incorporated Associations, rather than Sec.86 C'tees, to manage community use reserves for which Council has responsibility, with a MoU or licence confirming the expectations of both parties.
- Local CoM can be problematic for Councils. If DELWP is unable to assist (and most respondents were of the view that DELWP can offer little other than advice) they will invariably come to council for assistance. It was indicated that there can be ambiguous attitudes within councils, with some believing that they should not support local CoM if council is not formally involved in the management of Crown land reserves. But most councils reported that Local CoM are regarded as an integral part of the local community, and council will offer some level of support.
- From a resourcing perspective, some councils also indicated that the status of a reserve as Crown land or freehold can influence funding decisions, being likely to contribute more to works etc. on freehold rather than Crown land.
- An example of a common situation is Malone Park Marong near Bendigo, which has a Local CoM responsible for a recreation reserve with 21 buildings/structures that have significant problems (OHS, asbestos etc.). This is just one of many such reserves in the municipality. It was reported that significant upgrading is required for the reserve, with the Local CoM unable to cope and wanting to hand over responsibility to Council.
- A number of sample councils identified boundary issues between Crown land reserves managed by them as CoM and Local CoM. In many cases there is no clear demarcation with the community having difficulty understanding who has responsibility.

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- The issue of insurance for community use reserves was raised by a couple of the sample councils. One reported that it insures all community use reserves, both freehold and Crown land for which it is not CoM. Its insurer is now demanding that Council take responsibility for management of any land covered under the policy - meaning that it may have to remove any Crown land reserves under the control of a Local CoM from its policy. (*Comment: This is not necessarily a problem as Local CoM and Councils that are CoM for Crown land reserves already have public liability, professional indemnity and group personal accident insurance cover provided by DELWP*) Another reported that Crown land reserves that have been vested in a municipal council under s16 of the Crown Land (Reserves) Act are not covered by DELWP insurance.

4.3.1 Administration

- All councils indicated a good to excellent working relationship with local DELWP officers, a relationship essential to their role as CoM in respect of Crown land reserves. Those without dedicated resources or staff with strong knowledge of Crown land legislation are reliant upon DELWP support.
- All councils indicated that administrative actions in relation to Crown land reserves for which council is CoM are more complex and time consuming than is required for similar actions on council freehold. Leasing, licensing actions and development approvals are all more complex, with one respondent expressing the view that Ministerial approval can be required for seemingly trivial matters, such as the grant of a short term licence.
- Another council chose to purchase former Education Dep't land rather than having to deal with the added complexities if appointed CoM.
- All expressed the view that it was far easier to manage and administer Council freehold community use reserves.

4.3.2 Regulations.

- All but one of the sample councils were unaware of the possibility that there may be Regulations made under the CLRA or predecessor legislation in place in respect of Crown land reserves under their control.
- Local Laws are used when and if councils seek to deal with minor behavioral issues, such as dogs and litter, on land for which they are responsible.
- A lack of resources or shortage of skills means that most Local CoM will request Council assistance to deal with behavioral matters if some level of response beyond educating offenders is required. Some councils may do so,

others will not, seeing assistance to those CoMs as a matter for DELWP or the police.

- On council reported that the existence of Crown land regulations had created some difficulties recently when a person sought to enter a reserve at the fee stipulated in very old, but current, reserve regulations.

4.4 COMMUNITY USE RESERVES – A PORTFOLIO APPROACH

- Most councils believe a portfolio approach to the management of all community use reserves (Crown land and council freehold) would be advantageous. A single regime would:
 - reduce administrative complexities and inefficiencies;
 - ensure decisions are not influenced by land status, with many councils reporting that land status (Crown land versus freehold) has influenced decision making, limiting the options available to council to manage community use reserves in a strategic fashion; and
 - assist enforcement by creating the opportunity for a consistent approach across all community use reserves.
- A number of sample councils have Public Open Space (or similar) Strategies in place, while those that do not all believed such an approach would be beneficial. Such strategies can provide the opportunity to establish the basis upon which Council can seek to rationalise its land holdings.
- One council reported having done the strategic work, but the fact that some reserves are Crown land is impeding action to implement the changes the strategic planning has identified.
- Others expressed the view that they would like to be in a position to make decisions that are not impeded by land status.
- Flexibility is needed to manage community use reserves strategically. This would enable councils to ‘trade-up’ reserves in terms of location or attributes, maximizing public benefits which are not achieved through the current arrangements.
- However, councils were apprehensive about any new regime that shifted power from them to the State, or costs from the State to local government.
- All Councils reported having situations where a single land use (e.g. town hall, recreation reserve) was comprised of Crown land and council freehold (sometimes government road also). This can make management decisions more complex and lead to outcomes that are not ideal.

4.6 ROLE OF STATE AND LOCAL GOVERNMENT IN ‘COMMUNITY USE’ RESERVES

- All respondents interviewed were clear that Councils are the first point of contact for the community when seeking advice or providing feedback on the management of both Crown land and freehold community use reserves, irrespective of whether Council has any formal management role.
- One council that is CoM for high profile Crown land reserves expressed uncertainty as to responsibilities for the maintenance and renewal of infrastructure assets on such land. It noted that a Code of Practice, similar to the Road Management Act Code of Practice for Operational Responsibility for Public Roads, was one possibility.
- There was a consistent view that Local CoMs get little resourcing support from DELWP, which builds the expectation that council and ratepayers are the most appropriate benefactor.
- In most cases, sample councils believed that it would make sense for all Crown land community use reserves to be under their control.
- However, councils are suspicious of any approach that could lead to ‘cost shifting’ from state to local government. No council believed it was adequately resourced to meet the capital and ongoing costs associated with the management of Crown land for which it already has responsibility, let alone taking on additional responsibilities. This is particularly relevant to rural councils.
- There is significant variation in the capacity of councils to manage and administer land. Some rural councils have no dedicated property function, with officers from across council having to deal with property transactions as they arise. Urban councils have increased numbers of dealings but increased capacity to dedicate resources and build capacity to adequately deal with such matters.

4.6.1 Funding

- Most councils reported that they are less likely to offer assistance if council has no formal responsibility for the community use reserve; i.e. it is managed by a Local CoM. But more assistance may be forthcoming for Crown land reserves that provide significant local benefit.
- One council with a strong tourism focus indicated a desire to move closer to a user pays approach to boost funding; shifting costs away from ratepayers and onto users. This was seen as important as funding opportunities diminish (rate capping and reduced state gov’t funding). They also expressed a need

to enable commercial ventures to supplement incomes from reserves (e.g. micro-distillery and café at the head of the Rail Trail at Timboon).

4.7 RELATIONSHIP WITH OTHER LAND MANAGERS

- Problems associated with boundaries between councils and other land managers were the most recurring issue reported. This is most prevalent in relation to coastal areas and water frontage reserves with multiple managers (e.g. PV, Local CoM and municipal councils as CoM). This can create confusion for the community and lead to inconsistencies in management practices.
- That inconsistency can also lead to unintended consequences, with one council with a strong tourism focus reporting that the approach taken by PV in having people take their rubbish with them is very effective in the Park but has flow on impact in local towns where people choose to leave that rubbish rather than take it home. This has led to significant additional costs to council.

5 FINDINGS

Based on the feedback received from sample councils, we have found that:

- In Victoria, local councils' perspective on public land is likely to be significantly different from the perspective of State government agencies such as VEAC, Parks Victoria and DELWP. These differences reflect the key characteristics of community use public land: its usage mix, its parcel size, its legal status and governance complexity. Whereas State agencies are almost exclusively focused on Crown land, a council's portfolio of community use public land will be a mixture of Crown and freehold land.
- Councils are fully aware of the benefits realised by their communities from community use reserves, both Crown land and freehold. They welcome this VEAC public land investigation, are willing to participate and offer inputs, and keen to get some recognition of their role in providing and managing public land. Some are convinced that any study of public land must extend beyond Crown land if it is to be comprehensive and therefore meaningful, with 'local significance' being recognised as part of public land categorisation system.
- At the same time, councils already apprehensive about rate capping fear that if the investigation were to extend to freehold land owned by councils (currently beyond the VEAC definition of public land) it may presage some unwelcome government intervention or cost shifting.
- Whereas State agencies operate within relevant Crown land governance systems, councils and their communities find themselves operating within an

amalgam of Crown land and freehold governance systems, which often seem unduly complex and even irrational. Many councils cited cases of facilities which occupy a mix of Crown land and council freehold.

- Councils generally have good information systems, and many council officers are aware of the complications arising from their mixed Crown land/freehold portfolio. However, user groups and the broader community do not distinguish Crown land from freehold and find the complexities of governance arbitrary and pointless.
- The broader community also sees the local council as the first point of contact when seeking advice or providing feedback on the management of either Crown land or freehold ‘community use’ reserves, irrespective of whether that council has any formal management role.
- In relation to the Crown land reserves segment of their portfolios, councils find themselves having to meet contemporary needs through what is essentially a 19th Century governance system. The portfolio of Crown land reserves often predates the local government entity now responsible for its management. It remains a vitally important legacy for most Victorian municipalities but suffers from certain deficiencies: it does not reflect 21st Century population distribution, and it is not responsive to changing community values and activity patterns. Councils find themselves needing to augment, rationalise or reconfigure their inherited portfolios of community use land.

The administrative systems of the *Crown Land (Reserves) Act* do not lend themselves to this task. The Act predates modern approaches to (for instance), land use decision-making, balancing conservation and commercialisation, the making and enforcement of regulations, and accountability.

- Much of the apparatus of the *Crown Land (Reserves) Act* is seen as cumbersome, or even incompatible with sound management. The Act’s perceived deficiencies include inappropriate or overly-restrictive gazetted reserve purposes, overly-bureaucratic approval processes for works and tenures, and the survival of archaic and opaque regulations.
- One sub-set of Crown land reserves, although part of a community’s civic fabric, does not fall within the purview of the relevant council. These are reserves managed by Local CoM appointed by the Minister and directly accountable to DELWP. These committees will generally still approach councils for funding and other assistance in the first instance. Councils expressed mixed views on them: some provide them with (for instance) maintenance grants and insurance cover; others regard them as specialist

interest groups acting as volunteer agents for the State and provide little or no assistance.

- The relationship between councils and their communities, insofar as it affects public land governance and management, is in need of analysis and review. TO date, volunteers have been at the core of Crown land management – whether as Local CoM, or as some other form of entity answerable to the local council. While voluntary inputs are welcomed, past forms of management regime may no longer be appropriate for either the land or the volunteers themselves. In the words of one council officer, the age of amateurism is over.
- A further community-related problem arises in the course of councils' attempts to rationalise land holdings. A number of councils reported that attempts to improve efficiencies through the closure or amalgamation of redundant facilities had been frustrated by localised opposition. This problem is exacerbated in cases where the land in question is Crown land, and the proceeds of its sale cannot be recycled back into the relevant 'community of interest'.

Preliminary Reading

- VEAC, 2015: [Statewide Assessment of Public Land – Interim Report](#)
- The Public Land Consultancy: [Terra Publica, Easter 2014](#)
- Victorian Environment Assessment Act 2001, section 3 – [definition of ‘public land’](#)

The issues to be explored between The Public Land Consultancy and representative councils and some questions to help stimulate planning for the meeting and discussion.

- 1) The range of ownership models for public land of regional or local significance – e.g. Crown land reserves, freehold land owned by Council, freehold owned by a community group or trust, and unused road reserves.
 - *‘Public land’, as defined by the VEAC Act, does not include freehold reserves of local significance owned by council. Should an analysis of public land in Victoria recognise this reality in order to develop a system of land categorisation that is ‘simple and clear’ (item 1 in VEAC terms of reference)?*
- 2) There is a range of management options available for public land – e.g. Council as Committee of Management (CoM) under the Crown Land (Reserves) Act; local community CoM under Crown Land(Reserves)Act; section 86 Committees; unused roads and water frontages held under licence.
 - *What does council see as the pros and cons of the different types of management arrangements; i.e. freehold managed directly by Council; Special committee under Section 86 of the Local Government Act on freehold land, Council as CoM with direct management on Crown land, Council as CoM appointing a S86 Special Committee on Crown land, and community-based CoM (i.e. where the CoM reports directly to DELWP)?*
 - *Does council have an Open Space Strategy or Plan? Does it include all Crown land and freehold reserves of local significance within the municipality?*
- 3) Public land of local or regional significance being managed by Council, rather than by DELWP, Parks Victoria or some other Government department or statutory authorities.

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- *In your opinion, would recognition of certain Crown land as being of 'local significance' assist in the rationalisation of public land portfolios and lead to better land management outcomes?*
- 4) The utility or otherwise of the administrative apparatus of the Crown Land (Reserves) Act – e.g. temporary v permanent reservations, limitations on leases and licences, and the application and use of regulations.
- *At the local level, is there any useful purpose served by the current reservation status of Crown land (item 2 in VEAC terms of reference)? Could they be replaced by a meaningful set of categories, with a structured system for translating reserves from the old system to the new?*
 - *Does the current dual system of Crown land and freehold reserves lead to confusion or administrative complexities for council staff or result in sub-optimal outcomes in terms of portfolio management?*
 - *Is Council aware of the specific reservation relating to CROWN LAND reserves under its control and does it make any difference in how the land is managed? Has the reserve type ever created a problem? Has it restricted action or activities?*
 - *Does Council have responsibility for Crown land reserves used for 'operational' purposes; e.g. Deports, Rubbish tips, Town Halls? Is Council CoM for these reserves or does it manage the land by virtue of its reservation alone; i.e. management is 'implied'*
 - *Do Councils use local laws to deal with behavioral issues on CROWN LAND reserves or rely on Regulations or a combination of both? How do local C'tees deal with behavioral issues?*
- 5) Management and experience with selling community purpose freehold land (e.g. selling an underused football oval to have funds to invest in other sporting grounds).
- *Are there any locally significant reserves no longer used to their full potential?*
 - *Would Council make decisions on changing the use of such reserves if it was in a position to do so?*
 - *Has Council sought to sell freehold community reserves in the past (e.g. selling an underused football oval to have funds to invest in other sporting grounds). Did it present difficulties?*

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- 6) Any issues associated with the established categorisation of public land as outlined in the Interim report. E.g. community awareness.
- *Does the community recognise the difference between Crown land and freehold reserves managed or administered by Council?*
 - *In your experience, is the community aware of the various categories of public land and its effect on access and use?*
- 7) Does Council have any specific issues with Crown land managed by State Government departments or statutory authorities; e.g. liaison with DELWP/ PV about weeds/ fire in National Parks/ State forests; roadside issues?

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