

BOATING FACILITIES GOVERNANCE

*A Report for the Department of
Transport, Planning
and Local Infrastructure*

The Public Land Consultancy
10 October 2014

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1 Executive Summary

This report has been prepared by The Public Land Consultancy on behalf of the Local Ports Division of the Department of Transport, Planning and Local Infrastructure (DTPLI).

The Report responds to concerns framed by the Recreational Boating Working Group established by the Minister for Ports (Hon David Hodgett MP). The Working Group has expressed concern at the complexity of governance arrangements for boating facilities:-

It is considered by the working group that the impact of the varying mix of land side, waterside and facility management covered by varying legislative responsibilities hinders the efficient operation of the facilities and access to waterways.

This report responds to the Working Group's concerns.

The report firstly lays out the 'building blocks' of facility governance in Victoria: the types of land status found in coastal and inland recreational locations, the types of agency involved in the development and management of boating facilities, and the relevant governing legislation.

Eight case studies were undertaken during August 2014, in cooperation with the relevant facility managers. The eight studies were chosen to reflect the wide range of issues raised with the consultants by members of the Working Group. They include both coastal and inland examples, and range from relatively undeveloped facilities like Kow Swamp in the Kerang lakes system through to multiple-facility locations like the Gippsland Lakes.

1.1 Three Propositions

The Report tests three propositions, or hypotheses, relating to the perceived complexity of boating facility governance. Analysis of the cases studied results in the following responses to these propositions:-

Proposition to be Tested	Response
1 <i>There's little or nothing wrong with current arrangements – they just need to be clarified or better understood,</i>	May be true in some cases... Many perceived problems related to facility governance can be resolved through analysis, explanation and professional development
2 <i>There may be problems with governance arrangements for individual sites, but there's nothing basically wrong with the underlying administrative apparatus – What's needed is more skill and resources to better apply what's already available in the 'tool-kit.'</i>	Basically true. Most specific issues can be addressed within existing legislation... Many complexities related to facility governance are better described as anomalies or even dangers; they reflect deficiencies in the application of available governance systems, but once identified are capable of remediation

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3 *There are fundamental flaws in the underlying apparatus of governance. The tool-kit itself is not up to the job. We need some legislative amendment or systemic reform or major policy revision.*

True, looking at the bigger picture, and the longer term... some complexities reflect fundamental deficiencies in policy, legislation, or the apparatus of government – some failure of existing systems to respond to evolving needs or standards.

These responses are supported by fifteen generalised ‘findings’ reflecting the major themes emerging from the case studies.

The report concludes with three sets of recommendations:

- Four matters which should be addressed in the near future, and which in the consultants’ opinion need little or no further investigation
- Six matters which should be addressed in a medium-term framework, each requiring some further investigation and/or collaboration with other agencies
- Two major legislative reviews, which can realistically only be addressed in a context larger than is provided by recreational boating, and in a longer-term time frame.

1.2 Demand for and Funding of Boating Facilities

An important theme raised by the Boating Industry Association of Victoria (BIA) and the Victorian Recreational Fishing Peak Body (VRFish) related to their concerns about unmet demand for boating facilities in the State. In particular, BIA and VicFish believe that a greater proportion of revenue raised from licences and registrations should be returned to development of boating facilities.

These are no doubt important issues for these stakeholders, but only indirectly related to the terms of reference of this report.

We note that the Government’s views on funding were canvassed in evidence from the Minister for Ports before the Parliamentary Public Accounts and Estimates Committee on 12 May 2014.

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2 Background to this Report

2.1 The Working Party

The Minister for Ports in the Victorian Government has established a working group on recreational boating facilities matters. The working group is responsible for providing the Minister with advice on how to improve Victoria's recreational boating infrastructure, including how it can be better utilised and accessed, in conjunction with the current and future funding priorities for the sector.

Members of the group are:

Paul Benjamin, President, Boating Industry Association of Victoria (BIAV);
Steven Potts, General Manager, BIAV;
Nick Murray, Chief Executive Officer, Gippsland Ports;
Steve Walker, Chief Executive Officer, Yachting Victoria;
Ross Kilborn, Acting Chairman, Central Coastal Board;
Ray Page, Board Member, Western Coastal Board;
Bernie Cotter, Executive Officer, Association of Bayside Municipalities (ABM);
Franz Grasser, Board Member, VRFish;
Barry Tanner, 94.7 FM Geelong;
David Kramer, Executive Director, Futurefish;
Geoff Swanton, Manager Waterway Safety, Transport Safety Victoria; and
Jo Richards, Manager Local Ports Program, Parks Victoria.

The working group has identified the management arrangements on both the land and waterside of the State's boating facilities as a contributor to facilities not being planned and delivered in a manner that meets the demands of the sector or maximising economic outcomes for the State.

The Working Group describes the issue in the following terms:-

The land side of boating facilities is almost always public land managed under the Crown Land (Reserves) Act 1978. The Committee of Management appointed under that Act may be a publicly elected committee, a skills based committee or local government. The committee may manage the land directly, or it may lease the land to entities such as sailing clubs.

The land managed by the committee may or may not include land for uses associated with boat launching and retrieval such as parking areas or toilet blocks. In the absence of land for parking within the reserve, parking will occur in the surrounding streets which are managed by local government.

Fees for the use of the facility do not always apply. When they do, they are usually collected by the committee of management and cover both use and parking. In the absence of parking within the reserve, there may also be a requirement to pay for parking fees for use of the surrounding streets.

On the waterside, the seabed/riverbed and the water above it may or may not be part of the committee of management's responsibilities. If they are, they may or may not also be the waterway manager appointed under the Marine

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Safety Act 2010. That could be a different entity, or there may be no appointed manager.

Finally, the facility may be within one of the fourteen local ports, where the obligations within the Port Services Act 1995 will also apply.

It is considered by the working group that the impact of the varying mix of land side, waterside and facility management covered by varying legislative responsibilities hinders the efficient operation of the facilities and access to waterways.

2.2 Terms of Reference

In addressing these concerns, The Department of Transport, Planning and Local Infrastructure (DTPLI) has engaged The Public Land Consultancy to undertake this study of the governance of recreational boating facilities.

The Terms of Reference specified:-

The scope of this study will include:

1. *Identifying, in consultation with the Department and the members of the Minister's working group, a broad description of the range of legislation and associated governance arrangements currently overseeing management and development of Victoria's waterside land, waterway access and waterway management.*
2. *Development of 6-8 specific location case studies in consultation with the department and members of the boating working group. Case studies are to:*
 - *cover a mixture of sites including along the coast, inland, vessel launching and vessel berthing, local ports, committees of management and other crown land managers;*
 - *be supported by site visits and discussions with the managers and users of the agreed 6-8 sites.*

For each case study the contractor is to:

- *produce a map of all responsible entities/authorities related to activity at the site, and legislative requirements that operate for the identified facilities;*
- *identify any operational or other issues that could be attributed to the complex arrangements;*

3. *Identify issues and impacts related to the existing legislative and governance arrangements and propose recommendations for further improvement of current outcomes*

2.3 The Auditor-General's Report

In June 2014 the Victorian Auditor-General's Office (VAGO) tabled a report into Recreational Maritime Safety. It examined many of the issues under consideration in this report, but from a different perspective, and in considerably more depth.

The VAGO report found that:-

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Victoria's recreational boating industry is important to our economy and to Victorians' quality of life. In the past five years almost all maritime safety incidents on state waters have involved recreational vessels, and a new marine safety regulatory framework was introduced in 2012 to better manage safety risks.

The framework depends heavily on Transport Safety Victoria's (TSV) effective coordination with voluntary waterway managers and enforcement bodies to maximise duty holders' compliance with their safety obligations. However, TSV cannot demonstrate that it is effectively and efficiently regulating marine safety because it has no framework for reliably evaluating:-

- *the effectiveness of its regulatory approach, and whether duty holders, waterway managers and enforcement bodies are fulfilling their responsibilities to cost effectively minimise safety risks*
- *the competence and ongoing suitability of appointed waterway managers, and whether they are actively discharging their voluntary role*
- *if the state's longstanding waterway rules remain fit for purpose and effective, and support the efficient management of current safety risks*
- *whether critical information on system-wide marine safety risks and related enforcement strategies is adequately leveraged by TSV, waterway managers and Victoria Police to continuously improve their management of marine safety.*

The absence of such arrangements reduces TSV's accountability for performance, and significantly impedes its ability to regulate effectively. Consequently, TSV cannot adequately assure Parliament, the Minister for Ports or the community that its current approach to regulating marine safety is working.

Ongoing concerns about the adequacy of funding to TSV and waterway managers means that the Department of Transport, Planning and Local Infrastructure—in consultation with the Director, Transport Safety, and central agencies—needs to urgently review and provide assurance about the adequacy of current resourcing arrangements for effective implementation of the marine safety regulatory framework.

2.4 About this Report

2.4.1 Base-Case Propositions

The consultants entered into an examination of each case study on the basis of testing the following three following propositions:-

- 1 *There's little or nothing wrong with current arrangements – they just need to be clarified or better understood*
- 2 *There may be problems with governance arrangements for individual sites, but there's nothing basically wrong with the underlying administrative apparatus – What's needed is more skill and resources to better apply what's already available in the 'tool-kit'*
- 3 *There are fundamental flaws in the underlying apparatus of governance. The tool-kit itself is not up to the job. We need some legislative amendment or systemic reform or major policy revision.*

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2.4.2 Eight Case Studies

The principal criterion for selection was the presence of some known complexity regarding governance arrangements – either present or historical.

The case studies were chosen to encompass the following range of situations:-

- Coastal sites including some in Port Phillip; some on the ocean foreshore;
- Some where Parks Victoria is the Local Port manager, and some with other Local Port managers;
- Situations with a variety of Waterway Managers, at least one without any designated Waterway Manager
- Inland sites including one on the Gippsland Lakes; and one on an artificial storage, perhaps Lake Eildon or Eppalock.
- Administrative arrangements – at least one managed by a municipality, one by an incorporated Committee of Management,
- At least one managed by, or strongly associated with, a Yacht Club
- At least one with strong environmental values and/or Aboriginal associations.

Initially, it was considered useful to include one case study on the Murray River, so as to explore issues associated with the NSW border. Time did not permit this.

2.4.3 The Maps

For each site, the consultants were required to produce a map of all responsible entities and related authorities, and corresponding legislative requirements.

The opportunity has been taken to address this requirement through the provision of a wide variety of map-based data. The consultants' intention here is to illustrate the fact that not only are the governance regimes complex, but so are the data sources available to describe and define them.

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3 Overview of Public Land Governance in Victoria

3.1 Introduction

Recreational boating facilities occupy sites which may be subject to complex governance arrangements. These sites may have one or more forms of legal land status, be controlled and managed by various entities under a variety of possible arrangements.

New uses and works may be subject to a number of controls, exercised by a number of different agencies. The purpose of this chapter is to outline those arrangements, and provide a context for the eight case studies discussed in the following chapters.

At the start, it should be noted that 'land' includes bodies of water. Rivers, lakes, and off-shore areas are all land – even though they may be covered by water, either temporarily or permanently.

Virtually all the legislation and policy discussed in this report is Victorian, rather than Australian. It may be useful to explain the demarcations between the Victorian and Australian jurisdictions.

Two of Victoria's boundaries are of relevance here: the coastal boundary to the south, and the Murray River boundary to the north. The State of Victoria is deemed to extend to the limit of coastal waters, 3 nautical miles offshore. This distance is measured from the Territorial Sea Baseline (TSB), which generally corresponds to Low Water Mark but with straight lines across the mouths of bays and inlets. Thus the whole of Port Phillip, Western Port and the Gippsland lakes are within Victoria.

The boundary between Victoria and New South Wales is at the top of the high bank on the southern side of the main channel of the Murray River. Thus, at normal flows, there is a strip of dry land on the southern side of the river which is, in fact, in New South Wales. Boating facilities in this strip are not covered in this report.

As for powers to make and enforce laws, the Commonwealth parliament is constrained by the Federal Constitution to confine its attentions to certain matters set out in the Constitution, or matters voluntarily referred to it by the States. As a consequence of this arrangement, a very limited number of Commonwealth laws apply to our subject matter here – in particular the *Native Title Act 1993*, and the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).

Otherwise, all the legislation discussed in this report is Victorian State legislation.

There are coastal areas of Victoria under Commonwealth control, including Swan Island, Cerberus (Western Port) and the Heart Morass bombing range in Gippsland. Here the governance regime is essentially Victorian law, overlaid by constitutional exemptions exercised by the Commonwealth – e.g. exemptions from planning schemes.

Municipal councils, as the third level of government, play an important role in governance of boating facilities, but are not law-makers. Each municipality is created under the Victorian *Local Government Act 1989*, and exercises powers assigned to it under that and other Victorian Acts. Subject to these Acts, each council may make its own bylaws and exercise a range of powers such as making planning schemes, and determining parking restrictions.

3.2 The Agencies

Bodies exercising Land-related Powers and Functions

3.2.1 The Crown

The ultimate owner of all land in Victoria is 'The Crown in the Right of the State of Victoria.' This ownership of land may be subject to Native Title. Land alienated as freehold is not regarded as Crown land.

3.2.2 Government Departments

Government Departments are not corporate entities, and therefore exercise powers and functions as agents or delegates of their relevant Ministers and (in some cases) Secretaries.

DTPLI

The Department of Transport, Planning and Local Infrastructure (DTPLI) includes Transport Safety Victoria (TSV), and Freight, Logistics and Marine Division, with the Minister for Ports being responsible for the *Marine Safety Act 2010* and the *Port Management Act 1995*.

DTPLI is also responsible for land-use planning and environmental assessment in Victoria, managing the regulatory framework within which decisions relating to development and changes in land use are taken. The Minister for Planning has responsibility for the *Planning and Environment Act 1987* and *Environment Effects Act 1978*.

DEPI

The Department of Environment and Primary Industries (DEPI) answers to two Ministers, the Minister for Environment and Climate Change being responsible for Crown land and coastal management.

Within DEPI, the Land Fire and Environment Division deals with Crown land. DEPI is regionalized, with six regions across the State.

The Secretary for DEPI is a corporate entity established under the *Conservation Forests and Lands Act 1987*.

DEPI is a waterway manager under The Marine Safety Act 2010 for numerous waterways.

Acting as agent of the Minister for Environment and Climate Change, DEPI takes responsibility for Committees of Management of Crown land reserves, some of which are coastal managers, and some of which are waterway managers.

3.2.3 Municipal Councils

Most of Victoria falls within one municipal area or another, the exceptions being French Island, certain Alpine Resorts, and off-shore areas. Each municipality is governed by a council appointed under the *Local Government Act 1989* (the LG Act).

For coastal municipalities, the location of their foreshore boundary is of relevance to this report.

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The LG Act provides that municipal boundaries may be defined by Order in Council (OinC) made on the recommendation of the Minister for Local Government. If a boundary is defined by reference to the sea coast then, in the absence of anything to the contrary, that boundary is taken to be the line for the time being of the low water mark. However, it is possible for the OinC to specify some other boundary. The City of Greater Geelong, for instance, extends 200m into Corio Bay.

Municipal councils not only exercise powers within their boundary, but may exercise some powers outside that boundary:-

- Councils may be appointed as Planning Authority and Responsible Authority under the *Planning and Environment Act 1989*
- Councils may be appointed as Committee of Management for Crown reserves outside their municipal district
- Several Councils are appointed as waterway managers under the *Marine Safety Act 2010*, and a couple have been appointed as Local Port managers under the *Port Management Act 1995*.

Councils may impose rates, and enforce Local Laws only within the municipal district.

3.2.4 Parks Victoria

Parks Victoria (PV) is a statutory authority established under the *Parks Victoria Act 1998*. It cannot own land, but exercises various control and management roles in relation to land and waters.

- Under the *National Parks Act 1975*, PV is engaged by the Secretary for DEPI to manage all parks under that Act – including national parks , state parks , marine national parks and marine sanctuaries.
- Under the *Crown Land (Reserves) Act 1978* PV is Committee of Management for many Crown reserves.
- Under the *Port Management Act 1995* PV has been appointed as Local Port Manager for Port Phillip Bay, Western Port and Port Campbell.
- Under the *Marine Safety Act 2010* PV is waterway manager for Port Phillip, Western Port, Port Campbell, HMAS Canberra Dive Site, Lake Moodemere, Albert Park Lake , and navigable reaches of the Yarra, Maribyrnong, and Patterson Rivers.

3.2.5 Gippsland Ports Inc

Gippsland Ports Inc is a Committee of Management established under the *Crown Land (Reserves) Act 1978*, and appointed as local Authority responsible for the application of the Marine Act and other related legislation for five local ports and two waterways.

The five designated Local Ports are

- Mallacoota
- Snowy River (Marlo)
- Gippsland Lakes

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- Corner Inlet and Port Albert
- Anderson Inlet (Inverloch)

3.2.6 Transport Safety Victoria

Transport Safety Victoria (TSV) operates as part of Department of Transport, Planning and Local Infrastructure (DTPLI) but is controlled by the Director, Transport Safety (the Safety Director), an independent statutory office established under Part 7 of the *Transport Integration Act 2010*.

The maritime safety branch of TSV regulates duty holders, including port and waterway managers and Victoria's recreational boaters.

In the past, TSV was the default waterway manager under the *Marine Act 2010*. This is no longer the case. According to the VAGO report:-

As the state's transport safety regulator, the Safety Director needs to assure the effective management of safety risks on all state waters, including those without a designated manager. TSV's legal advice is that the Act does not explicitly mandate this or require the Safety Director to become the 'default' waterway manager in such circumstances.

In the immediate future, a major focus of TSV will be transitioning to the national maritime safety regulatory scheme.

3.2.7 Water Authorities

Some recreational boating facilities are managed by Water Authorities, which are corporate entities established under Part 6 of the *Water Act 1989*. Notable here are Goulburn-Murray Water, which manages a number of water bodies in the north of the State, Gippsland and Southern Rural Water which manages Blue Rock Lake and Pykes Creek Reservoir, and Melbourne Water, which manages various lakes and creeks in the metropolitan area.

The primary function of these authorities is the provision of water for domestic and irrigation use. They may (voluntarily) also accept responsibility as Waterway Managers under the *Marine Safety Act 2010*.

3.2.8 Catchment Management Authorities

Catchment Management Authorities (CMAs) are statutory authorities established under the *Catchment and Land Protection Act 1994*. There are 10 CMAs which between them cover all terrestrial Victoria.

Under the *Catchment and Land Protection Act 1994* these CMAs exercise powers relating to weeds and pest animals.

Most CMAs are also appointed under the *Water Act 1989* as Water Authorities with responsibility for waterways in their catchment. The exception is the Port Phillip and Western Port catchment where Melbourne Water (rather than the PPWCMA) is the waterway manager for purposes of the *Water Act 1989*.

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As Water Authorities, CMAs may gazette certain rivers and streams as ‘designated waterways’ on which ‘works on waterways’ permits are required. These designated waterways may be either Crown land or freehold.

3.2.9 The Victorian Coastal Council and Coastal Boards

The *Coastal Management Act 1995* is the head of power for the Victorian Coastal Council (VCC) and three regional coastal boards – the Western, Central, and Gippsland RCBs.

These entities have no management powers or responsibilities, their functions being to plan, advise, coordinate, liaise, facilitate and so forth.

Amongst the strategic plans drafted by these agencies are:-

- The Victorian Coastal Strategy, which provides for the long term planning of the Victorian coast
- Regional Coastal Action Plans which identify strategic directions and objectives for use and development in the relevant region

Implementation of these plans is not mandatory, but any ‘Minister, public authority, committee of management of reserved Crown land or municipal council must take all reasonable steps to give effect to’ both the VCS and any CAP.

3.3 Crown Land: Use and Development

Several agencies exercise functions and powers relating to land use and works or developments.

3.3.1 The Planning System

Planning schemes are made under the *Planning and Environment Act 1989*. They apply to all of terrestrial Victoria, but only to portions of the State’s off-shore waters.

They control uses and works, within two major constraints:-

- A planning scheme cannot pro-actively initiate a proposal for the use and development of any land, it can only respond to a proposal arising from an applicant
- Planning schemes are not retrospective, and cannot deal with pre-existing uses and works, even if they do not comply with the scheme.

Each planning scheme is made by a ‘planning authority,’ usually the relevant municipality, and is administered by a ‘responsible authority’ – also usually the municipality.

Planning Scheme Amendments require approval from the Minister for Planning.

Planning permits may involve inputs from affected persons and referral authorities, and are subject to judicial review by VCAT.

Projects that are capable of having a significant environmental impact may be required to be assessed under the *Environment Effects Act 1978*. The Minister for Planning may require a proponent to prepare an Environment Effects Statement when there is a likelihood that a project will have regionally or State significant

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adverse effects on the environment and there is a need for integrated assessment of potential environmental effects.

3.3.2 Coastal Management Act consent

On coastal Crown land all works and uses require consent from the Minister for Environment and Climate Change.

Unlike planning permits, there is no appeal to VCAT and no set of 'as of right' provisions – although Minister's consent has already been granted for various categories of minor works.

3.3.3 Port Management (Local Ports) Regulations

Within a declared Local Port, no works of any kind may be undertaken without the consent of the port manager – subject to exemptions under the Port Management (Local Ports) Regulations 2004

3.3.4 Aboriginal Heritage approvals

The *Aboriginal Heritage Act 2006* makes it an offence to damage Aboriginal cultural heritage, or to undertake activities likely to damage Aboriginal cultural heritage.

The Act allows such works if they adhere to a Cultural Heritage Management Plan (CHMP), and specifies circumstances in which a CHMP is mandatory.

CHMPs are approved by Registered Aboriginal Parties (RAPs) or by AAV within the Department of Premier and Cabinet.

3.4 The Land

3.4.1 Two Types of Land: Crown and Freehold

For our purposes, there are two fundamental types of land in Australia – Crown land and freehold land. At one time the whole of Australia was Crown land (but subject to Native title, discussed below). Over the course of some two hundred years substantial areas of Crown land have been 'alienated' as freehold – the usual instrument of alienation being a 'Crown grant.' Virtually all these alienations were for terrestrial land – so virtually all off-shore land remains Crown land.

Native title went unacknowledged until 1992, when it was recognised by the High Court. Subsequently, the Commonwealth parliament enacted the *Native Title Act 1993*. This Act confirms that Native title has been extinguished on land which is, or ever has been, freehold. In other words, Native title can exist only on Crown land – including off-shore land. In some areas the identity of the Native title holder has already been determined by the Federal court, but elsewhere it is yet to be established.

In considering Aboriginal matters, it is important to distinguish between Native Title and cultural heritage. The former exists only on Crown land, and is the subject of Commonwealth law; the latter may exist on any land, and is the subject of Victorian state law.

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3.4.2 Disaggregating Land-Related Roles

Governance of public land is often spread across numerous entities. It is often necessary to disaggregate their roles and responsibilities: ownership, control, management and occupation.

Although Crown land is ultimately controlled by the Crown (subject to Native title) control is usually delegated to some statutory entity, which may in turn appoint managers and authorise occupations.

Over and above these roles, other agencies may well exercise land-related powers and functions.

Ownership

In the case of Crown land, the entity which may be regarded as the owner is 'the Crown in the Right of the State of Victoria' – represented by the Governor. The principal representative of the Crown is the Minister administering the *Land Act 1958*, namely the Minister for Environment and Climate Change, the Hon Ryan Smith MP. This Minister's representative for practical purposes is the Department of Environment and Primary Industries (DEPI).

In the case of freehold land, every parcel has an owner other than the Crown. Government agencies may own land in freehold, but this is not regarded as Crown land. A freehold owner will usually (but not necessarily) hold title to the land. Freehold titles are recorded under one of two systems – the Torrens title system and the General Law (or Old Law) system.

Control

Freehold Land is normally controlled by its owner, or registered proprietor. This person may occupy and manage the land themselves, may pass occupation rights to a tenant under a lease or occupancy agreement. The owner or tenant (if there is one) may pass management responsibilities to a contractor.

All Crown land has a controlling entity, by which is meant the entity entitled under law to make decisions about the land's status, occupation and management.

Management

On Crown land the controlling entity may appoint a manager. Often this manager has effective control of the land for day to day purposes, making management decisions, enforcing regulations, and acting as landlord for any tenancy.

Occupation

Apart from those activities which require no consent, other uses and occupations may be authorised by lease, licence, or permit – depending on the provisions of the relevant legislation.

Leases and licences are contracts between the land manager (who may be described as the landlord) and some private party (who may be described as the tenant). Both leases and licences involve a rental payment from tenant to landlord.

A lease is a grant of exclusive occupation of land, for a defined period or term. It provides security of tenure, and cannot be arbitrarily terminated. A licence, on the other hand, allows use rather than occupation, is non-exclusive, and provides little if any security of tenure.

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Activities and uses which are ephemeral or non site-specific may also be authorised under various provisions of Crown land legislation. These authorisations could not really be described as forms of tenure.

3.4.3 Public Use

Many uses of public land require no specific permit or authorisation. Users of Crown land enjoy the presumption of consent – their activities are deemed to be permitted unless legislation says otherwise. The opposite applies on freehold land, where the law of trespass holds that uses and occupations are prohibited unless consented to by the landowner.

Other uses will require consents under relevant legislation. Angling requires compliance with the *Fisheries Act 1995*, car-parking on the beach is constrained by the *Land Conservation (Vehicle Control) Act 1972*, camping in a National Park requires compliance with the National Parks Regulations, and so forth.

3.5 Sub-Categories of Crown Land

Although Crown land is one of only two primary categories of land, it has numerous sub-categories.

‘Default’ status Crown land

If Crown land has been given no specific status, it is known as ‘unreserved and unalienated’ or perhaps as ‘unallocated’ Crown land, and is dealt with under the *Land Act 1958* – the successor of Land Acts back as far as 1862.

Victoria’s largest tract of this land is Port Phillip – most of which has never been reserved or alienated. In addition, there are various stretches of such land alongside some rivers, although most riparian Crown land has been reserved.

Under the *Land Act 1958*, this ‘default’ status land may be sold as freehold, leased or licensed.

Government Roads

There are two types of road reserve in Victoria, corresponding to the two basic types of land. A road reserve laid out on Crown land is known as a ‘government road’ while a reserve laid out on freehold land is often described as a ‘subdivisional road.’

The word ‘road’ may need some explanation. Land may be described as a road reserve even if there is no physical roadway on it, and conversely a physical roadway may occupy land which is not a road reserve.

Reserved Crown land

Ever since the first surveys in Victoria, Crown land has been ‘reserved’ from alienation and set aside for some public purpose. This is the subject of the *Crown Land (Reserves) Act 1978*. Before 1978 this body of law was found in the Land Acts.

Each reserve has been created by an Order in Council (OinC) published in the Government Gazette. Every reserve has some specified official gazetted public purpose.

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Reserves are either 'temporary' in which case they may be revoked or varied by another OinC, or permanent in which case they may be revoked only by a new, site-specific Act of Parliament.

Notable amongst the thousands of reserves across Victoria are the 1881 reservation of Crown land alongside many rivers, and the 1886 reservation of many Crown land foreshores. These are permanent reservations, for unspecified 'public purposes.'

Reserves may have regulations, may be placed under a Committee of Management (CoM) and may be leased and licensed.

National and Other Parks

Under the *National Parks Act 1975* Crown land may be designated as some form of park. Categories of park created under this Act include National Park, State Park, Coastal Park, Marine National Park, and Marine Sanctuary.

Each National Parks Act park may have regulations. There is no provision for Committees of Management, and very restricted provisions for leases and licences.

Note that land of other status may also be called 'park.' Many parcels of land named 'xxx Park' will, in fact, be reserves created under the *Crown Land (Reserves) Act 1978*, or even freehold land owned by a municipality.

Vested Land

The term 'vested' land is somewhat ambiguous, but generally refers to Crown land placed under the control of some authority, but without a freehold title. When the authority no longer required the land, it must divest it back to the Crown.

Ports

Ports are areas of land and waters defined by or under the *Port Management Act 1995* (the PM Act).

Commercial Trading Ports include the Port of Melbourne, which is defined by the PM Act itself, and the Ports of Geelong, Hastings and Portland - each defined by Orders in Council made under the Act.

Local Ports are declared to be a local port by Order in Council under the PM Act. Currently there are 14 Local Ports. Land within any of these ports may be of any status, but will normally be Crown land, either reserved or unreserved.

Note that to be a port manager of a local port, the entity must be appointed as a Committee of Management of Crown land within the port.

A port manager of a local port may not be the only land manager within the local port boundary.

Local port	Port manager
Gippsland Ports, including:	
Gippsland Lakes	
Corner Inlet and Port Albert	
Snowy River	Gippsland Ports Committee of Management Inc
Mallacoota	
Anderson Inlet	

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Port Phillip Bay and Western Port	Parks Victoria
Port Fairy	Moyne Shire Council
Apollo Bay	Colac-Otway Shire Council
Warrnambool	Warrnambool City Council
Port Campbell	Parks Victoria
Lorne	Great Ocean Road Coast Committee
Barwon Heads	Barwon Coast Committee of Management Inc
Portland Bay	Glenelg Shire Council

3.6 The Legislation

3.6.1 Commonwealth and State Jurisdictions

The Commonwealth parliament is constrained by the Federal Constitution to confine its attentions to certain matters set out in the Constitution, or matters voluntarily referred to it by the States. As a consequence of this arrangement, a very limited number of Commonwealth laws apply to our subject matter here – in particular the *Native Title Act 1993*, and the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). Otherwise, all the legislation discussed in this report is Victorian State legislation.

3.6.2 Primary and Subordinate Legislation

Acts of Parliament often provide for the creation of subordinate legislation. Well-known examples include Planning Schemes made under the Planning and Environment Act and the Road Rules, made under the Road Safety Act.

Certain subordinate legislation is subject to a 10-year sunset arrangement, but other subordinate legislation simply continues on the statute books indefinitely.

3.6.3 Acts relevant to Recreational Boating

Land Act 1958

This Act governs unreserved Crown land (or ‘default status’ Crown land) which includes most of Port Phillip, Western Port, and Victoria’s offshore waters.

It also applies to unused Government roads and Crown land frontages to rivers and lakes.

It includes powers to issue leases and licences over such land, but no powers to make regulations or appoint delegated managers.

National Parks Act 1975

This Act, despite its name, is an Act of the Victorian Parliament. It creates National Parks, State Parks, Marine National Parks and Marine Sanctuaries. Every time government wishes to create a new park, an amendment to the Act is required.

Under the Act, various sets of regulations have been made, including principally the National Parks Regulations 2013.

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Crown Land (Reserves) Act 1978

This Act governs Crown land which has been reserved for some specified public purpose. Reserves are either temporary (and may be revoked by administrative action) or permanent (and may, in general, be revoked only by some new, site-specific Act or Parliament).

This Act governs the appointment and operations of Committees of Management, which may be municipal councils, bodies established for a public purpose (such as Parks Victoria) or incorporated bodies consisting of three or more persons ('local' committees).

Regulations under the Crown Land (Reserves) Act have been made for many reserves, but since they are not statutory rules they do not sunset after 10 years and do not require Regulatory Impact Statements.

Road Safety Act 1986

This Act deals with physical roadways, regardless of their cadastral status or governance regime.

It is the head of power for the Road Rules, including parking rules.

Marine Safety Act 2010

This Act provides for (amongst other things):-

- The appointment of Waterway Managers
- Registration of recreational craft and licensing of masters
- the duty of care to be borne by persons associated with marine operations
- the regulation and management of the use of vessels on State waters, and
- the engagement of harbour masters by port managers

The Vessel Operating and Zoning Rules are made under this Act.

Planning and Environment Act 1989

Planning schemes are made under the *Planning and Environment Act 1989*. They apply to all of terrestrial Victoria, but only to portions of the State's off-shore waters.

They control uses and works, within two major limitations:-

A planning scheme cannot pro-actively initiate a proposal for the use and development of any land, it can only respond to a proposal arising from an applicant

Planning schemes are not retrospective, and cannot deal with pre-existing uses and works, even if they do not comply with the scheme.

Each planning scheme is made by a 'planning authority,' usually the relevant municipality, and is administered by a 'responsible authority' – also usually the municipality.

Planning Scheme Amendments require approval from the Minister for Planning.

Planning permits may involve inputs from affected persons and referral authorities, and are subject to judicial review by VCAT.

Local Government Act 1989

This Act provides for the creation of municipal districts and allows Councils to be established to govern them. It provides that, unless otherwise determined, the coastal boundary of any coastal municipality is Low Water Mark.

Boating Facilities Governance

It empowers Councils to exercise certain powers and functions within their boundaries, but also allows them to accept appointment to exercise other powers and functions outside their boundaries.

The principal form of subordinate legislation here are Local Laws made by municipalities. They may relate to any function conferred on a council, whether under the *Local Government Act 1989* or any other Act. They may apply to the whole of a municipality or to specific areas within it. They sunset after 10 years.

Native Title Act 1993 (Commonwealth)

This Act recognises that Native title continues to exist, except where it has been extinguished by alienation to freehold or by public works. Thus Native Title will continue to exist on many areas of Crown land, including water bodies and off-shore areas.

The Act provides a system for identifying Native title holders (in Victoria this is augmented by the *Traditional Owners Settlement Act 2010*).

The Act also defines a regime under which actions affecting Native title may be validated.

Port Management Act 1995

This Act establishes certain commercial trading ports, and allows for the declaration of local ports.

Under this Act, a local port manager has a series of functions and powers relating to the management of the local port.

Regulations under this Act include the *Port Management (Local Port) Regulations 2004*.

Coastal Management Act 1995

This Act establishes the Victorian Coastal and the Regional Coastal Boards. It establishes a hierarchy of planning instruments, including the Victorian Coastal Strategy and Coastal Action Plans (CAPs).

It defines Coastal Crown Land to be:-

- The whole of the seabed
- Any Crown land within 200m of high water mark
- Any Crown land reserved for the purpose protection of the coastline
- Plus any land added by Order in Council
- Less any land omitted by Order in Council.

On coastal Crown land all works and uses require consent from the Minister for Environment and Climate Change.

Unlike planning permits, there is no appeal to VCAT and no set of 'as of right' provisions – although Minister's consent has already been granted for various categories of minor works.

Parks Victoria Act 1998

This Act establishes Parks Victoria as a statutory authority. The Act itself does not appoint Parks Victoria as a land manager, but allows it to accept such appointments. Under the *National Parks Act 1975* the Secretary for DEPI has engaged Parks Victoria to manage all National Parks in Victoria, and various other parks. Under the

Boating Facilities Governance

Crown Land (Reserves) Act 1978 the Minister for E&CC has appointed Parks Victoria as Committee of Management for many Crown reserves.

Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) 1999

This Commonwealth Act deals only with matters over which the Commonwealth has jurisdiction under the Federal Constitution. These matters include the protection of endangered species listed under international treaties, and the protection of Ramsar wetlands.

Approvals under the EPBC Act are required for any actions which may affect these species or places.

Road Management Act 2004

This Act applies principally to roads 'reasonably required for general public use.' It appoints VicRoads, municipal councils, and the Secretary for DEPI as road authorities. Under this Act a road authority may (and invariably will) adopt a road management plan specifying the standards to which it will construct, inspect and maintain those roads which it has chosen to list on its road register. A road authority (other than VicRoads) may choose not to manage some roads under its control.

Aboriginal Heritage Act 2006

The *Aboriginal Heritage Act 2006* makes it an offence to damage Aboriginal cultural heritage, or to undertake activities likely to damage Aboriginal cultural heritage.

The Act allows such works if they adhere to a Cultural Heritage Management Plan (CHMP), and specifies circumstances in which a CHMP is mandatory.

Regulations made under this Act define 'Areas of cultural heritage sensitivity' which include all Coastal Crown land as defined by the *Coastal Management Act 1995*, and a band 200m either side of any named waterway – unless that land has been the subject of significant ground disturbance.

CHMPs are approved by Registered Aboriginal Parties (RAPs) or by AAV within the Department of Premier and Cabinet.

3.6.4 Conclusions

The legislative regime described above may seem complex – but these 14 Acts do not constitute a comprehensive list of the legislation applying to recreational boating facilities.

However, the number of Acts is not so important. What is important is what part of the development life cycle the facility is at. When a new facility is being developed, planning and environment considerations are the priority, along with getting the land tenure and future management structure in place.

Management of an operational facility can largely be governed under the relevant Crown land Act and the Local Government Act, as appropriate.

Behavioural issues on water are a marine safety issue covered appropriately under the MSA and waterway manager functions – with enforcement conducted by police and other authorised officers, not unlike roads.

On a day-to-day basis their impact on users of recreational facilities would most probably take the form of compliance with relatively familiar regulations – relating to navigation, parking, litter, control of dogs and so forth.

Boating Facilities Governance

The 14 Acts are listed in chronological order – dating from 1958 to 2010. This chronology reflects the parliamentary processes of making and reviewing legislation: at any one time the range of legislation pertaining to any given activity will include some relatively recent Acts and some due or even overdue for repeal and/or revision.

Likewise, subordinate legislation made under these Acts may or may not become out-of-date, depending on whether it is subject to a 10-year sunset and review process. Upon renewal, some but not all subordinate legislation is subject to a Regulatory Impact Statement (RIS).

Although each Act cycles through a well-established (longitudinal) process of drafting, parliamentary consideration, proclamation, periodic amendment and eventual repeal, there is no recognised system for reviewing the (lateral) impacts of a set of legislation on some specific activity, agency or function.

* * * * *

4 The Eight Case Studies

4.1 Portland

Location: Lee Breakwater Road, Portland.

4.1.1 General Description:

The Portland boating facilities are on the foreshore in Portland Harbour adjacent the township. The facilities were recently upgraded with the addition of a Marina and four-lane boat ramp and associated car and trailer parking, which opened in July 2014. The planning and delivery of the new facilities was funded by the Shire of Glenelg and grants through the State Government's Boating Safety and Facilities Program and Regional Development Victoria

Increasing demand was a significant driver for the redevelopment. The popularity of Portland as a destination for trailer-boat fishers had grown to the point of the previous three-lane ramp having to cater for up to 400 launches per day at peak times, with 250 -300 being common. Peak season is from approx. February to July. Primary users are trailer-boat fishers and fishing charter operators.

The facilities now cover three distinct nodes along the foreshore; i.e. the original three lane launching ramps and public jetty with moorings for older craft; new marina and associated car park; and new 4 lane launching ramp with large car and trailer parking areas.

The recently constructed Marina can accommodate 70 boats ranging in size from 5m to 25m. It caters to commercial and charter boats and private recreational craft. Berths are occupied under an annual permit.

The old finger jetty (circa 1972) provides berths for up to 40 older style boats. Demand for berths at this jetty has been declining. Fees are less than those charged at the new marina. Maintenance is a growing issue for this structure.

A number of swing moorings were removed with the development of the Marina. Only 8 remain with only two currently being used.

Within the broader precinct are four buildings not associated directly with the boating facilities. The Portland Yacht Club and Portland Fishing Club occupy, under lease from Council as CoM, separate buildings located near the original ramps. The Naval Cadets has a lease over an older building towards the southern end of the reserve. The Maritime Discovery Centre is located to the west of the new Marina. There is a large adjacent area available for car parking.

4.1.2 Discussion

Governance

The Shire of Glenelg has day to day management responsibility for all matters relating to the land and water components of the Portland boating facilities. This is clearly understood by users and stakeholders.

The entire area occupied by the upgraded boating facilities is Crown land reserved for Public Purposes. The Lee Breakwater Road, which provides access to the precinct, is managed by Council but is not part of the reserve.

Boating Facilities Governance

The Shire of Glenelg is Committee of Management over this and adjoining foreshore areas (shown on plan above as CA 6A, Section A) under the provisions of the *Crown Land (Reserves) Act 1978*. This arrangement was originally only in place in respect to the area above HWM, but following negotiations with DEPI, the area reserved and Council's appointment as CoM was extended to include the below HWM components of the area within which all the infrastructure associated with both the old and new facilities is located.

Boating Responsibilities

The Shire of Glenelg is the Local Port Authority for the Port of Portland Bay over the area shown on plan below. A Specific Unit has been established with Council to manage the Local Port function, and maintains clear and separate accountabilities to those exercised as Council under the *Local Government Act 1989* and Committee of Management under the CL(R) Act. Council is also waterway manager of the local port area for the purposes of the *Marine Safety Act 2010*.

The boundary of the Local Port aligns with the (below HWM) portion of the area for which Council has been appointed as Committee of Management.

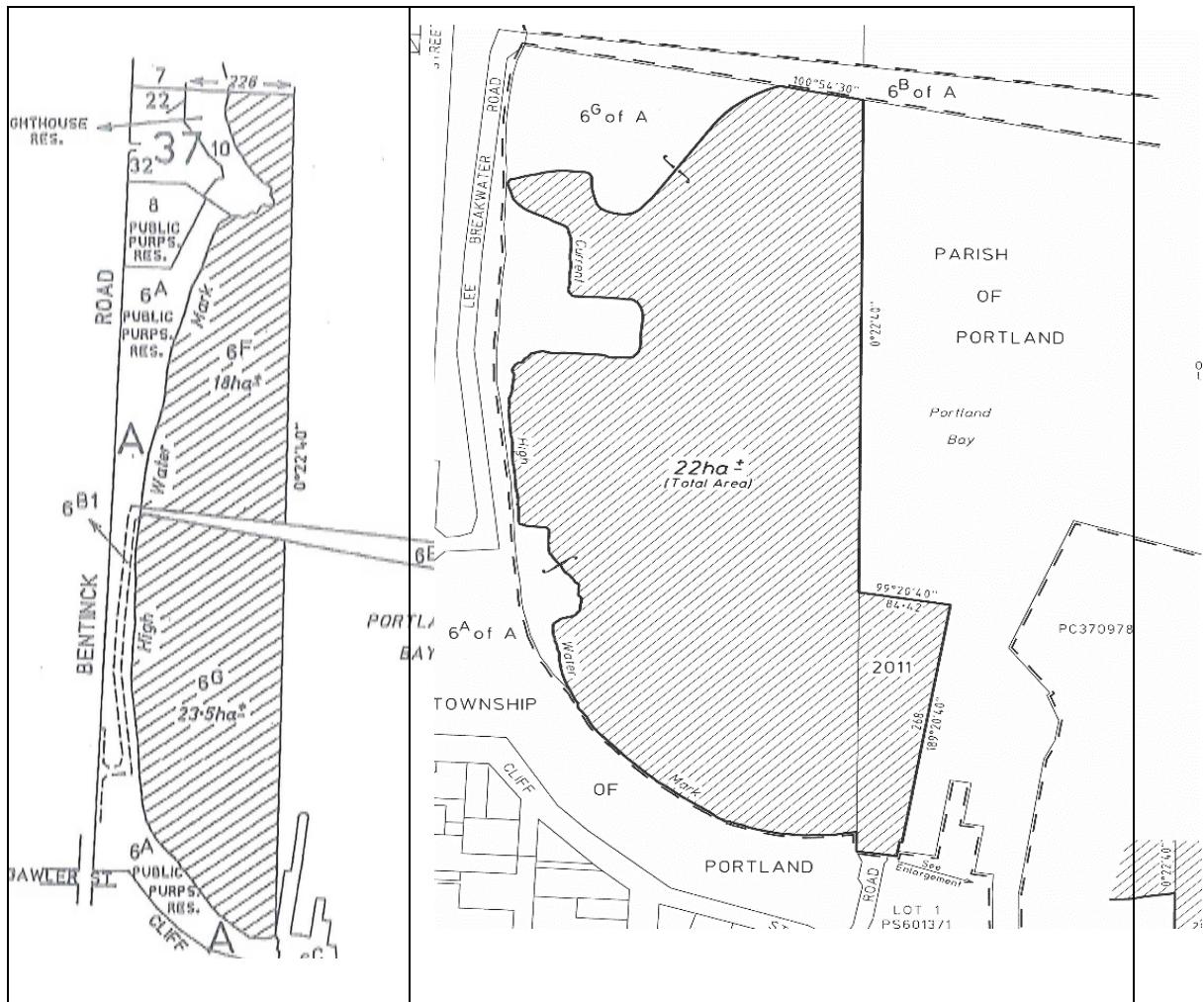
The local port boundary abuts, on its eastern side, the commercial Port of Portland boundary. Demarcation between the role of Council as the Manager of the Portland Bay and that of the Port of Portland is clearly understood. It is understood that a 'Boundary Operating Agreement' is currently being negotiated between the Port, Local Port, Regional Channel Authority and TPLI to formalise what is considered to be a sound working relationship.

Navigational aids associated with boating facilities within the local port are maintained by Council.

Dredging is not required in the vicinity of the launching ramps. The Port of Portland regularly dredges in and around the harbour mouth as per its requirements. Dredge spoils are used to renourish beaches to north of facilities. Some were used for reclamation works associated with the development of the new launching facilities.

The dual role of the Shire of Glenelg as Committee of Management and Local Port and Waterway Manager for the entire area within which the boating facilities are contained appears to have removed governance complexity and focused efforts. The establishment of a Local ports Unit within Council may have increased Council's capacity to effectively plan and deliver the recently completed upgrades.

Boating Facilities Governance



The Crown Reserve (Left) and the Local Port area (Right)

Car Parking

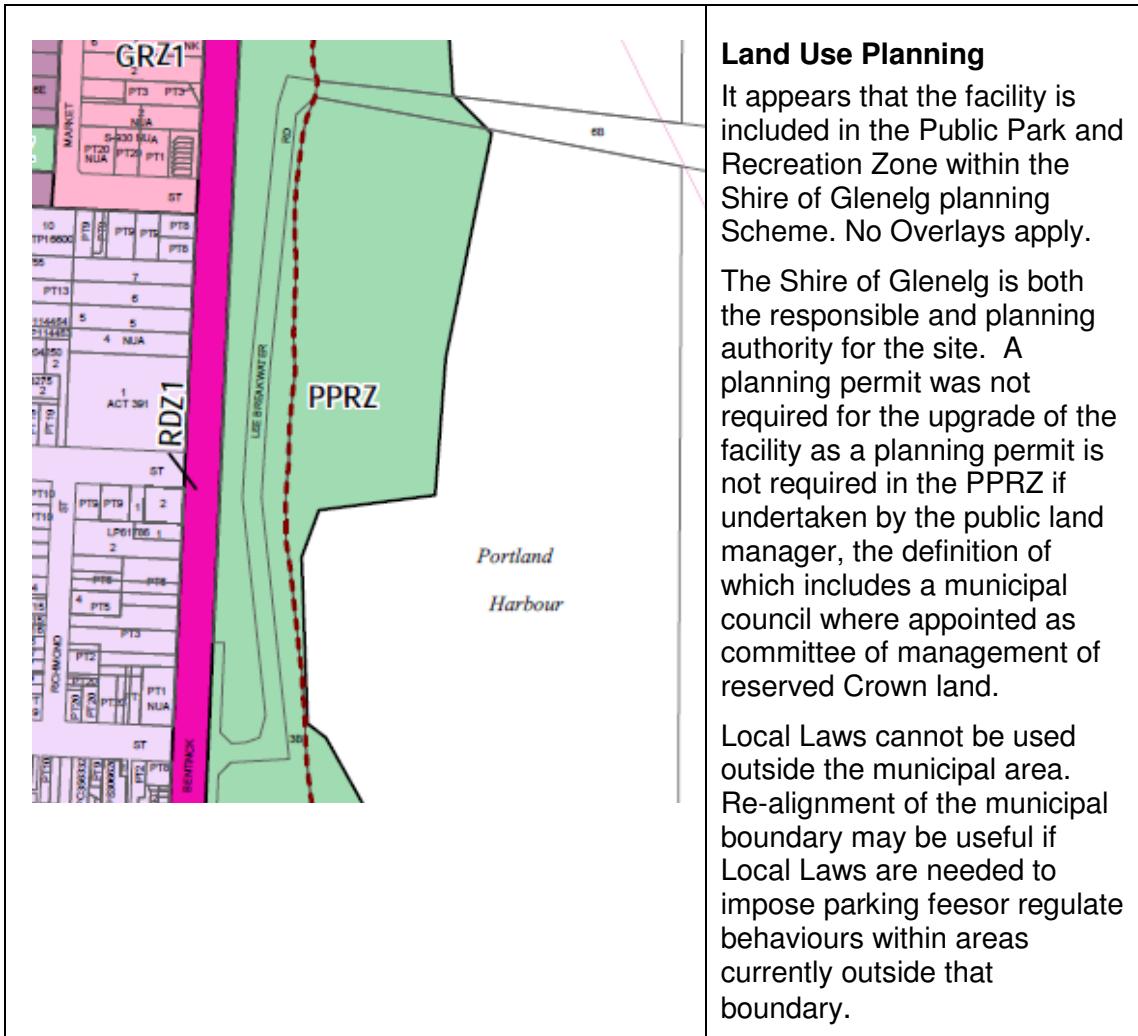
With the addition of the new facilities to the north, formal car & trailer parking has increased to approx. 200 (170 new; 30 original near old ramp).

Overflow car-parking for approx. 130 cars & trailers will now be provided adjacent the newer ramp. This will lessen the need to utilise the large grassed areas to the west of the old ramp in peak periods.

Two automatic ticket machines that provide for car& trailer parking permits cater for casual users (\$10 per day). Annual permits are also available (\$55 for ratepayers; \$110 for non-ratepayers. Parking is enforced through Local Laws. Should a person chose to launch and park off-site and away from designated car and trailer parking bays, no fee is payable.

The new marina and launching facilities have yet to be subjected to peak pressures, but are expected to deliver a significant improvement for users and the broader community with traffic congestion and parking being significantly reduced.

Boating Facilities Governance



4.1.3 Conclusions

- The adoption of multiple roles by a single agency/authority has the potential to reduce governance complexity and focus effort.
- The coupling of a marina with public launching facility increases the options available to users and can help to separate commercial operators from recreational boaters, potentially reducing pressures on launching facilities at peak times.

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Boating Facilities Governance

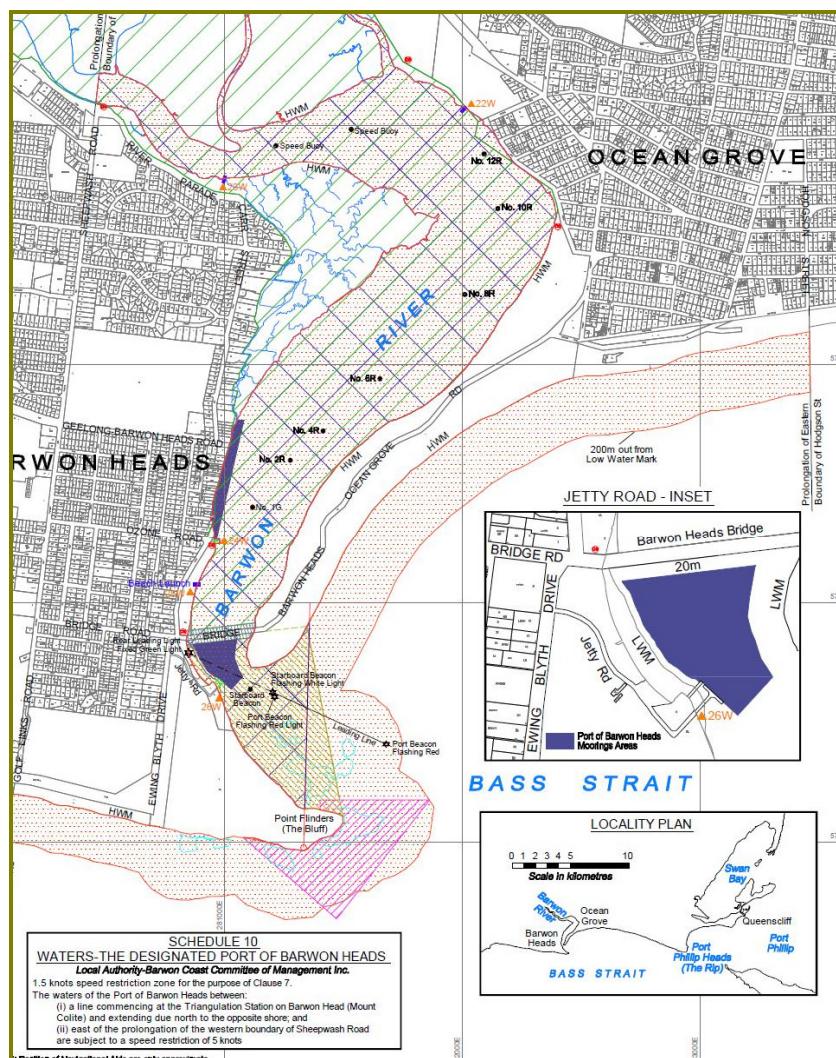
4.2 Barwon Heads

4.2.1 General Description

Barwon Heads is a seaside township, relatively quiet in the off season, but extremely busy over the summer period. The estuary of the Barwon River has conservation values, but is also an important recreational boating venue, and one of few places on the outer coast offering relatively safe access to Bass Strait.

There are three main boat ramps. The most popular is managed by the City of Greater Geelong (on the Ocean Grove side of the estuary) and the smaller two managed by Parks Victoria (on the Barwon Heads side). At peak times, the ramps are over capacity, and car and trailer parking spills over into residential streets.

The governance regime over land and water is very complicated, and it is unlikely that it is understood by the average boater. Information provided at boat ramps is useful for boating safety, but ambiguous and confusing about governance. However, the management agencies have good working relationships and appear to understand their different powers and responsibilities.



Boating Facilities Governance

Crown land description

A summary of land and water management responsibilities is shown in the attached map.

Barwon Coast Committee of Management has responsibility for several parcels of land under the *Crown Land (Reserves) Act 1978*. It manages the camping ground which generates the bulk of its revenue, and some estuary fringes and foreshore areas. It also manages Crown seabed downstream of the Barwon Heads bridges, which is designated as a mooring area. Parks Victoria is the land and river bed manager of the Lake Connewarre State Game Reserve, which is reserved under the *Crown Land (Reserves) Act 1978*. The State Game Reserve covers the estuary of the Barwon River north from the Barwon Heads bridges. DEPI is the waterway manager within the State Game Reserve, upstream of the local port.

Parks Victoria is also the manager of the Barwon Bluff Marine Sanctuary, which is designated under the *National Parks Act 1975*.

On the Ocean Grove side of the Barwon River, the City of Greater Geelong is the manager of the Ocean Grove Boat Ramp.

Planning Scheme Zones and Overlays

In the City of Greater Geelong Planning Scheme, the foreshore caravan and camping reserve is zoned Public Park and Recreation Zone. The purpose of the Zone is to recognise areas for public recreation and open space, to protect and conserve areas of significance where appropriate, and to provide for commercial uses where appropriate.

Most actions by the designated public land manager do not require a planning permit, but any other entity will require a planning permit for most uses and development.

The estuary and the foreshore and seabed 200m seaward of Low Water Mark is zoned Public Conservation and Resource Zone. The purpose of the Zone is to conserve and protect natural values, and allow for some low-impact recreation activity.

The estuary area is also covered by a Heritage Overlay. This seeks to protect the landscape and heritage values of the waterway. Other overlays nearby include:

- Design and Development Overlay
- Environmental Significance Overlay
- Flood Overlay
- Special Building Overlay

A Heritage Overlay covers some areas of the foreshore adjacent to the estuary.

The general effect of these overlays is to trigger a planning permit requirement mainly in relation to vegetation removal, restrict building in flood prone areas, and to apply guidelines for the design of buildings.

Coastal Management Act 1995

The Crown land within 200m of the shore is designated as Coastal Crown land under the *Coastal Management Act 1995*, and requires a separate consent from the

Boating Facilities Governance

Minister for Environment and Climate Change for any use or development of Coastal Crown land. The power to issue this consent is in some cases delegated to the Department of Environment and Primary Industries, or the consent is given in advance for various minor developments or maintenance.

Boating responsibilities

Under the *Port Management Act 1995* and the *Marine Safety Act 2010*, Barwon Coast is the port manager for the local port of Barwon Heads, and waterway manager for the navigable waters of the Barwon River as shown on the map. Barwon Coast has the power to manage recreational boating activity on these waters and is able to manage the swing moorings in the river under this legislation. As is commonly the case, Barwon Coast receives no funding for the waterway manager function, other than funding received for its port manager role.



Multiple signage reflects governance complexity. Barwon Coast is not alone in this.

Barwon Coast does not own a vessel and has no on-water capability. It has chosen not to authorise officers under the *Marine Safety Act 2010*. This appears to be a consequence of the lack of funding available for waterway managers across the state.

Instead, Barwon Coast relies on the Water Police to manage any incidents at boat ramps or on the water.

Transport Safety Victoria also authorise officers under the *Marine Safety Act 2010* to undertake compliance and patrols, particularly over the busy summer period.

Municipal boundary

Conventionally municipal boundaries are defined by the Mean Low Water Mark. Under the *Local Government Act 1989* and the *Planning and Environment Act 1987*, Councils are able to exercise their planning powers outside the municipal boundary. This is the situation around Barwon Heads, where the municipal boundary of the City of Greater Geelong is at Low Water Mark, but the municipal planning scheme extends 200m seaward.

Although it is not a major issue, it is worth exploring whether the municipal boundary should be extended to include the seabed and waters adjacent to the land. This would allow authorised Council officers to use Local Laws powers within this extended boundary.

Boating Facilities Governance

4.2.2 Discussion

Governance

The foregoing paragraphs are a very brief summary of the governance issues in Barwon Heads. These roles and responsibilities are undoubtedly complex and difficult for the average boater to understand.

Parks Victoria's responsibilities are for the State Game Reserve under the *Crown Land (Reserves) Act 1978*. It also has responsibility for the Barwon Bluff Marine Sanctuary at Barwon Heads. DEPI is the waterway manager upstream of the Local Port within the State Game Reserve.



Barwon Coast is responsible for the Camping ground on land, is manager of seabed Crown land downstream of the Barwon Heads bridges, and Local Port manager through the estuary and along the coast in both directions, to a distance of 200m from Low Water Mark. Both Barwon Coast and Parks Victoria officers have various complementary and overlapping authorisations under many different heads of power.

This overlap of authorisations is not necessarily a bad thing, but requires a good relationship between agencies and their staff. In addition Transport Safety Victoria officers are authorised and undertake compliance activities across the state mainly during the busy summer period.

Parks Victoria staff and officers of Barwon Coast say they have a very clear understanding of their separate and shared responsibilities.

Boating Facilities Governance

Governance model

Six government agencies (Barwon Coast, Parks Victoria, the Department of Environment and Primary Industries, Transport Safety Victoria, the City of Greater Geelong and the Water Police) all play active roles in managing recreational boating activity in the Barwon Heads precinct. While two of the key agencies say that this is not a significant problem, common sense would say that some administrative simplification would be sensible, and surely reduce the time and complexity in management and decision-making.

At the very least, DEPI and the City of Greater Geelong could withdraw from their direct roles, to be replaced by Parks Victoria and Barwon Coast respectively. However, it often the case that the agencies would happily withdraw from responsibilities; rather, it is the inheriting agency which is reluctant to add another unfunded task to an already busy set of responsibilities.

At the time Barwon Coast Committee of Management was appointed as Local Port manager and waterway manager, it appears that the intent was to have one management agency with a set of integrated management roles across land water and seabed. The implication appeared to be that some profitable activities (eg camping on the coast) could cross-subsidise some unfunded or less profitable activities (eg waterway manager).

However, a different philosophy has emerged through the Victorian Auditor General, who has in recent times criticised agencies for funding cross subsidies. The Auditor General is seeking transparency, in that when government allocates funds to a particular activity, the public can be assured that the funds are all spent on that activity and not diverted elsewhere.

So Barwon Coast is in a difficult situation where it may be expected by some user groups to spend funds derived from camping, on boating activity. However, it has no clear direction from state government agencies as to whether it should cross-subsidise or not.

At present, there are some apparently misaligned cadastral boundaries. There may be good reason for this, but if so, the reasons are not clear. At the mouth of the Barwon River, the boundary of Local Port Manager designated seabed and waterway manager/TSV Boating Zone boundary are not aligned. Also, the Port Manager gazetted seabed and the Marine Sanctuary boundary appear to overlap, which should not be possible. In addition, some navigation marks in the channel are inside the boundaries and some outside. Again, day-to-day, this lack of neatness may not be a particular issue, especially as Barwon Coast has no on-water capability, and no relevant authorisations. But if this is not a problem, perhaps there is no need for a Local Port manager or waterway manager in the precinct.

The principles of simplification can be applied in other places. Alignment of cadastral boundaries such as planning schemes and responsibilities under other legislation can be helpful. Re-alignment of municipal boundaries may be useful in some situations. The elimination of one or two management agencies from a precinct can be a significant improvement, provided this does not diminish necessary management capability.

Boating Facilities Governance

Maintenance Dredging

There is an issue with maintenance dredging at Barwon Heads as in many locations with boat ramps. This is a necessary activity to ensure safe navigation in shallow and tidal waters. It is also very expensive, both to carry out the physical task, but also to get the necessary approvals under the EPA's Dredging Protocol and under the *Coastal Management Act 1995*.

The limitations on dredging activity are largely a function of limited budgets. However from a governance perspective, and perhaps the wider community, powers already exist to carry out the task. It may well be unreasonable to expect the wider community to pay for an activity which only benefits boat owners.

4.2.3 Conclusions

- At Barwon Heads, it is clear that although the governance regime is inherently complex, the tools exist to bring about some streamlining of responsibilities, and reduce the amount of unnecessary administrative burden on all parties.
- The land and functional managers interviewed believed that although there are considerable complexities, they are well understood, and the level of cooperation between agencies is high. They felt that day-to-day recreational boaters generally are not hindered by the regulatory complexities.
- The fact that both land and seabed in the estuary are reserved and managed by Barwon Coast and Parks Victoria is beneficial for a good understanding of relevant responsibilities, and minimising double-handling of administrative matters.
- Probably Barwon Coast has sufficient powers under the Crown Land (Reserves) Act 1978 to manage moorings and undertake its broad land/seabed management role in the precinct. It is possible in some localities with minor facilities, the additional Port Manager role may be superfluous, and offers no additional advantage
- Maintenance dredging for recreational boating is an issue in many places, including some locations on the outer coast. There is no sound rationale to say why some channels are dredged by the Local Port Manager, and some by local government or a Yacht Club, and some not at all. There are significant costs in dredging, spoil disposal and in obtaining necessary approvals. A more logical approach using economies of scale and simplified approvals would be beneficial. The user-pays principle, although likely to be unpopular (and expensive) in some places, could be reasonably applied to maintenance dredging.

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4.3 Altona

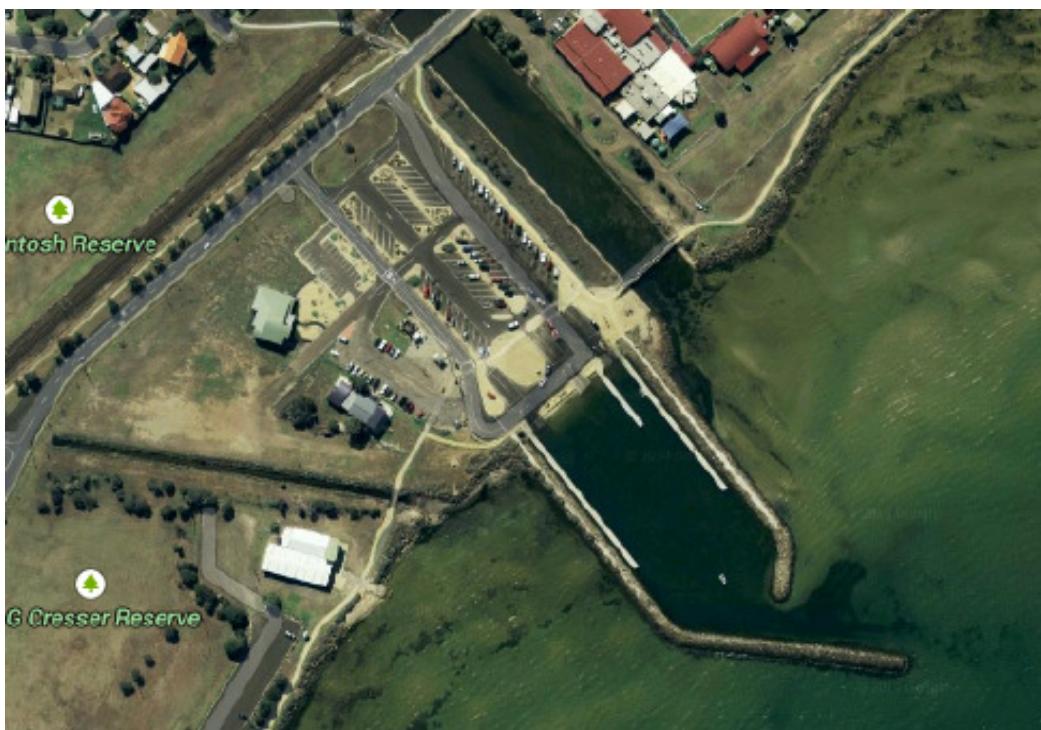
Location: Beach Street, Altona

4.3.1 General Description:

The Altona Boar Ramp is located on Beach Street, Seaholme. The facility has evolved over time with a major upgrade in 2000. The facility now comprises the two harbour walls, three floating pontoons, six-lane boat ramp; associated car and boat trailer parking (including an overflow area for peak times); toilet block and fish cleaning table. The area also includes two buildings occupied by fishing clubs under lease agreement with Council, which is the freehold owner of the majority of the land-based area covered by the facility.

The facility serves a broad catchment, with the primary users being trailer-boat fishers, with some jet ski operators and pleasure boat users.

This is one of two public boat launching facilities managed by HBCC. The Altona boat ramp caters for approx. 70% of launching traffic within the municipality with the remaining 30% using the facilities at the Warmies at Newport.



Five navigational aids are in place immediately outside the facility entrance.

There are approximately 100 formal boat and trailer parking bays available on-site with overflow parking for 40 vehicles and trailers provided on the large grassed area in the south-western portion of the site (used during peak times and for fishing 'events'). Additional on-street parking (car & trailer bays) have been identified in adjoining Beach Street. Surrounding streets are used (though not encouraged) in peak periods.

Members of the fishing clubs that occupy the two buildings within the precinct have no additional rights to the boating facilities to the broader public, however a small area of car-only parking has been provided by Council adjacent one of the buildings.

Boating Facilities Governance

4.3.2 *Discussion*

Governance

Users and stakeholders alike are clear that the Altona boat ramp facility is primarily managed and maintained by HBCC.

The area occupied by the Altona Boat Ramp and related facilities is unusual in that the majority of the area is freehold land owned by the Hobsons Bay City Council (the land having been Granted to a predecessor - the President, Councillors and Ratepayers of the Shire of Altona). The boundary of this freehold parcel with the adjoining Crown land is clearly defined on title by metes and bounds (see plan).

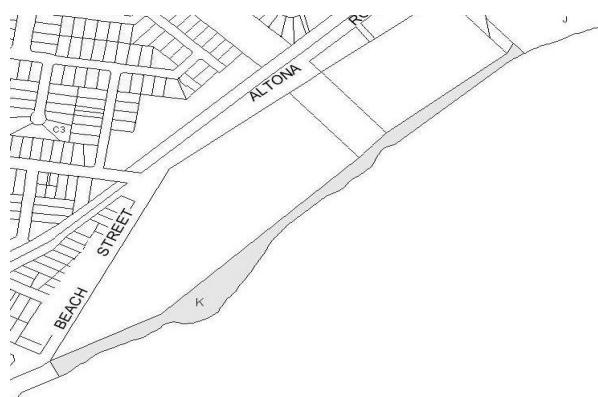
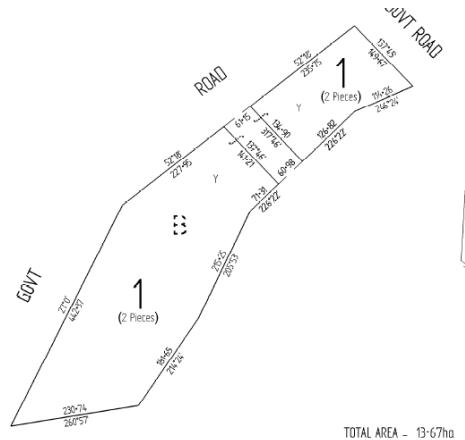
Between the freehold and the bed of PPB, which is unreserved Crown land, is a small strip of Crown land permanently reserved for Public Purposes (CA K, Sec 9, Parish of Truganina). A status check confirmed that there is no Committee of Management over this reserve (shaded on plan), with the effect that management responsibility for this area, as it is for the unreserved Crown land, resides with DEPI as agent for the Crown. Council has no formal tenancy arrangement (lease or licence) to either of these Crown land areas.

There is no clear on-ground delineation of these freehold or Crown land boundaries, with boat ramps, jetties and revetments appearing to traverse all three.

While HBCC is yet to receive formal approval for the use of the Crown land components of the facility, this has not prevented Council from expanding and maintaining the facility.

However, there are obvious risks associated with the lack of any formal authority by HBCC to occupy and use the Crown land portion of the facility. That authority could be given in one of two ways, either through the grant of some form of tenure, or by placing the Crown land under the control of Council as Committee of Management (this would require reservation of the unreserved portion of the land).

If some form of tenure was to be considered without any change in land status, it would need to meet the requirements of both the *Land Act* 1958 and the *Crown Land (Reserves)* Act 1978. An alternative would be to reserve the unreserved portion of the land and grant the tenure under the *Crown Land (Reserves)* Act only.



Boating Facilities Governance

However, it would seem more efficient to have the entire Crown land area occupied by the facility to be reserved for public purposes with Council then appointed as Committee of Management. This would remove any need for DEPI, as agent for the Minister for Environment and Climate Change, to take any future landlord role and would be consistent with Council's role with surrounding foreshore areas. It would also formalise Council's role as Public Land Manager for land use planning matters.

Boating Responsibilities

While PV, as both Local Port manager and waterway manager, has the statutory responsibility for the provision and maintenance of navigation aids for the waters of PPB, Hobsons Bay City Council is responsible for the maintenance of the 5 navigational aids marking the approaches to the Altona boat harbour. This arrangement is likely to have been put in place as a condition of the issuing of a works authority under the *Port Management (Local Ports) Regulations*, at the time the facility was constructed. It is understood such an arrangement is also in place for other boating precincts in PPB and Western Port.

Maintenance Dredging

Annual dredging of the harbour entrance is required to maintain sufficient depth for access to the Bay. Dredge spoils have been used to renourish beaches to the north of facility (spoil material pumped directly during dredging operation).

HBCC is required to obtain the following consents before dredging operations can begin:-

- Consent under the *Coastal Management Act 1995* (DEPI); and
- Works authority under *Port Management (Local Port) Regulations* (PV).

Until recently, HBCC had to seek CM Act consent every year in order to undertake dredging to keep the harbour navigable. At one point delays resulted in silting up of the entrance to the point where it was unusable. The most recent CMA consent was granted for a 5 year period – reducing administration.

An annual works authority under the *Port Management (Local Ports) Regulations* is also required from PV prior to dredging operations.

To date, these authorities have been limited to one year on the basis that if a different contractor may be used in future years. If a permit was granted for a longer period, Council would still need to provide information, on an annual basis, in order for PV give Notice to Mariners of actions being proposed.

EPA can also be involved as a point of contact for members of the public concerned during dredging operations (despite signage indicating approvals having been obtained and facts associated with the colour and odour of spoils). It is understood that Council's relationship with EPA is solid.

Parks Victoria staff and officers of Hobsons Bay City Council have a very clear understanding of their responsibilities in relation to the maintenance of navigational aids and maintenance dredging of the harbour. However, the efficiency of having Council deliver activities for which PV has statutory responsibility and, presumably, the requisite resources and skills, could be questioned.

This is particularly the case with maintenance dredging, essential at this location but also a very expensive operation, both in terms of the physical task and the need for

Boating Facilities Governance

approvals under the Port management (Local Port) Regulations 2004 and the *Coastal Management Act 1995*.

Marine Safety

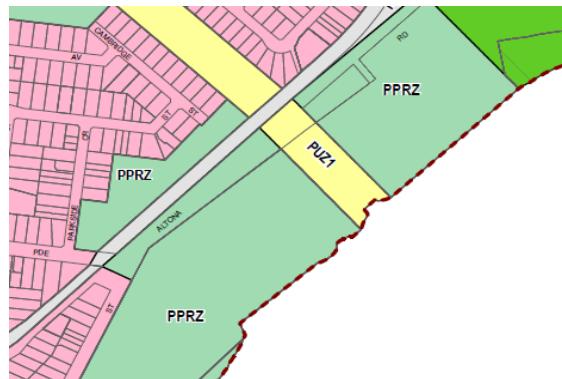
Parks Victoria is the Local Port Manager and waterway manager for the navigable waters of Port Phillip Bay. It has the power to manage recreational boating activity on these waters and day-to-day patrols and compliance duties can be carried out by authorised PV staff.

Transport Safety Victoria also authorises officers under the *Marine Safety Act 2010* to undertake compliance and patrols on waterways across the state. In practice, in an emergency situation, the Water Police, rather than Parks Victoria or TSV staff, will exercise its powers under the Act.

Land Use Planning (Planning Scheme Zones and Overlays)

The on-land facilities are within the Public Park and Recreation Zone (PPRZ) in the City of Hobsons Bay Planning Scheme. The municipal (and zone) boundary appears to follow the Low Water Mark.

There is a Design & Development Overlay over much of the area which, in effect, limits the height of buildings along the foreshore.



HBCC is the responsible and planning authority for the site. A planning permit was not required for either dredging or the upgrade of the facility in 2000 on the basis that a planning permit is not required in the PPRZ if undertaken by the public land manager, which includes PV and municipal councils, including where appointed as committee of management of reserved CL. This is also the case with the Public Use and Public Conservation and Resource Zones.

Alignment of planning scheme boundaries with the area over which Council has management responsibilities would be helpful.

Re-alignment of the municipal boundary may be useful if Local Laws are needed to impose fees or regulate behaviours within areas that are currently outside that boundary.

Car-parking

Two automatic ticket machines cater to boat launching by casual users. The fee paid allows parking in the car and trailer parking bays provided. Parking limits and non-payment of fees is enforced by HBCC through Local Laws. Should a person chose to launch and park off-site and away from designated car and trailer parking bays, no fee is payable.

The fees have not been aligned to any other facility but it is understood that the City of Wyndham may have aligned its fees with HBCC.

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The description of the fee payable for using the facility to launch and retrieve a boat as a daily ‘launching’ fee or annual ‘boat ramp’ fee, can be misleading. A person launching a boat and parking outside designated car and trailer parking areas is not required to pay the fee. The type of language used may be designed to discourage people launching and parking in side streets nearby, but is at odds with how the fee is described elsewhere (e.g. it is designated as a “Boat Trailer Parking” fee at Portland).

Demand

Increasing demand is the key issue for users, stakeholders, neighbours and Council. At peak times, delays of up to 3 hours can be experienced for those wishing to launch, with traffic on surrounding roads (and nearby rail-crossing) being impacted significantly (e.g. through-traffic being totally impeded along Altona Road). The period regarded as ‘peak’ is also expanding.

There is a single entry point and exit point to the facility which leads to circulation problems at peak times for those seeking to park within the site. Off-site parking can create delays in launching and retrieval.

The Altona and Seaholme Foreshore Community Vision – November 2012, notes the need to reasonably enhance car and trailer parking at the Altona Boat Ramp, but infers that this be achieved without further expansion.

Reconfiguration of the site to increase parking and circulation will be constrained by the location of the fishing club buildings.

4.3.3 Conclusions

- Governance arrangements need to be formalised to ensure roles and responsibilities of bodies with management of all the aspects of boating facility management are clear and unambiguous. Formalisation of these arrangements ensures the Head of Power to act, eliminates doubt and reduces risk.
- Maintenance dredging for recreational boating is an issue across Port Phillip and Western Port, as well as some locations on the outer coast. There is no sound rationale to say why dredging for public facilities, such as the Altona boat ramp, is required to be undertaken by the facility manager, usually the local council, while the Local Port Manager takes responsibility for the activity elsewhere. There are significant costs in dredging, spoil disposal and in obtaining necessary approvals. A more logical approach using economies of scale and simplified approvals would be beneficial.
- It is likely that PV, which has statutory responsibility for such action, together with the experience and specialist knowledge required to deliver, is in the best position to plan and deliver dredging across Port Phillip Bay and Western Port most efficiently. PV would also only require one approval (CM Act consent) rather than two as is required of other parties. If it is only funding, or lack of it, that has defined those areas for which PV currently undertakes dredging, then opportunities to have PV take responsibility for all maintenance dredging relating to public boating facilities in PPB and Western Port, and be funded accordingly, should be explored.

Boating Facilities Governance

- If starting with a green field site, the planning process should consider the need for future expansion. The Altona experience has shown that a stepped approach to development can lead to decisions being taken (i.e. placement of buildings occupied by tenants) that limit + future development opportunities.
- Consistency in how launch or car and trailer parking fees are described and applied across the State would be helpful.

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4.4 Sandringham

4.4.1 General Description

Crown land description

The Sandringham Harbour comprises four parcels of Crown land: Crown Allotments 21G, 21H, 21J and 2004 on Parish Plan 3163, all reserved for public purposes (temporary).

- CA 21G contains the lease area of the Sandringham Yacht Club, including the Yacht Club building, main car park, boat yard, ancillary buildings and mooring pens.
- CA 21H is a narrow strip of land containing the rock breakwater.
- CA 21J is the seabed of the harbour outside the Yacht Club lease area, which contains about 30 swing moorings
- CA 2004 is a crescent-shaped beach area of approximately 2.5ha. This area used to be seabed (below Low Water Mark in 1906), but sand has since accreted within the harbour, and it is now a permanent sandy foreshore.

These four parcels are managed by Parks Victoria under the provisions of the *Crown Land (Reserves) Act 1978*.



Adjoining CA 21G and CA 2004 is CA 21B, permanently reserved as Public Park, and managed by Bayside City Council under the provisions of the *Crown Land (Reserves) Act 1978*. Crown Allotment 21B comprises the cliff-top and sloping face of the cliff. It is mostly vegetated, but contains several car parks and a toilet block. A narrow curved strip of this reserve at the foot of the cliff contains several harbour-related buildings and tenancies. The management of this small curved strip is in the process of being transferred from Bayside City Council to Parks Victoria, as it relates more to the harbour than to the rest of the cliff-top parks.

Boating Facilities Governance

Planning Controls

In the Bayside City Council Planning Scheme, the entire harbour area, foreshore reserve, and seabed 600 metres seaward of the harbour breakwater is zoned Public Park and Recreation Zone. The purpose of the Zone is to recognise areas for public recreation and open space, to protect and conserve areas of significance where appropriate, and to provide for commercial uses where appropriate.

Most actions by the designated public land manager do not require a planning permit, but any other entity will require a planning permit for most uses and development.

The harbour area is also covered by various Planning Scheme Overlays, including:

- Design and Development Overlay
- Erosion Management Overlay
- Vegetation Protection Overlay

A Heritage Protection Overlay covers some areas of the foreshore adjacent to the harbour.

The general effect of these overlays is to trigger a planning permit requirement mainly in relation to vegetation removal, and to apply guidelines for the design of buildings.

Coastal Management Act 1995

The harbour area is designated as Coastal Crown land under the *Coastal Management Act 1995*, and requires a separate consent from the Minister for Environment and Climate Change for any use or development of Coastal Crown land. The power to issue this consent is in some cases delegated to the Department of Environment and Primary Industries, or the consent is given in advance for various minor developments or maintenance.

Boating responsibilities

Under the Port Management Act 1995 and the Marine Safety Act, Parks Victoria is the Local Port Manager and waterway manager for the navigable waters of Port Phillip and Western Port, as well as the Port of Port Campbell. Parks Victoria has the power to manage recreational boating activity on these waters and is able to manage the swing moorings in the harbour under this legislation.

Day-to-day patrols and compliance duties can be carried out by duly authorised ranger staff. In practice, in an emergency situation, the Water Police will invariably exercise their powers rather than Parks Victoria staff.

Transport Safety Victoria also authorise officers under the Marine Safety Act to undertake compliance and patrols, particularly over the busy snapper season and summer period.

Municipal boundary

Within Port Phillip Bay, conventionally municipal boundaries are defined by the Mean Low Water Mark. Under the Local Government Act and the Planning and Environment Act 1987, Councils are able to exercise their planning powers outside the municipal boundary. Typically, this is the situation around Port Phillip, where the municipal boundary is at Low Water Mark, but the municipal planning schemes extend 600m seaward, replicating the powers of the former Port Phillip Authority which was abolished in the mid-1980s.

Boating Facilities Governance

However, around Sandringham Harbour, the municipal boundary has been extended to include the Breakwater, Yacht Club lease area and harbour waters. This has two implications: firstly, authorised Council officers are able to use Local Laws powers within this extended boundary. Secondly, Council is also able to exercise its municipal rating powers, and charge rates within this area.

4.4.2 Discussion

Governance

The foregoing paragraphs are a very brief summary of the governance issues in Sandringham Harbour. To the uninitiated, these roles and responsibilities may appear complex and difficult to understand. However, it is fair to say that this governance regime is as clear and simple as one might find anywhere on the Victorian coastline.

Parks Victoria's responsibilities align with the harbour-related uses, and it directly manages the single land-and-seabed lease with the Sandringham Yacht Club. It also has complementary powers under the Crown Land (Reserves) Act 1978, the Port Management Act 1995 and the Marine Safety Act.

Bayside Council is responsible for the cliff-top parkland and car parking in the precinct, but has no direct involvement with the harbour, other than exercising its municipality-wide responsibilities under the Planning and Environment Act 1987. Both Council and Parks Victoria officers have various complementary authorisations under many different heads of power.

Parks Victoria staff and officers of Bayside City Council have a very clear understanding of their separate and shared responsibilities. The major tenant, the Sandringham Yacht Club has a sound understanding of which agency has these varied responsibilities, and relationships between the two agencies and main tenant are as cordial and professional as one could expect.

Foreshore Plan

Prior to the Sandringham Foreshore Plan of 2010, the management of the precinct was considerably more complicated. The Department of Sustainability and Environment (now the Department of Environment and Primary Industries) was an additional land manager in the precinct. The Department managed the Yacht Club tenancy, but had limited land management capability. The municipal boundary was also at the Low Water Mark, limiting the capacity of the Council to manage the precinct.

The Foreshore Plan laid out an approach to simplify management arrangements in the precinct. These arrangements are almost fully in place. The agency representatives and the Yacht Club all report that the arrangements and relationships are as good as could possibly be expected. According to their representatives, there is no doubt that the simplification has made it more efficient, easier and quicker for issues to be raised and resolved between tenants and agencies.

Governance model

So does Sandringham Harbour represent the perfect management model which should be replicated all along the coast? The answer is yes, in some ways, but no in others.

Sandringham is essentially a private facility, and significant areas of the foreshore are not openly available to the public. Of course, it is appropriate that the Club pays

Boating Facilities Governance

a Crown rental that reflects the privilege Club Members have in enjoying such a prime location on the coast. And the Club plays its role as a community organisation in offering boating and safety training, various community support programs, and several excellent facilities (boatyard, restaurant and others) which are available to the public at a cost.

There are other clubs in similar situations, such as Royal Melbourne Yacht Squadron in St Kilda Harbour and several clubs in Williamstown and other boating precincts.

While these tenancies are largely based on historical occupation of the foreshore and are reasonably well accepted by the public, it is fair to say that new proposals to establish or extend private occupation of foreshore areas are often controversial, and divide opinion in local communities.

However, the principles of simplification can be applied in other places. Alignment of cadastral boundaries such as planning schemes and responsibilities under other legislation can be helpful. Re-alignment of municipal boundaries may be useful in some situations. The elimination of one or two management agencies from a precinct can be a significant improvement, provided this does not diminish necessary management capability.

Maintenance Dredging

Seemingly, the only significant issue of contention for the harbour is that of maintenance dredging. This is a necessary activity to ensure safe navigation in various locations around Port Phillip. It is also very expensive, both to carry out the physical task, but also to get the necessary approvals under the EPA's Dredging Protocol and under the Coastal Management Act 1995.

Parks Victoria has an annual maintenance dredging budget in excess of \$2m, which is used primarily to keep open the entrances of the Queenscliff Cut and Patterson River. There are also several other locations Parks Victoria has traditionally carried out dredging as part of its Local Port Manager responsibilities.

The Yacht Club carries out maintenance dredging from time to time in its lease area, but is reluctant to dredge a channel which is outside the lease area and also serves the adjacent swing moorings managed by Parks Victoria.

The lack of dredging activity is largely a function of limited budgets. However from a governance perspective, and perhaps the wider community, powers already exist to carry out the task. It may well be unreasonable to expect the wider community to pay for an activity which only benefits boat owners. A taxpayer who doesn't own a boat could probably suggest a solution: that costs are attributed against the Yacht Club and its members, and the swing mooring licence-holders. Contributions are collected by Parks Victoria, who then carries out the work.

4.4.3 Conclusions

- Coastal governance can be inherently complex. Nevertheless, experience at Sandringham Harbour confirms that the tools exist to bring about some welcome streamlining of responsibilities, and reduce the amount of unnecessary administrative burden on all parties.
- It is also clear that the fact that land and seabed in the harbour are reserved and managed by Parks Victoria is highly beneficial for a good understanding of relevant responsibilities, and minimising double-handling of administrative matters.

Boating Facilities Governance

- Parks Victoria has sufficient powers under the Crown Land (Reserves) Act 1978 to manage moorings and undertake its broad land/seabed management role in the precinct. It is possible in some localities with minor facilities, the additional Port Manager role may be superfluous, and offers no additional advantage. However, in Port Phillip, it is probably useful to retain an organisation with Port Manager responsibilities, on-water capacity, and similar contiguous compliance responsibilities (Marine National Parks).
- Maintenance dredging for recreational boating is an issue across Port Phillip and Western Port, as well as some locations on the outer coast. There is no sound rationale to say why some channels are dredged by the Local Port Manager, and some by local government or a Yacht Club, and some not at all. There are significant costs in dredging, spoil disposal and in obtaining necessary approvals. A more logical approach using economies of scale and simplified approvals would be beneficial. The user-pays principle, although likely to be unpopular (and expensive) in some places, could be reasonably applied to maintenance dredging.

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4.5 Patterson River

4.5.1 General Description

Crown land description

The Patterson River boating precinct comprises three main parcels of Crown land: Crown Allotments 101B, 102B and 2006 on Parish Plan 3025, Parish of Lyndhurst, are unreserved Crown Land, vested in Melbourne Water.

- CA 101B is the riparian land now used as the car park and launching areas
- CA 102B is the bed of the Patterson River between Nepean Highway and the Frankston Freeway
- Lot 2006 is Launching Way, the roadway connecting to the car park.



These parcels are assigned to Melbourne Water but are under the day-to-day management of Parks Victoria through a simple management agreement. There is no prescription given for Melbourne Water's management regime, but it can be presumed that the primary purpose is for flood management of levee banks and low-lying adjoining residential areas. Parks Victoria's responsibility is to manage the precinct for recreational boating purposes, presumably avoiding conflict with Melbourne Water's obligations.

Adjoining these allotments are several others under different regimes:

- Lot 1 TP678536 comprising land and river bed at the mouth of the river, downstream of Nepean Highway, managed by the City of Kingston
- CA 1A3 on PP 3025; an area approximately 250m x 1000m, being seabed in Port Phillip immediately west of the mouth of the river. This is the area where sandbars would build up and require dredging activity. The municipal boundary deviates from Low Water Mark to include this area.
- CAs 7A1 and 7A2 on PP 3025, being areas of foreshore adjacent to the mouth of Patterson River, managed by the City of Kingston.
- CA 101G is a very small allotment of 35m² just off Launching Way, adjacent to the site office building, and managed by Parks Victoria.

Boating Facilities Governance

Through a lease to an on-site operator, the site is managed with a daily presence to run a small convenience store, sell fuel and charge for car parking.

Planning Controls

In the City of Kingston Planning Scheme, the foreshore reserve, the mouth of Patterson River upstream to Nepean Highway, and seabed 600 metres seaward of the harbour breakwater is zoned Public Park and Recreation Zone. The purpose of the Zone is to recognise areas for public recreation and open space, to protect and conserve areas of significance where appropriate, and to provide for commercial uses where appropriate.

There is a narrow Public Use Zone (Transport) – PUZ4 crossing Patterson River. This Zone appears to include Nepean Highway and the Frankston Railway line. It is not clear if the zone also includes the adjacent footbridge.

Upstream of the Public Use Zone (Transport) is a Public Use Zone (Service and Utility) – PUZ1. This zone covers Patterson River itself, the adjacent dry land and levee banks, as well as Launching Way, a roadway leading to the car park area and public boat ramps. It appears that Launching Way follows the alignment of a tributary to Patterson River. It is assumed that this watercourse has been channelled underground.

Most actions by the designated public land manager do not require a planning permit, but any other entity will require a planning permit for most uses and development.

The boating precinct is also affected by various Planning Scheme Overlays, including:

- Design and Development Overlay
- Land Subject to Inundation Overlay
- Special Building Overlay

Other Overlays exist nearby but do not directly affect the boating precinct:

- Development Plan Overlay
- Environmental Audit Overlay
- Environmental Significance Overlay
- Heritage Overlay

The general effect of these overlays is to trigger a planning permit requirement mainly in relation to flooding issues, and to apply guidelines for the design of buildings.

Coastal Management Act 1995

The boating area at the mouth of the Patterson River is designated as Coastal Crown land under the *Coastal Management Act 1995*, and requires a separate consent from the Minister for Environment and Climate Change for any use or development of Coastal Crown land. The power to issue this consent is in some cases delegated to the Department of Environment and Primary Industries, or the consent is given in advance for various minor developments or maintenance.

Upstream of Nepean Highway, the river and adjacent dry land have been explicitly gazetted as “not Coastal Crown Land” and therefore are not covered by the provisions of the *Coastal Management Act 1995*.

Boating Facilities Governance

Boating responsibilities

Under the *Port Management Act 1995* and the *Marine Safety Act 2010*, Parks Victoria is the Local Port Manager and waterway manager for the navigable waters (including Patterson River) of Port Phillip and Western Port, as well as the Port of Port Campbell. Parks Victoria has the power to manage recreational boating activity on these waters and is able to manage the swing moorings in the harbour under this legislation.

Day-to-day patrols and compliance duties can be carried out by duly authorised ranger staff. In practice, in an emergency situation, the Water Police will invariably exercise their powers rather than Parks Victoria staff.

Transport Safety Victoria also authorise officers under the *Marine Safety Act* to undertake compliance and patrols, particularly over the busy snapper season and summer period.

Municipal boundary

Within Port Phillip Bay, conventionally municipal boundaries are defined by the Mean Low Water Mark. Under the Local Government Act and the Planning and Environment Act 1987, Councils are able to exercise their planning powers outside the municipal boundary. Typically, this is the situation around Port Phillip, where the municipal boundary is at Low Water Mark, but the municipal planning schemes extend 600m seaward, replicating the powers of the former Port Phillip Authority which was abolished in the mid-1980s.

However, around the mouth of Patterson River, the municipal boundary has been extended to include seabed and waters. This has two implications: firstly, authorised Council officers are able to use Local Laws powers within this extended boundary. Secondly, Council is also able to exercise its municipal rating powers, and may charge rates on any occupancies within this area.

4.5.2 Discussion

Governance

The obvious complication in terms of managing recreational boating is the additional management layer imposed with the vesting of land in Melbourne Water, and the subsequent management agreement with Parks Victoria. If Melbourne Water has sufficient powers under its legislation to carry out its drainage and flood management responsibilities, it should be a simple matter to surrender the land to the Crown, for the land to be reserved under the *Crown Land (Reserves) Act 1978* for public purposes, and for DEPI to allocate management responsibility directly to Parks Victoria. Alternatively, if Melbourne Water must retain management of the waterway, there is no reason why it should not also manage the launching ramps as well through the existing lease to the operator.

Parks Victoria's responsibilities align with the boat launch-related uses. It also has complementary powers under the *Crown Land (Reserves) Act 1978*, the *Port Management Act 1995* and the *Marine Safety Act 2010*.

Kingston Council is responsible for car parking in adjacent streets in the precinct, but otherwise has no direct involvement with the launching area, other than exercising its municipality-wide responsibilities under the *Planning and Environment Act 1987*. Both Council and Parks Victoria officers have various complementary authorisations under many different heads of power.

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Parks Victoria staff have a very clear understanding of their separate and shared responsibilities.

The management of the facility should be simplified through Melbourne Water, relinquishing the vesting of the land, for it to be reserved and management delegated to Parks Victoria. This would also enable the existing lease to be put on a proper footing under the *Crown Land (Reserves) Act 1978*.

The principles of simplification can be applied in other places. Alignment of cadastral boundaries such as planning schemes and responsibilities under other legislation can be helpful. Re-alignment of municipal boundaries may be useful in some situations. The elimination of one or two management agencies from a precinct can be a significant improvement, provided this does not diminish necessary management capability.

Maintenance Dredging

An issue for Patterson River is the requirement for maintenance dredging, mainly at the mouth. This is a necessary activity to ensure safe navigation in various locations around Port Phillip. It is also very expensive, both to carry out the physical task, but also to get the necessary approvals under the EPA's Dredging Protocol and under the *Coastal Management Act 1995*.

Parks Victoria has an annual maintenance dredging budget in excess of \$2m, which is used primarily to keep open the entrances of the Queenscliff Cut and Patterson River. There are also several other locations Parks Victoria has traditionally carried out dredging as part of its Local Port Manager responsibilities.

Typically, Patterson River mouth is dredged three or four times a year, when trigger-point depths are shown by survey to have been reached.

Parks Victoria receives feedback from boaters when sandbars develop offshore, and also from local residents when dredge spoil is deposited on beaches, and organic matter gives off odours. This organic matter dissipates after a few days.

Again, dredging is paid for through general tax revenue, and Parks Victoria carries out the work with funds from the Department of Transport Planning and Local Infrastructure. It is reasonable to examine the question as to whether dredging should be paid for through user-pays funding. Theoretically, this could be shared by the boat-owning residents of Patterson Lakes, as well as through public launching fees. The practical effect of increasing fees to the appropriate level (say an additional \$5 per launch) would be to push car-and-trailer parking onto adjacent residential streets. However, perhaps this could be introduced progressively over several years.

4.5.3 Conclusions

- Although the governance regime appears unluly complex, for Patterson River, the tools exist and can be used to bring about some welcome streamlining of responsibilities, and reduce the administrative burden on all parties.
- Melbourne Water should surrender the land to the Crown, to be reserved under the *Crown Land (Reserves) Act 1978* for public purposes, and for DEPI to allocate management responsibility directly to Parks Victoria.

Boating Facilities Governance

- The fact that land and river bed in the harbour are managed by Parks Victoria is highly beneficial for a good understanding of relevant responsibilities, and minimising double-handling of administrative matters.
- Parks Victoria appears to have sufficient powers under the *Crown Land (Reserves) Act 1978* to manage pile moorings in the river, dredge the entrance of the river and undertake its broad land/seabed management role in the precinct.
- It is possible in some localities with minor facilities, the additional Port Manager role may be superfluous, and offers no additional advantage. However, in Port Phillip, it is probably useful to retain an organisation with Port Manager responsibilities, on-water capacity, and similar contiguous compliance responsibilities (Marine National Parks).
- Maintenance dredging for recreational boating is an issue across Port Phillip and Western Port, as well as some locations on the outer coast. There is no sound rationale to say why some channels are dredged by the Local Port Manager, and some by local government or a Yacht Club, and some not at all. There are significant costs in dredging, spoil disposal and in obtaining necessary approvals. A more logical approach using economies of scale and simplified approvals would be beneficial. The user-pays principle, although likely to be unpopular (and expensive) in some places, could be reasonably applied to maintenance dredging.

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4.6 Gippsland Lakes

4.6.1 General Description

The Gippsland Lakes constitute the most complex case study examined in this project. They cover 340 square kilometres, with a coastline exceeding 500 km. A map of the Lakes lists no fewer than 72 sites of interest to recreational boaters, including 26 with boat launching ramps, 48 with public jetties, and 3 with public swing moorings.



Gippsland Lakes exhibit three forms of governance-related complexity:—

- A history of various forms of Strategic Plan
- Multiple agency remits, both in terms of geographic boundaries and functions
- Cadastral or land status complexity – particularly related to Crown land

A Legacy of Strategic Plans

As for the legacy of strategic plans, the following are indicative:-

- Gippsland Lakes Strategy, DCE, 1990
- Environmental Audit and Environmental Strategy (CSIRO, 1988 and 2001)
- Gippsland Lakes Coastal Action Plan (GCB, 1999 – currently under review)
- Gippsland Lakes Future Directions and Action Plan (GLCTF, 2002)
- Integrated Planning for Gippsland – Coastal Action Plan (GCB, 2002)

Boating Facilities Governance

- Gippsland Lakes Ramsar Site Strategic Management Plan (DSE, 2003)
- State of the Gippsland Coast (GCB, 2006)
- Boating Amenities and Sustainable Infrastructure Study (GCB, 2008)
- Gippsland Lakes Natural Assets Report Card (GLCTF, 2011)
- Gippsland Lakes Environmental Strategy (Ministerial Advisory Committee, Draft, 2012)

Multiple agency remits

The agency-related complexity is both geographic and functional. Here we find that control and management of various specified areas falls to:-

- Gippsland Ports Inc
- Parks Victoria
- VicForests
- Two municipalities (and a further three in the catchment)
- Several community-based Committees of Management

Further powers and functions (often within specified areas) are exercised by -

- The Gunai Kurnai Aboriginal community
- Two Catchment Management Authorities
- The Gippsland Coastal Board
- Urban and Rural Water corporations
- The Gippsland Lakes Ministerial Advisory Committee
- Environment Protection Authority

Of the many agencies involved with governance of the Gippsland Lakes, two are of a type not reflected in the other case studies. These are Gippsland Ports, and the Gippsland Lakes Ministerial Advisory Committee.

Gippsland Ports is an incorporated Committee established under section 14A of the *Crown Land (Reserves) Act 1978*. It was established in 1996 to provide a regional service to the local community, visitors and other user groups. It is Local Port Manager under the Port Management Act for the Local Port of Gippsland Lakes, and four other Local Ports. It is the designated waterway manager under the Marine Act for seven waterways, including the waters of the five Local Ports.

The scale and charter of Gippsland Ports sets it aside from many other Local Port Managers and Waterway Managers, while its boating-focused core business sets it apart from Parks Victoria.

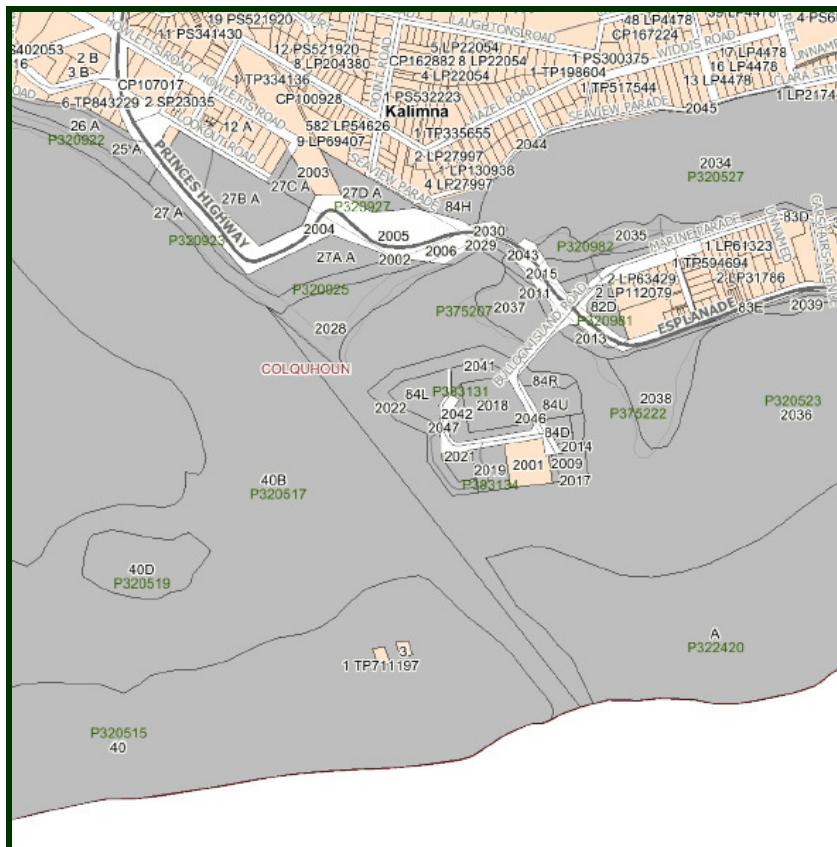
The Gippsland Lakes Ministerial Advisory Committee is an *ad-hoc* non-statutory authority answerable directly to the Minister for Environment and Climate Change and the Minister for Regional and Rural Development. It has a life-span of 3 years. Organisational support is provided by the East Gippsland Catchment Management Authority.

The Committee has no formal powers, but exercises considerable influence through coordination, studies such as the Gippsland Lakes Environmental Strategy, and allocations from the \$10 million Gippsland Lakes Environment Fund.

Boating Facilities Governance

Cadastral Complexity

The complexity of the cadastre in an area such as the Gippsland Lakes is illustrated by the following series of maps – each covering the eastern end of Lake King and The Entrance.

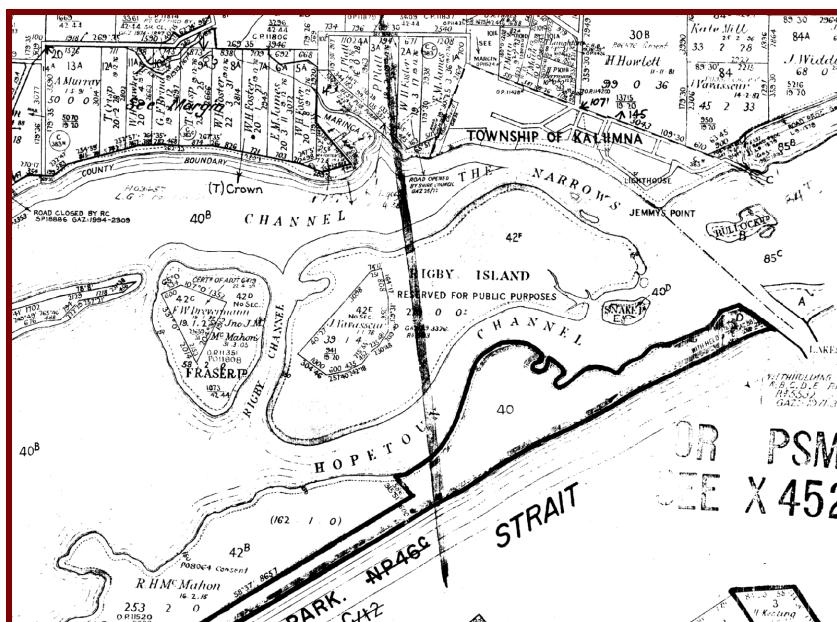


This map, derived from DEPI's 'Explore Victoria On-Line' website shows:-

Parishes (in this case, Colquhuon);

For the Crown land (grey) - Crown Allotment numbers (e.g. 40B); Parcel numbers (e.g. P320517);

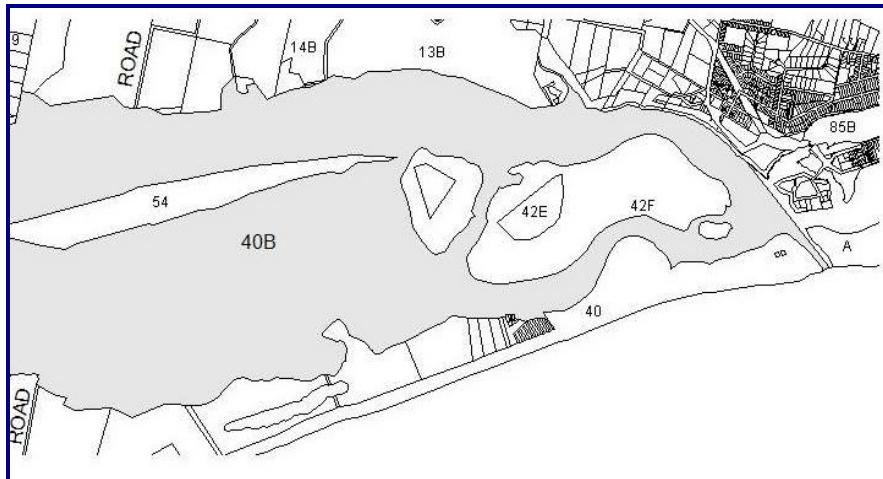
For the freehold (pink) – references to Crown Allotments, Title Plans, or Plans of Subdivision.



This is part of the Parish Plan for the Parish of Colquhuon.

It shows the original Crown dealings, including alienations as freehold, reservations, and creation of the Coastal Park.

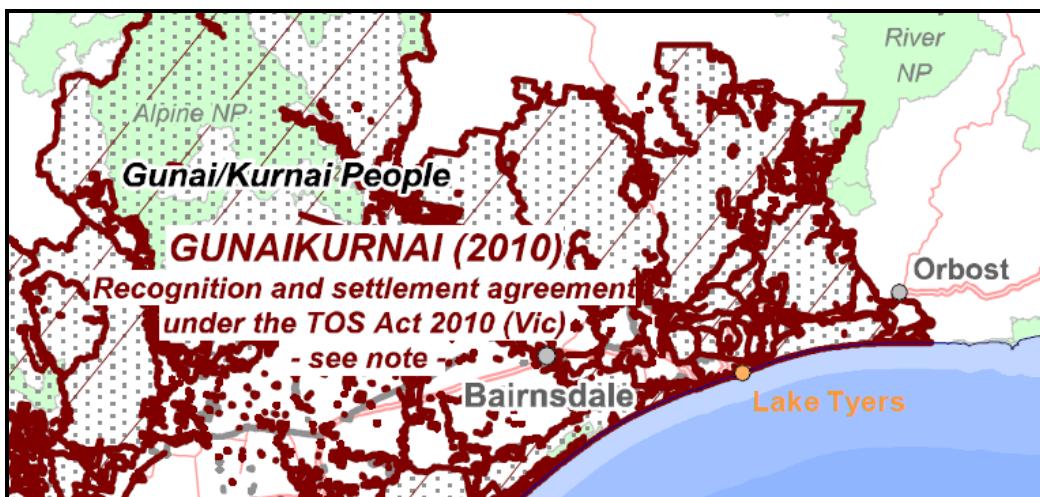
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This is part of a Status Report for CA 40B, Parish of Colquhuon, from the DTPLI 'Landata' website. The accompanying information shows the Crown Allotment to have four different Crown land statuses:-

- Part is temporarily reserved for Public Purposes by virtue of an Order in Council dated 30 September 1889.
- Part is unreserved Crown land
- Part is permanently reserved for Public Purposes by virtue of an Order in Council dated 23 May 1881
- Part is temporarily reserved for Public Purposes by virtue of an Order in Council dated 21 January 1879.

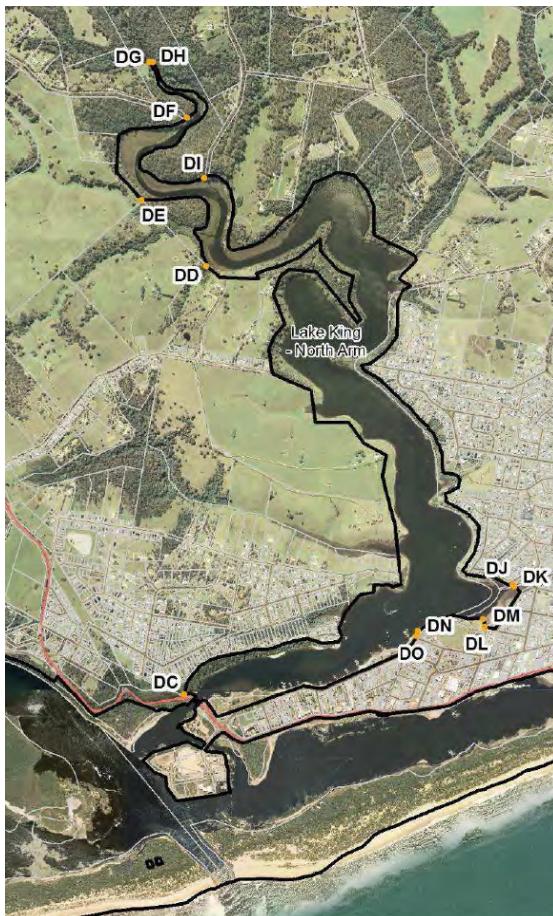
Some of these Orders in Council relate to clearly defined parcels; others relate to areas defined by geographical features, e.g. 'one chain from the Low Water Mark.' In cases such as this, a meaningful determination of current status can be made only by a Licensed Surveyor.



This map shows the area within which the Gunai Kurnai Aboriginal people hold native title rights. Use and development of Crown land in this area must comply with the Commonwealth *Native Title Act 1993* – possibly through adoption of an Indigenous Land Use Agreement (ILUA)..

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Quite separately, the Lakes and most of their hinterland are Areas of Cultural Significance under the Aboriginal Heritage Act 2004, and in many circumstances works will require a Cultural Heritage Management Plan (CHMP).



The Gippsland Lakes Ramsar site is one of 64 wetland areas in Australia listed as Wetlands of International Importance under the Ramsar Convention.

As illustrated from this detail from the official map of its boundaries, the site includes many of the Lakes' abutting estuaries, marshes and dune systems.

As a Ramsar site, activities which may impact on certain species (particularly bird species) are governed by the Commonwealth Environment Protection and Biodiversity Control (EPBC) Act.

4.6.2 Discussion

Gippsland Lakes are of such a size, and with such an intensity of usages, that they exhibit many of the complexities illustrated by the other case studies examined in this project.

Over and above the matters common to Gippsland Lakes and other sites, Gippsland Lakes has certain governance arrangements warranting special attention here.

Gippsland Ports

When Victoria's ports were reformed in the 1990s, Gippsland Ports emerged as a unique type of entity. It is the only authority managing a suite of ports and waterways, and having port and waterway management as its core business.

Now, some 20 years after the port reforms, it would appear timely to review the relative successes of the various formulae adopted for appointment of Local Port managers. There would seem to be a case for viewing Gippsland Ports as a successful model suitable for applying to Local Ports elsewhere.

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The Ministerial Advisory Committee

There would also seem to be a case for regarding the Gippsland Lakes Ministerial Advisory Committee as a success.

It is well-accepted that complex areas of public administration often need coordination. Some forms of coordination, however, seem to work better than others. The Port Phillip Authority (1968 – 1983) was, in retrospect, generally regarded as being a further layer of bureaucracy superimposed on an already complex system of coastal governance.

As the Ministerial Advisory Committee approaches the end of its 3-year lifespan, it would appear appropriate for government to review its achievements and form a view on whether it provides a model for coordination of complex environments elsewhere.

Commonwealth involvement

Of the eight case studies considered in this project, the Gippsland Lakes provides the clearest reminder that although recreational boating is governed principally by state law, it is also affected by Commonwealth law.

The entire Gippsland Lakes area is subject to Native Title, and therefore works are 'future acts' for the purposes of the Native Title Act. Likewise, the entire Lakes area is within a declared Ramsar area, and works must comply with the Commonwealth EPBC Act.

Risk Exposure

One of the most notable documents reviewed in the course of this consultancy has been advice relating to risk exposure, prepared for Gippsland Ports by the law firm Clayton Utz.

The advice addresses the legal obligations of Gippsland Ports as a Waterway Manager, as a Local Port Authority and as a Crown Land Committee of Management. In particular, it addresses the consequences of failure to meet these obligations as a result of deficiencies in funding.

It discusses the circumstances in which the conferral of statutory functions might be interpreted as a duty to perform those functions which, if not met, would constitute negligence and give rise to liability for damages.

Part XII of the *Wrongs Act 1958* sets out the principles a court must consider in determining whether a public authority has a duty of care to people exposed to loss or injury. These principles tend to suggest that in defending itself against a charge of negligence, an agency might cite lack of financial and other resources. On the other hand, the principles tend to suggest that an agency's duty is greater if it performs a narrowly rather than broadly defined range of functions.

4.6.3 Conclusions

- Gippsland Ports appears to have been one of the more successful of the Port Authorities established in the course of the Kennett Government's port reforms of the mid 1990s. Consideration should now be given to using it as a model for management of other groups of Local Ports and waterways.
- Likewise, the Gippsland Lakes Ministerial Advisory Committee appears to have been a successful innovation. Consideration should now be given to:-
 - commissioning an independent review of its success

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- extending its term beyond its 3-year lifespan
- using it as a model for coordination of other complex areas (e.g. Western Port or the River Murray)
- giving it statutory recognition as a Regional Coastal Board under the Coastal Management Act
- There is a clear need to analyse and review the types of risk exposure falling on Local Port Authorities and Waterway Managers, in light of their limited funding and breadth of responsibilities.
- Revenues from boating-related tenures such as jetty licences should be retained locally, rather than credited to the Consolidated Fund. This is readily achievable through appointment of Committees of Management under the Crown Land (Reserves) Act
- Bodies best able to accept significant public land management responsibilities (for instance, as Waterway Managers, Local Port Managers or Crown Land Committees of Management) will have one or more (preferably all) of the following characteristics:-
 - sufficient size and substance to employ professional staff and achieve economies of scale
 - an independent capacity to develop well-informed policies
 - a charter which recognises the land management as a core function
 - clear accountability to a critical and involved superior agency
 - capacity and willingness to come under community scrutiny.

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4.7 Lake Eildon

4.7.1 General Description

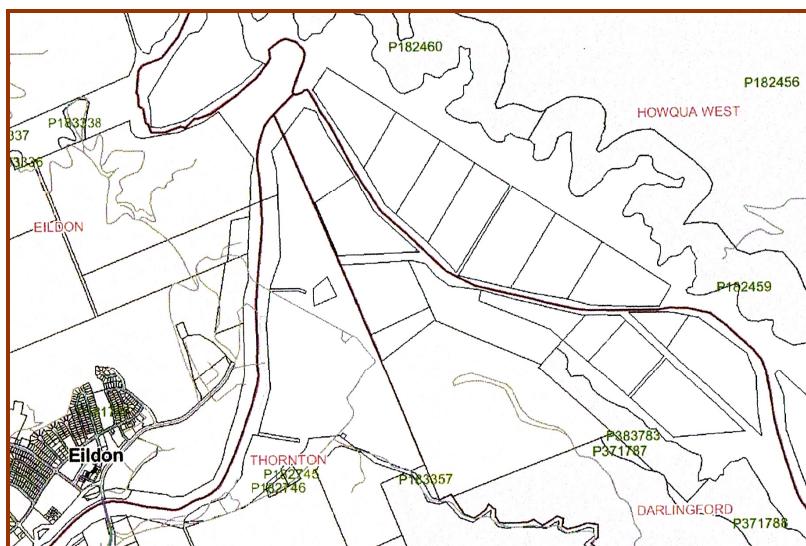
In terms of surface area, Lake Eildon is the largest artificial water body in Victoria, covering 13,800 ha at full supply level. It rates as one of Victoria's most popular holiday destinations. At six times the size of Sydney Harbour, Lake Eildon is the only reservoir in Victoria where houseboats are permitted to operate.

Governance

The land occupied by the lake is a mixture of freehold held in title by G-MW as the successor of the State Rivers and Water Supply Commission (SR&WSC), and Crown land vested in G-MW under section 32 of the Water Act 1989.

About half of the Lake's 500 km shoreline is bounded by Crown land, being the Lake Eildon National Park or Reserved Forest. The remainder is bounded by freehold land.

The lake was originally created in 1915, and expanded in the 1950s. As inundated land its governance features are quite different from natural lakes, river frontages or the coastline. Some evidence of the pre-1915 cadastre remains in the form of Parish boundaries, re-acquired Crown allotments, and discontinued road reserves in the centre of the Lake.



4.7.2 Discussion

Boating Responsibilities

G-MW is the designated Waterway Manager under the *Marine Safety Act 2012*. This appointment may well be appropriate, but seems to have resulted from historical momentum rather than from any recent policy-based analysis.

G-MW manages 14 water storages with recreational boating, but is Waterway Manager only for some. At Lake Nagambie, for instance, the Shire of Strathbogie is

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Waterway Manager; and at Lake Boga, the Waterway Manager is the Shire of Swan Hill. At Kow Swamp there is no designated Waterway Manager.

Boating Launching

Recreational facilities at Lake Eildon include 42 boat launching ramps, as follows:-

- 26 open to the public
- 5 at commercial marinas
- 5 operated by private boat clubs
- 5 associated with Caravan parks
- 1 for G-MW's own vessels

Use of these facilities is closely related to water levels, so at any one time only some ramps will be available.

Forms of management regime include the following:-

- G-MW direct management
- Parks Victoria direct management
- G-MW licence to Murrindindi Shire
- G-MW and Mansfield Shire Memorandum (MOU)
- G-MW lease to caravan park operator
- G-MW lease to commercial tenant
- G-MW licence to private boat club
- G-MW licence to private tenant

There are also some 30 private slipways.

Audit of Recreational Boat Ramps

The Lake Eildon Land and On-Water Management Plan (2012) recognised a series of key issues associated with the large number of boat ramps and public access points. As a priority action it proposed audits of existing boat ramps, public access points, and existing infrastructure and service provision in and around the Lake.

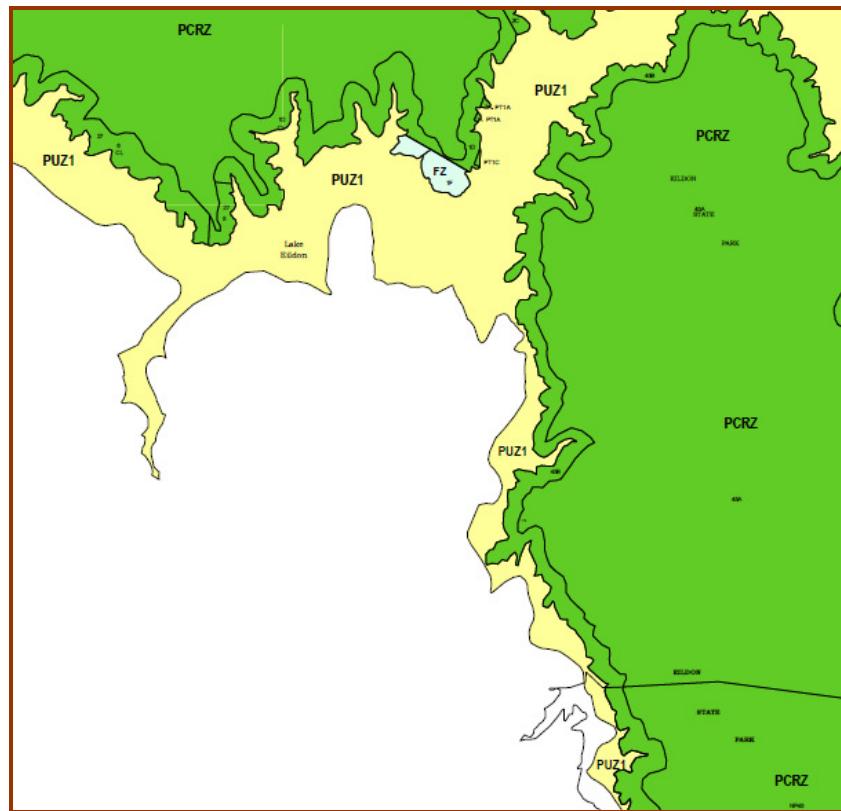
This recommendation of the Land and On-Water Management Plan is now being implemented. G-MW and the two municipalities (Mansfield Shire as lead proponent) have engaged consultants to conduct the audit.

Municipal Responsibilities

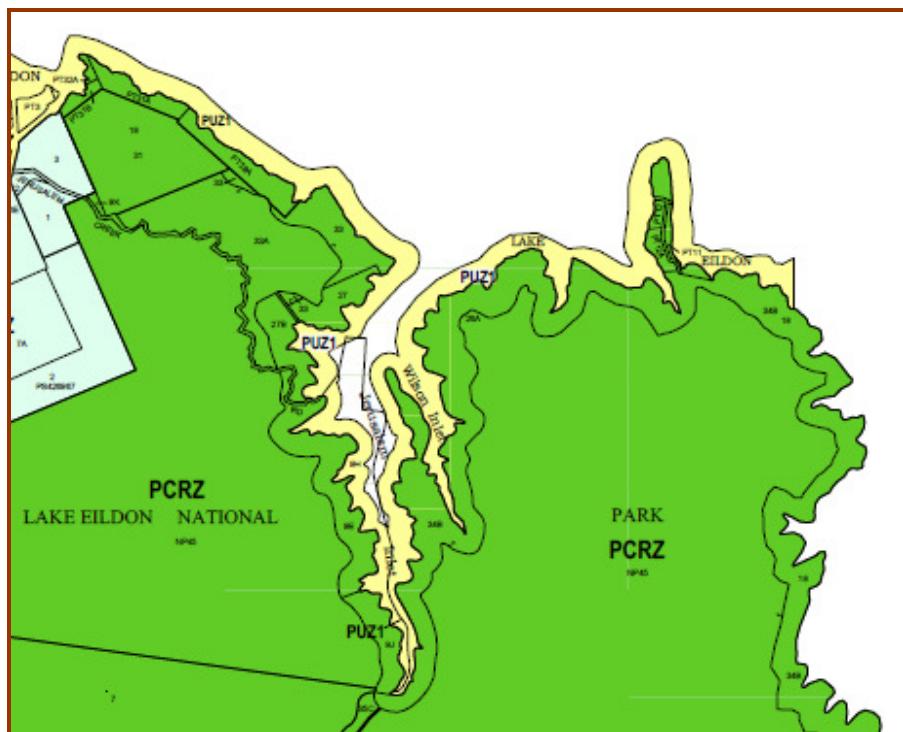
The Shire of Murrindindi lies generally to the South of the lake; the Shire of Mansfield generally to the North. The boundary between the two municipalities is the High Water Line on the southern side.

Each municipality is responsible for its own planning scheme. The boundary between those schemes is not the shire boundary but, in places, a line 200m north of the High Water Line.

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The Mansfield Planning Scheme (above) and the Murrindindi Planning Scheme (below)



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The National Park Interface

As can be seen on the Planning Scheme maps, the boundary of the Lake Eildon National Park lies 200m inland from HWM. This 200m buffer zone is managed by Parks Victoria (PV).

The Lake Eildon National Park Management Plan (July 1997) discusses governance of this buffer zone, describing it as 'complex and administratively cumbersome.'

Problems associated with management of this zone are exacerbated by the fluctuating water levels: for practical purposes the interface between the National Park and the water includes not only the 200m buffer, but also the variable-width exposed bed of the Lake.

The 1997 Management Plan proposed the adoption of the following strategy:-

Prepare a management agreement (under the provisions of Section 19C of the National Parks Act) with the Secretary NRE and Goulburn Murray Water to ensure the 200 m buffer, enclaves of State forest between the boundary and the buffer and exposed Lake areas are managed by PV.

This 1997 Management Plan is due for revision in the near future.

Roading and Parking

Access to boat ramps around the Lake's 500 km perimeter is via many roads, controlled and managed by various agencies under a range of governance regimes.

The Lake Eildon Land and On-Water Management Plan notes that 'a unified approach to traffic management on and around the boat ramps surrounding the lake has not been established.'

Roadways within formal road reserves are generally 'municipal roads' within the meaning of the Road Management Act 2004. All are controlled by relevant municipality, which may designate some, but not all, as 'public roads' to be managed in accordance with standards specified in the municipality's road management plan.

Roadways in the National Park and State Forest also come under the Road Management Act 2004. They are controlled by the Secretary for DEPI. Some, but not all, may be designated as 'public roads' to be managed by Parks Victoria in accordance with standards specified in DEPI's road management plan.

Roadways on G-MW land (whether it is freehold or vested Crown land) are not roads within the meaning of the Road Management Act 2004, which does not recognise water authorities as road authorities.

All physical roadways open to the public fall under the Road Safety Act, regardless of their governance regime.

The Lake Eildon Land and On-Water Management Plan proposes that G-MW take the lead role in development of a unified approach to traffic management at boat ramps to improve traffic flow and improve safety.

4.7.3 Conclusions

- The primary purpose of Lake Eildon is the storage of water for irrigation – against which recreational boating has traditionally taken second place. The Land and On-Water Management Plan acknowledges that recreation must be

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balanced against this primary role. This balance, however, is not reflected in G-MW's charter or funding. As a Water Corporation, G-MW's operating costs are recovered through irrigation water charges, which do not include management of public recreation facilities.

- The Audit of recreational facilities now under way should provide a sound, evidence-based and practical basis for the identification of risk exposure and prioritisation of future investment.
- On inland water storages there may be a lack of consistency in the choice of Waterway Manager under the *Marine Safety Act 2012*. There would seem to be a strong relationship between fluctuating water levels and boating safety, supporting the proposition that the Water Authority should also be the Waterway Manager and yet (e.g. at Lake Boga) these roles may fall to different authorities.
- Management of the interface zone between the Lake and the National Park seems never to have been formalised, as proposed in the 1997 National Park Management Plan. This would seem to represent an unquantified risk exposure to both G-MW and Parks Victoria.
- Strategic planning documents, although essential for coordinated land management, have a limited life expectancy. The Lake Eildon Land and On-Water Management Plan (2012) provides a set of sound (but non-statutory) strategies for inter-agency approaches to the minimisation of management inconsistencies and administrative complexities. The Lake Eildon National Park Management Plan (1997), on the other hand, may have had considerable utility at the time of its adoption, but after 17 years is in need of revision and reinvigoration.

* * * * *

4.8 Kow Swamp

4.8.1 General Description

Kow Swamp is the largest water body in the Kerang lakes system. It was once an ephemeral wetland, but since 1900 has operated as a permanent storage for irrigation water.

This usage has significantly modified the Swamp's environmental values, which are not deemed to be as significant as those of others in the Kerang lakes system – some of which are designated Ramsar sites.

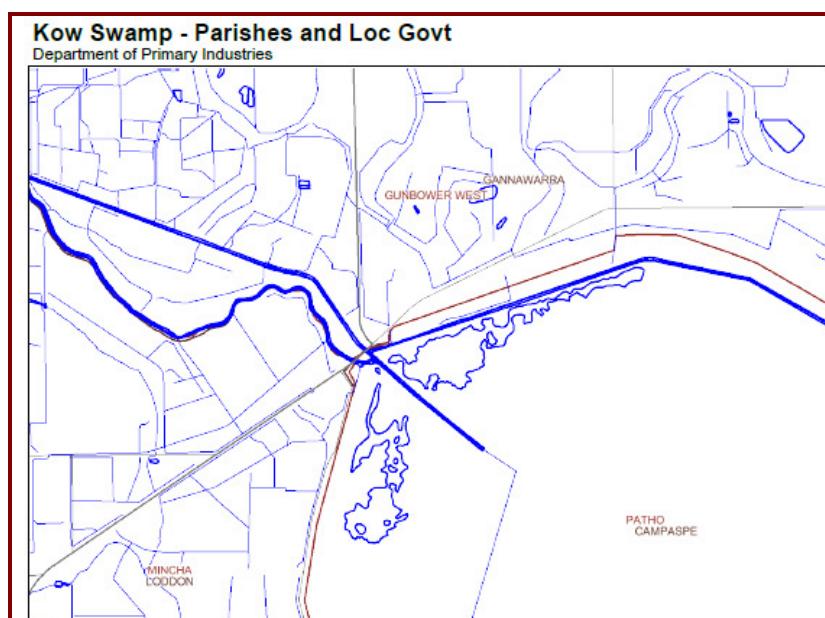
The transition from ephemeral wetland to permanent storage resulted in a legacy of thousands of red-gum stumps – which constitute a challenge for advocates of recreational boating.



Kow Swamp is subject of a formal agreement between the State of Victoria and the Yorta Yorta people; and its Aboriginal cultural values are of international renown.

Land Status and Governance

The bed of the Swamp and the surrounding foreshores were permanently reserved for public purposes in 1881. No Committee of Management has been appointed under the *Crown Land (Reserves) Act 1978*, and it is not known whether any regulations were ever proclaimed.



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The Swamp lies at the intersection of three municipalities: Campaspe, Gannawarra and Loddon, with the water body in Campaspe, but the regulator and principal access points in Gannawarra.

Two Water Authorities exercise powers and functions in relation to the Swamp:-

- Goulburn-Murray Water (G-MW) is a water authority with water supply powers under Part 8 of the Water Act 1989
- North Central Catchment Management Authority (NCCMA) is a water authority with waterway management powers under Part 10 of the *Water Act 1989*.

There is no Waterway Manager appointed under the *Marine Safety Act 2010*, and no Vessel Operating and Zoning Rules have been proclaimed.

Together with the whole of the Kerang Lakes system Kow Swamp fell within the area covered by the Victorian Environment Assessment Council (VEAC) River Red Gum Forests investigation of 2008. The corresponding VEAC recommendation (accepted by government) is:-

H1 That water production areas; storage areas, diversion works and associated facilities; protective buffer zones around diversion works and storages where defined in a special area plan; and any other public land considered necessary, as shown on Map A be used for:

- (a) water supply purposes*
- (b) other activities permitted by the water supply authority after consultation with the Department of Sustainability and Environment, and other agencies, as appropriate*
- (c) the protection of natural and cultural heritage values, and*
- (d) unless otherwise securely reserved, these area be permanently reserved under the Crown Land (Reserves) Act 1978 for water supply purposes and be managed by the water supply authority.*

4.8.2 Discussion

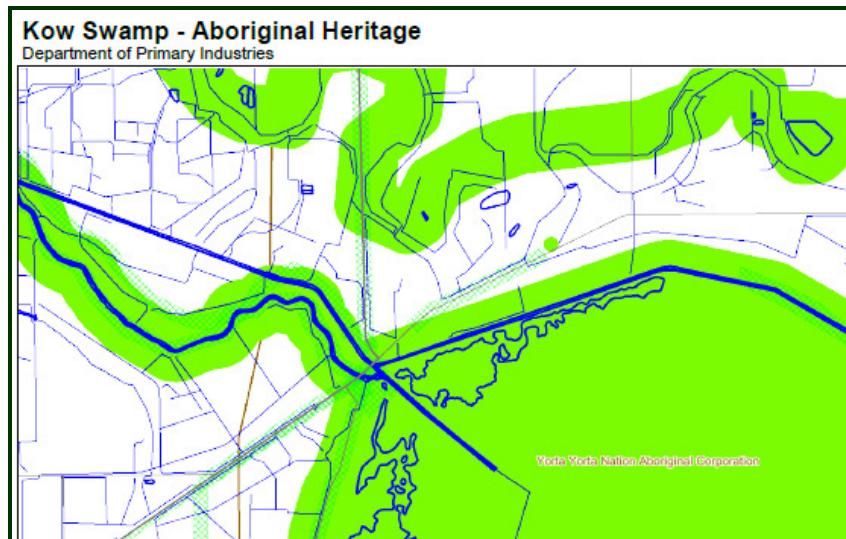
Of all the sites examined in this report, this one best illustrates how boating facilities may intersect with Aboriginal values.

Native title to Kow Swamp (Ghow in the Yorta Yorta language) should be held by the Yorta Yorta people, but due to what can only be described as a failure of the Federal legal system, it is not.

In recognition of this failing, the Victorian government entered into a Co-operative Management Agreement with the Yorta Yorta people, under which the State recognises the Yorta Yorta People's role in management decision making relating to the protection, maintenance and sustainability of cultural and environmental values within certain Designated Areas. Kow Swamp is a 'Designated Area' under Schedule 2 of the Agreement.

Apart from the matter of Native Title, Aboriginal cultural heritage is a significant consideration. Kow Swamp is a burial site of international renown, and it seems curious that it is not listed on the National Heritage List under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (The EPBC Act). It is, however, recognised as an Area of Cultural Significance under the Victorian *Aboriginal Heritage Act 2006* – which also recognises the Yorta Yorta as Registered Aboriginal Party (RAP).

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Areas of Cultural Significance for the purposes of the Aboriginal Heritage Act 2006. Most waterways in the state will be similarly designated, but at Kow Swamp the Aboriginal values are considerably more important than elsewhere.

The site is currently the subject of two simultaneous studies:-

- The first is a Land and On-Water Management Plan, being undertaken by G-MW. According to G-MW the Plan is intended to identify and protect the Swamp's important values. It will provide a strategic management framework not just for water storage but also for improving water quality, valuing cultural heritage and increasing environmental and recreation values.
- The second is a Boating Master Plan, being undertaken by Fisheries Victoria within DEPI. According to Fisheries Victoria the master plan will address the construction of a boat ramp, fishing platform, and associated vehicle access and navigation improvements at Kow Swamp. It will enable proper consideration of boating safety risks, location of facilities, design elements, infrastructure costs and maintenance arrangements.

4.8.3 Conclusions

Consideration of new recreational boating facilities here highlights the value conflicts to be negotiated whenever developments are mooted for relatively undisturbed landscapes. In such cases it must not be simply assumed by the boating community that demand for expanded facilities will necessarily be met.

The fact that two studies being conducted simultaneously is a matter of some concern. If the two studies are coordinated they should deliver complimentary and therefore sounder outcomes; if uncoordinated they may constitute a recipe for disaster.

If boating is to be facilitated here, it would appear essential that a waterway manager be appointed, and vessel operating and zoning rules adopted. The most likely candidate agency for this role is G-MW, which is thus provided with a further case for associated funding.

* * * * *

5 Findings

The demand for recreational boating facilities can be expected to increase over coming years, but the total length of Victoria's foreshores and water frontages will not.

In these circumstances, public land managers will be faced with several interconnected concerns:-

- the need for expanded or additional facilities without compromising other land uses and environmental values
- risk exposure arising from intensity of usage, land use conflicts, compliance regimes, and budgetary pressures
- public expectation of access to services unimpeded by excessive regulation and administrative complexities.

The governance apparatus applicable to public land in Victoria is complex and in some respects cumbersome. Although governments continually review and revise this apparatus, any expectation of a perfect overall system being achieved would be unrealistic. Nowhere will this be more true than at the interface between public land and public waters.

The governance of recreational boating facilities may be tested against three propositions, each of which reflects some degree of truth:-

Proposition to be Tested	Response
1 <i>There's little or nothing wrong with current arrangements – they just need to be clarified or better understood,</i>	May be true in some cases... Many perceived problems related to facility governance can be resolved through analysis, explanation and professional development
2 <i>There may be problems with governance arrangements for individual sites, but there's nothing basically wrong with the underlying administrative apparatus – What's needed is more skill and resources to better apply what's already available in the 'tool-kit.'</i>	Basically true. Most specific issues can be addressed within existing legislation... Many complexities related to facility governance are better described as anomalies or even dangers; they reflect deficiencies in the application of available governance systems, but once identified are capable of remediation
3 <i>There are fundamental flaws in the underlying apparatus of governance. The tool-kit itself is not up to the job. We need some legislative amendment or systemic reform or major policy revision.</i>	True, looking at the bigger picture, and the longer term... some complexities reflect fundamental deficiencies in policy, legislation, or the apparatus of government – some failure of existing systems to respond to evolving needs or standards.

5.1 Findings supporting Proposition 1

5.1.1 *Cadastral and Legal complexities*

The governance arrangements for many facilities are often difficult to ascertain and understand. The cadastral details of Sandringham harbour, for instance, are best obtained and interpreted by a licensed surveyor.. The implications of the lease to Sandringham Yacht Club may need interpretation by a property lawyer.

Nevertheless, once such professional advice is to hand, stakeholders can safely proceed to remedy any deficiencies, remove the corresponding risks, and go about undertaking their various roles and functions.

To ordinary members of the public, most of this complexity will be invisible.

5.1.2 *Professional Competencies*

The professional staff involved in management and administration of recreational boating facilities will be well qualified in their primary discipline, with qualifications and experience in (for instance) planning, engineering, law or environmental science. It is unlikely that they will have had structured training in the interpretation of land status and the management of land governance regimes.

5.2 Findings supporting Proposition 2

5.2.1 *Land Status*

Several case studies found anomalies relating to land status and management arrangements – all of which are capable of remediation.

The multiple land status associated with many boating facilities can increase the administrative burden associated with the management of the facility. Often, what appears to be a single facility may in fact occupy freehold land owned by a Council, reserved Crown land governed under the *Crown Land (Reserves) Act 1978*, and unreserved Crown land governed under the *Land Act 1958*.

The burden of operating under multiple legislative regimes (e.g. Land Act and Crown Land (Reserves) Act for unreserved and reserved Crown land respectively) can be readily eliminated. The reservation of Crown land for an appropriate purpose and appointment of a Committee of Management is the most common approach and is reasonably efficient.

What appears to be a continuous road system may in fact occupy land which is a formal road reserve and land which isn't. Such multiple land status regimes may result in confused, ineffective or inefficient management regimes – which may nevertheless be rationalised by use of status-change mechanisms already available on the Victorian statute books.

5.2.2 *Agency Roles*

In parallel with the fragmented land status found at many facilities, there may also be fragmented management responsibilities. Again, if such multiple management regimes result in confused, ineffective or inefficient management they may be rationalised by use of role assignment mechanisms already available on the Victorian statute books.

At Sandringham, various deficiencies in the precinct's governance were exposed in the course of undertaking the Foreshore Management Plan – an exercise which took

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8 years to complete, but which resulted in a series of changes to land status and administrative responsibility, all achieved through currently available mechanisms.

Although rationalisation of individual sites may be possible, there is no clear mechanism for facilitating such rationalisation. *Ad hoc* reviews of individual sites may be effective, but it may be preferable to set up a structured program for prioritising and effecting site governance simplifications.

5.2.3 Local Government Roles

Because boating facilities are often at municipal boundaries, they are may be subject to inconsistent planning instruments.

Planning schemes for some coastal municipalities end at the water's edge, in which case off-shore uses and developments are not subject to planning controls. This has been rectified in other areas, where planning schemes continue some distance out to sea.

The planning schemes of inland municipalities need not terminate at municipal boundaries, so there is scope for bringing a cross-boundary facility under a single council.

Municipal boundaries themselves may be inappropriate – particularly coastal boundaries, which by default are set at Low Water Mark. Provision exists in the Local Government Act 1989 to move such boundaries seaward and so bring a measure of consistency to many coastal facilities. This has already occurred at two of our case study locations – Patterson River and Sandringham Harbour.

Again, such boundary adjustments may occur on an *ad hoc* basis, but may be better incorporated into some broader program of site governance simplification.

5.2.4 Risk Exposure

In theory at least, non-compliance with the law relating to public land governance may result in an agency facing legal action, costs of remediation and/or compensation, or political embarrassment.

Such risk exposure may be acceptable in some cases, but this should not be assumed. It is of concern that no government agency undertakes any systematic, periodic audit of governance compliance.

Gippsland Ports Inc has commissioned legal advice on this question from the law firm Clayton Utz. This advice should now be reviewed and evaluated by both DTPLI and DEPI.

5.2.5 Facility Managers

Bodies best able to accept significant management responsibilities for public boating facilities will have one or more of the following characteristics:-

- sufficient size and substance to employ professional staff, achieve economies of scale, and implement well-framed programs
- a charter which recognises the land and asset management as a core function
- clear accountability to a critical and responsible superior entity
- capacity and willingness to come under community scrutiny.

If possible, benefits may be obtained by bringing various key roles (e.g. land manager, local port manager and waterway manager) under a single body. This would build capacity, reduce duplication and confusion, and focus effort.

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Again, rather than allow such reforms to be effected on an *ad hoc* basis, there may be merit in establishing a structured program for identifying and prioritising situations which would benefit from reform.

Caution should be exercised, however, before attempting to construct some new, purpose-built agency with overarching responsibility for recreational boating sites. The fact that many sites work well under current governance systems tends to suggest that a new entity is not necessary, while the relatively short life-spans of NSW Maritime and the Port Phillip Authority throw doubt on the effectiveness of achieving policy objectives through organisational restructure.

5.2.6 Road Access and Parking

The complexities of road-related governance are not confined to roads serving boating facilities. Roads and parking areas associated with boating facilities may be under a range of management regimes.

Problems associated with traffic and parking are common to many facilities, and there is little value addressing them specifically in a boating-related context. Nevertheless, there are a couple of observations to be made here.

A clear understanding of roles and responsibilities and a consistent approach to traffic management is to be encouraged.

Municipal councils are usually best placed to manage the control and enforcement of parking, even on land which they do not otherwise control. This can happen under existing legislation. Councils are generally aware of the need to frame parking strategies which address overflow parking associated with sporting events and seasonal retail fluctuations – and they should also recognise the need to address overflow parking associated with recreational boating.

Water authorities (including Goulburn-Murray Water and Melbourne Water) are not recognised as road authorities for the purpose of the *Road Management Act 2004* – and perhaps they should be. This would require legislative change.

5.2.7 Strategic Planning

Strategic Plans could constitute an effective instrument for identifying the need for governance reform, but often they do not. Many such plans, including the Victorian Coastal Strategy and Coastal Action Plans discuss the development and utilisation of public land, without addressing its legal status or administrative regime.

Other strategic plans do address governance – including, for instance, the Gippsland Lakes Environmental Strategy commissioned by the Gippsland Lakes Ministerial Advisory Committee.

The use of such documents to establish sound (but non-statutory) frameworks to reduce management inconsistencies and administrative complexities is to be encouraged.

5.3 Findings supporting Proposition 3

5.3.1 *Fragmented management regimes*

The existence of multiple facility managers would not necessarily be an issue, if there were systems for strategically planning and implementing an improved network of facilities, and sharing accumulated expertise in facility developing and management.

5.3.2 *Local Ports and their Managers*

There is a case for arguing that there are too many Local Ports created under the *Port Management Act 1995*, and too many Local Port Managers. Now, some 20 years after the reforms that saw their creation, it would appear timely to review the relative successes of the approaches taken for their appointment.

Gippsland Ports has emerged as a unique type of entity, having port and waterway management as its core business, and successfully managing a suite of ports and waterways. It could well be a model for management of other groups of Local Ports and waterways.

5.3.3 *Waterway Managers*

There is a clear and urgent need for policy development around the appointment of waterway managers under the *Marine Safety Act 2012*. As the VAGO notes, they are unfunded; the notion that they accept their role voluntarily is not realistic, and there is an unacceptable level of uncertainty about responsibility for those waterways without a designated manager.

Amongst the 176 waterways with appointed managers, we find:-

- 34 under the Department of Environment and Primary Industries
- 51 under 22 municipal Councils
- 8 under Parks Victoria
- 12 under Transport Safety Victoria
- 14 under Goulburn-Murray Water
- 7 under Gippsland Ports Inc
- 10 under Melbourne Water
- 9 under Barwon Water
- 8 under Crown Land Committees of Management
- 1 under a private boating club

The wide variety of agencies appointed as waterway managers raises questions about their competency and the uniformity of their management standards.

In one of the cases studied, the waterway manager had no officer authorised to undertake compliance, and did not even operate a boat.

On inland water storages there would seem to be a strong relationship between fluctuating water levels and boating safety, supporting the proposition that the Water Authority should also be the Waterway Manager and yet (e.g. at Lake Boga) these roles may fall to different authorities.

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5.3.4 Coastal Management Act

The *Coastal Management Act 1995* reflects a 20-year old view of coastal governance, and is now due for a thorough overhaul. Various aspects of this legislation warrant early review, so that they may be carried forward, enhanced or abandoned in any successor legislation. These include:-

- the need for Coastal Management Act consent on coastal Crown land
- the powers and functions of Regional Coastal Boards
- the efficacy of Coastal Action Plans and Management Plans.

Many coastal management powers and function were not brought under the Coastal Management Act in 1995, and consequently that Act has never functioned as a comprehensive instrument of coastal governance.

5.3.5 Other Public Land Legislation

The focus of The Public Land Consultancy's work over many years has been the reform of statutory and policy regimes relating to Crown land management and administration. The following observations are offered from this perspective.

Several other legislative instruments have a bearing on recreational boating, although their ambit covers far more than just boating facilities. The deficiencies of these instruments should be noted here, although their reform will presumably be driven by studies other than this one.

The *Crown Land (Reserves) Act 1978* continues a much-amended but essentially archaic apparatus for determining land status, making regulations, appointing managers, and issuing tenures. Its reform could deliver better outcomes for many Crown land facilities, not just boating-related facilities.

The Victorian Planning Provisions result in anomalous treatments of public land. Major developments proposed by prescribed public land managers may avoid exhibition, consideration by referral authorities, and objections to VCAT if they are governed only by the public land zones – but not if they are also subject to an overlay. In some circumstances certain public land managers would not require a planning permit, although others would. Again, reform of these anomalies would improve outcomes across all public land, not just boating facilities.

In these matters, as with many others covered in this report, any advance must be made through inter-departmental arrangements involving both DTPLI and DEPI.

5.3.6 Regulatory Complexity

Boating facilities, whether on the coast or inland, are subject to overlapping sets of subordinate legislation made under various Acts. These may include:-

- By-laws made under the Water Act 1989
- Regulations made under the *Crown Land (Reserves) Act 1978* (note that these regulations do not sunset, hence will often be archaic, may be unknown to the land manager, and yet take precedence over any incompatible municipal local law)
- Local Laws under *Local Government Act 1989*
- Marine Safety Regulations 2012
- Parking regulations under the *Road Safety Act 1986*
- Ministerial Guidelines for Port Safety and Environment Management Plans - made under Section 91CA of the *Port Management Act 1995*

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- Vessel Operating and Zoning rules made under Part 5.1 of the *Marine Safety Act 2010*

Some (but not all) of these regulations are subject to periodic (or longitudinal) review, but there is no clear system for reviewing the collective (or lateral) efficacy and utility of these regulations.

5.3.7 Maintenance Dredging

Maintenance dredging for recreational boating is a significant issue across Port Phillip and Western Port. There appears to be no sound rationale, apart from a lack of funding, to say why dredging for public facilities, such as the Altona boat ramp, is required to be undertaken by the facility manager, usually the local council, while the Local Port Manager takes responsibility for the activity elsewhere.

There are significant costs in dredging, spoil disposal and in obtaining necessary approvals. A more logical approach using economies of scale and simplified approvals would be beneficial.

It is likely that Parks Victoria, which has statutory responsibility for such action, together with the experience and specialist knowledge required to deliver, is in the best position to plan and deliver dredging across Port Phillip and Western Port most efficiently. Parks Victoria would also only require one approval (Coastal Management Act consent) rather than the two required by other parties.

If it is only funding, or lack of it, that has defined those areas for which Parks Victoria currently undertakes dredging, then opportunities to have Parks Victoria funded sufficiently to take responsibility for all maintenance dredging relating to boating facilities

The user-pays principle, although likely to be unpopular (and expensive) in some places, could be reasonably applied to maintenance dredging. This could include the imposition or increase in fees or charges for those who directly benefit, such as the members of clubs, swing mooring licence-holders, and those that utilise public launching facilities. Access to funds generated from Boat Licence fees should also be considered.

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6 Recommendations

6.1 Short Term

It is recommended:-

6.1.1 Rectification of Existing Governance Deficiencies

That all facility managers be required to obtain and understand in detail the land status and governance apparatus applicable to their facility; and that they be encouraged to interpret that information and identify any associated deficiencies and risks. In this, the audit of boating facilities being conducted by G-MW on Lake Eildon may serve as a model.

That DTPLI works with DEPI and relevant facility managers to

- clarify and document the two departments' respective responsibilities for governance of boating facilities
- rectify identified deficiencies and simplify management arrangements at locations with known governance problems – commencing with those deficiencies identified in the case studies, and
- establish a state-wide program for identifying other sites with governance complexities, and a prioritised program for rectifying those complexities.

6.1.2 Capacity Building

That DTPLI enhances its capacity to support and advise recreational boating stakeholders on matters pertaining to the governance of recreational boating facilities

That DTPLI auspices knowledge-building, information-sharing, and professional development for facility managers and the recreational boating community.

6.1.3 Budgetary Restructure

That DTPLI, in parallel with implementing the budget-related recommendations from the VAGO report, also considers reframing its program budget structure in order to target funds specifically for waterway management.

6.1.4 Risk Analysis

That DTPLI builds on the work done by Clayton Utz on behalf of Gippsland Ports, and now commissions an independent, high-level investigation of the risk exposure of Waterway Managers and Local Port Authorities, including an assessment of the effectiveness of existing risk management strategies and the adequacy of insurance covers.

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6.2 Medium-term

It is recommended:-

6.2.1 Rationalisation of Local Ports

That government conducts a review of the system of Local Ports, with a view to reducing their number and rationalising their management. The review should address:-

- Whether all locations designated as local ports in 1995 are necessary
- Whether further locations should be designated as local ports
- The relative merits of the various models of local port management , i.e. Parks Victoria, Gippsland Ports, Local Government, and Crown land Committees of Management.
- Whether there is value in continuing the requirement for a local port manger be a Crown land Committee of Management

6.2.2 Rationalisation of Waterway Managers

That government, in parallel with considering VAGO's recommendations on funding for waterway managers, also considers the criteria and process for appointing waterway managers, and the risks associated with the default regime in cases where there is no waterway manager.

In particular, consideration should be given to establishing a waterway governance regime similar to that for roads under the *Road Management Act 2004*. Virtually every road in the State has a designated 'coordinating road authority', the default authority being the local municipality. Each coordinating road authority decides which of its roads it will manage, and to what standard. Thus control of roads is non-discretionary, but management of roads is discretionary. The RM Act then indemnifies road managers in relation to those roads they choose not to manage.

6.2.3 Dredging

Parks Victoria should take responsibility for all maintenance dredging relating to public boating facilities in Port Phillip Bay and Western Port, and be funded accordingly. It is likely that PV, which has statutory responsibility for such action, together with the experience and specialist knowledge required to deliver, is in the best position to plan and deliver dredging across PPB and Western Port most efficiently. PV would also only require one approval (CM Act consent) rather than two as is required of other parties.

6.2.4 Murray River

That the Victorian Government liaise with the NSW Government to simplify governance arrangements for land on the south bank of the Murray River; and in particular, to rationalise responsibility for boating facilities associated with Victorian municipalities but legally within NSW.

6.2.5 Regulatory Review

That all facility managers should be required to obtain any *Crown Land (Reserves) Act 1978* regulations relevant to their facility, to review their efficacy, and advise DEPI on their retention, amendment or revocation.

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That government commission a lateral review of the regulatory regime applying to (a) Coastal Crown land and waters and (b) recreational areas within the meaning of the *Water Act 1989*.

The review should determine:-

- whether the regulatory regime involves duplications, omissions or inconsistencies,
- the extent to which it should be rationalised
- whether such regulations should all be statutory rules
- the best process for conducting future regulatory updates

6.2.6 Road Management

Government should allow Water authorities with reservoirs or recreational lands to be recognised as Road Authorities for purposes of the *Road Management Act 2004*.

6.3 Longer-Term

It is recommended that:-

6.3.1 Reforming the Coastal Management Act

Government commence a process of reviewing the *Coastal Management Act 1995*, with a view to deciding at a later date whether it should be continued, modified, or repealed.

Such a review should focus on:-

- the need for Coastal Management Act consent on coastal Crown land
- the powers and functions of Regional Coastal Boards
- the efficacy of Coastal Action Plans and Management Plans.

Many coastal management powers and function were not brought under the Coastal Management Act in 1995. These include, for instance:-

- The determination of coastal Crown land status
- The appointment of coastal Crown land managers
- The granting of coastal Crown land tenures.

The recommended review of the Act should also consider whether such powers and functions should be brought under the Act.

6.3.2 Reforming other relevant Acts

DTPLI should maintain a monitoring watch on government's plans to review other legislative instruments, such as the *Crown Land (Reserves) Act 1978*, the *Land Act 1958*, and the Victorian Planning Provisions.

When proposals for such revisions are made, DTPLI should ensure they are tested against the expectations of the recreational boating industry.

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7 Appendices

7.1 Terms of reference

7.1.1 *Background*

The Minister for Ports has established a working group on recreational boating facilities matters. The working group is responsible for providing the Minister with advice on how to improve Victoria's recreational boating infrastructure, including how it can be better utilised and accessed, in conjunction with the current and future funding priorities for the sector.

The working group has identified the management arrangements on both the land and waterside of the State's boating facilities as a contributor to facilities not being planned and delivered in a manner that meets the demands of the sector or maximising economic outcomes for the State.

The land side of boating facilities is almost always public land managed under the Crown Land (Reserves) Act 1978. The Committee of Management appointed under that Act may be a publicly elected committee, a skills based committee or local government. The committee may manage the land directly, or it may lease the land to entities such as sailing clubs.

The land managed by the committee may or may not include land for uses associated with boat launching and retrieval such as parking areas or toilet blocks. In the absence of land for parking within the reserve, parking will occur in the surrounding streets which are managed by local government.

Fees for the use of the facility do not always apply. When they do, they are usually collected by the committee of management and cover both use and parking. In the absence of parking within the reserve, there may also be a requirement to pay for parking fees for use of the surrounding streets.

On the waterside, the seabed/riverbed and the water above it may or may not be part of the committee of management's responsibilities. If they are, they may or may not also be the waterway manager appointed under the Marine Safety Act 2010. That could be a different entity, or there may be no appointed manager.

Finally, the facility may be within one of the fourteen local ports, where the obligations within the Port Services Act 1995 will also apply.

It is considered by the working group that the impact of the varying mix of land side, waterside and facility management covered by varying legislative responsibilities hinders the efficient operation of the facilities and access to waterways.

7.1.2 *Scope*

The scope of this study will include:

1. Identifying, in consultation with the Department and the members of the Ministers working group, a broad description of the range of legislation and associated governance arrangements currently overseeing management and development of Victoria's waterside land, waterway access and waterway management.
2. Development of 6-8 specific location case studies in consultation with the department and members of the boating working group. Case studies are to:

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- cover a mixture of sites including along the coast, inland, vessel launching and vessel berthing, local ports, committees of management and other crown land managers;
- be supported by site visits and discussions with the managers and users of the agreed 6-8 sites.

For each case study the contractor is to:

- produce a map of all responsible entities/authorities related to activity at the site, and legislative requirements that operate for the identified facilities;
- identify any operational or other issues that could be attributed to the complex arrangements;

3. Identify issues and impacts related to the existing legislative and governance arrangements and propose recommendations for further improvement of current outcomes

7.1.3 *Deliverables*

- A weekly progress report (via email is acceptable)
- A draft report within 4 weeks of commencement
- A draft final report within 2 weeks after feedback from DTPLI

A copy of the draft final report will be circulated via the department for consideration and comment by members of the working group.

- A final report following any feedback from the Boating Working Group

The draft final report must be completed and submitted to the department by 29 August 2014 to allow for circulation to the working group with the report to then be finalised by mid-September 2014.

7.2 Compendium of Coastal Land Law

Feature of the Cadastre	Relevant Legislation or law	Relevance to a coastal council
<p>Land Status</p> <p>Every piece of land in Victoria (indeed in Australia) is either Crown land or freehold land. Crown land may be undifferentiated 'default status' Crown land, or may have some further sub-status - e.g. Government road, Crown Reserve or National Park</p> <p>For Crown land, Native title may be a significant consideration.</p> <p>Freehold land may include roads and reserves</p>	<ul style="list-style-type: none"> • <i>Land Act 1958</i> • <i>Crown Land (Reserves) Act 1978</i> • <i>National Parks Act 1975</i> • <i>Native Title Act (C'wealth)</i> • Common law Doctrine of Accretion • <i>Subdivision Act 1988</i> 	<ul style="list-style-type: none"> • All off-shore land in Victoria is Crown land. Most is undifferentiated 'default status' Crown land; some is Reserved Crown land; some is Marine National Park • Over 95 percent of the Victorian foreshore is Crown land, less than 5% is freehold. • The Crown land is mostly reserved under the Crown Land (Reserves) Act for 'public purposes'; some is reserved under that Act for other purposes. • Some (e.g. the Shire of Mornington Peninsula's ocean foreshore) is National Park.
<p>Land Ownership</p> <p>All freehold land has an owner, typically a private or corporate entity</p> <p>Crown land may be regarded as being 'owned' by the Crown – represented for our purposes by the Minister for Environment and Climate Change (MECC).</p>	<ul style="list-style-type: none"> • <i>Land Act 1958</i> • <i>Transfer of Land Act 1958</i> • <i>Common law of adverse possession</i> 	<ul style="list-style-type: none"> • Shire of Mornington Peninsula, City of Bayside and City of Hobsons Bay all own foreshores in freehold • Councils own most freehold roads • Councils may own other freehold property • The Commonwealth of Australia owns parts of Point Nepean in freehold
<p>Lesser Interests</p> <p>Interests other than proprietary ownership are recognized and protected by property law. They are negotiable (may be bought and sold) and compensable (may be acquired by negotiation or compulsion).</p>	<ul style="list-style-type: none"> • <i>Land Act 1958</i> • <i>Property Law Act</i> • <i>Transfer of Land Act 1958</i> • <i>Crown Land (Reserves) Act 1978</i> • <i>Land Acquisition and Compensation Act 1986</i> • <i>Conservation Forests and Lands Act 1987</i> 	<ul style="list-style-type: none"> • Tenants (with leases or licences) may hold (or be treated as if they hold) a legal interest in either freehold or Crown land • Councils may take freehold land or Crown land on lease • Councils may be the beneficiaries of easements, covenants, or 's.173' agreements over freehold land
<p>Control of land</p> <p>Often (but not necessarily) the owner of land is also its</p>	<ul style="list-style-type: none"> • <i>Port Management Act 1995</i> 	<ul style="list-style-type: none"> • Port lands are Crown land where control has passed from the Crown to a Port

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<p>controller.</p> <p>With Crown land, it is not uncommon for the Crown to vest or delegate control in some public-sector entity.</p>	<ul style="list-style-type: none"> • <i>Road Management Act 2004</i> • <i>Crown Land (Reserves) Act 1978</i> 	<ul style="list-style-type: none"> • Authority • All coastal councils are Committees of Management with control over some coastal Crown land reserves, under delegation from the MECC. Some of this reserved Crown land may extend seaward beyond the municipal boundaries • Committees of Management for other reserved Crown land may be local citizens or bodies such as Parks Victoria • Arterial roads are Crown land where control has passed to VicRoads as Coordinating Road Authority • Other Government roads are Crown land where control has passed to Councils as Coordinating Road Authorities
<p>Management of land</p> <p>Often (but not necessarily) the controller of land is also its manager</p> <p>On public land, some aspects of management may be delegated to tenants, friends' groups, or Section 86 Committees</p>	<ul style="list-style-type: none"> • <i>Road Management Act 2004</i> • <i>Crown Land (Reserves) Act 1978</i> • <i>Local Government Act 1989</i> • <i>Common law governing tenures and contracts</i> 	<ul style="list-style-type: none"> • Councils may manage land they control, or contract it out, or sub-delegate to a committee under the Local Government Act • Land subject to a tenure (lease or licence) will be managed by the tenant.
<p>Development and Use Approvals</p> <p>Public agencies may exercise powers and functions in relation to land which they do not own, control, occupy or manage. These are generally reactive rather than proactive powers; negative restraints on the owners' rights rather than positive compulsions on the owners' rights. Included here are:-</p> <ul style="list-style-type: none"> • Making planning schemes • Administering planning schemes • Making and administering controls other than planning schemes 	<ul style="list-style-type: none"> • <i>Planning and Environment Act 1987</i> • <i>Aboriginal Heritage Act 2004</i> • <i>Coastal Management Act 1995</i> • <i>Local Government Act 1989</i> • <i>Water Act 1989</i> • <i>Marine Act 1988</i> • <i>Catchment and Land Protection Act 1994</i> 	<ul style="list-style-type: none"> • Councils are both Planning Authorities and Responsible Authorities for their municipal areas – plus (in the case of some councils) a band of off-shore land up to 600 metres wide, seaward of Low Water Mark • As local government, Councils exercise powers and functions in relation to all land within their municipal boundaries – regardless of its cadastral status • For most coastal councils, their municipal district ends at Low Water Mark. For the City of Greater Geelong, the municipal boundary extends 200 m into Corio Bay • Parks Victoria is Waterway Manager for Port Phillip and

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		<p>Western Port under the Marine Act</p> <ul style="list-style-type: none"> • Catchment Management Authorities (CMAs) have regional waterway, floodplain, and drainage powers under the Water Act 1989 in non-metropolitan Victoria. • Melbourne Water exercises regional waterway, floodplain, and drainage powers in metropolitan Melbourne.
<p>Making the law</p> <p>State Parliament makes primary legislation (i.e. Acts)</p> <p>Ministers (or their delegates within government agencies) apply the law as empowered to do so by legislation</p> <p>The Governor-in-Council or Ministers make most subordinate legislation (e.g. regulations)</p> <p>Councils make local laws and prepare Planning Scheme Amendments</p> <p>Courts make the common law</p>	<ul style="list-style-type: none"> • <i>Federal Constitution</i> • <i>Offshore Constitutional Settlement 1979 etc</i> • <i>Constitution Act 1975</i> • <i>Subordinate Legislation Act 1994 (Vic)</i> • <i>Local Government Act 1989</i> 	<ul style="list-style-type: none"> • The parliament enacted the Crown Land (Reserves) Act in 1978 and since then has amended it 99 times. • The Minister for Environment and Climate Change (MECC) causes Crown land to be reserved under the Act, makes regulations for those reserves, appoints Committees of Management for them, approves tenures (leases and licences) over them, etc • Coastal freehold boundaries may be affected by the doctrine of accretion (court-made or common law) which holds that boundaries defined by topographic features may move over time.

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