The Yarra River Protection (Willip-gin Birrarung Murron) Act - First Steps in Implementing a Bold Act

Andrew Kelly, Yarra Riverkeeper
& Dr Bruce Lindsay, Environmental Justice Australia
• Quick orientation on the Yarra (Birrarung)
• Yarra Riverkeeper – what do we do?

Features:
• Not-for-profit.
• Community advocates.
• Part of a worldwide network of waterkeepers.

Key features of waterkeepers are (compliance quality standards):
• A boat on the waterway
• An office on or near the waterway
• A paid spokesperson, called the riverkeeper.
The (Constitutional) Objectives of the Association are—

• to be an effective, independent public advocate for the Yarra River and its tributaries

• to provide a unified voice, representative of the community, in relation to whole-of-river issues

• to identify, create and implement initiatives that will protect and restore the Yarra River and its tributaries

• to build and foster relationships with all stakeholders

• to ensure integrated management founded upon stewardship

• to build and make publicly accessible knowledge relating to the Yarra catchment

• to celebrate the ecological and social value of the Yarra River and its tributaries

• to establish a realistic funding base that can support projected activities.
Where the Act began
Yarra Riverkeeper
Election Policies – 2014 Victorian State Election

• ‘Ensure that all planning decisions in the corridor are overseen by a single authority which has a whole-of-river remit, beyond local council boundaries.

• ‘Promote a long-term vision for the Yarra corridor as a continuous corridor of public green space and unbroken wildlife habitat along the length of the river.’
Labor will introduce a Yarra River Protection Act to guard the river corridor from inappropriate development. A new trust will develop standardised planning controls for the Yarra and work with agencies to promote the river’s amenity and significance.

We will work with Environment Victoria, Catchment Management Authorities and Landcare groups to develop a strategy to improve our riparian land and...
Joint action: ‘The Yarra River Protection Act Project’
Drove engagement through community forums and sessions.
Drove engagement — publication of 5 influential reports
Wurundjeri elders enter into the Legislative Assembly
The Act

• Title and preamble in English and Wurundjeri.

• Government is required to create a Yarra Strategy Plan.

• Establishment of a council to oversee the plan and be the voice of the river.

• The council includes the traditional owners, community, and experts.

• The council reports to the minister.

• The plan has a long term vision and is assessed and reviewed frequently.

• The plan is a public document tabled in State Parliament.

• A baseline is established and the river and adjacent corridor is monitored.

• Government agencies are required to consider the interests of the river in their actions.

• Government agencies are audited against this requirement.
An act is only as good as its implementation
Publication of influential reports
Thank you
Dr Bruce Lindsay
KEY FEATURES OF THE ACT

1: PURPOSES AND PRINCIPLES

• PURPOSES:
  • FRAMEWORK ACT FOR PLANNING, POLICY AND GOVERNANCE (‘RIVER LAW’ IN URBAN SETTING)
  • DECLARATION OF YARRA RIVER AND ADJACENT PUBLIC LANDS AS ‘ONE LIVING AND INTEGRATED NATURAL ENTITY’
  • HAVE REGARD TO EXTENSIVE BODY OF PRINCIPLES

• PRINCIPLED MANAGEMENT
  • ENVIRONMENTAL PRINCIPLES (PRECAUTION, NET ENVIRONMENTAL GAIN, INTERGENERATIONAL EQUITY, ETC
  • SOCIAL PRINCIPLES (AMENITY, PUBLIC PARTICIPATION)
  • RECREATIONAL PRINCIPLES
  • CULTURAL PRINCIPLES (RECOGNITION AND PROTECTION OF ABORIGINAL VALUES, HERITAGE, KNOWLEDGE; PARTNERSHIP AND CUSTODIANSHIP ROLES OF TRADITIONAL OWNERS)
  • MANAGEMENT PRINCIPLES (COORDINATION, USE OF ‘BEST PRACTICABLE MEASURES’, CONTINUOUS IMPROVEMENT)
KEY FEATURES 2: STRATEGIC PLANNING

- YARRA STRATEGIC PLAN
  - STAND-ALONE STATUTORY INSTRUMENT
  - INCLUDE 50-YEAR ‘COMMUNITY VISION’ AS STATUTORY DEVICE
  - UP TO 10 YEARS IN DURATION
  - BROAD MANDATORY CONTENT, INCLUDING LAND USE FRAMEWORK PLAN BUT OTHER CONTENT IN ADDITION INCLUDING:
    - OBJECTIVES AND VALUES
    - PERFORMANCE OBJECTIVES FOR WATERWAY HEALTH, AMENITY, ENVIRONMENTAL CULTURAL AND HERITAGE VALUES
    - INFRASTRUCTURE NETWORKS
    - RESTORATION PROJECTS
    - ‘NARRATIVE DESCRIPTION OF RIVER CORRIDOR’
    - PROJECT AND PROPOSAL DECISION-MAKING FRAMEWORK
    - ESTABLISH MEASURES EXPRESSLY BINDING OR RECOMMENDATORY ON PUBLIC AUTHORITIES
KEY FEATURES

3: APPLICATION

• APPLICATION TO ‘YARRA RIVER LAND’ + LAND UP TO 1KM FROM RIVER CORRIDOR WITHIN ADJACENT MUNICIPALITIES AS DESIGNATED

• IN PRACTICE, YSP LIKELY TO APPLY TO:
  • RIVER CORRIDOR (BED, BANKS, SOIL, WATER COLUMN)
  • ADJACENT CROWN LANDS (NOT MUNICIPAL LAND)
  • ANY OTHER DESIGNATED LAND UP TO 1KM FROM RIVER (EG TRIBUTARY CORRIDORS)

• MEASURES EXPRESSLY BINDING ON, OR TO BE HAD REGARD BY PUBLIC AUTHORITIES INCLUDE:
  • DELWP (EG SECRETARY), PLANNING AUTHORITIES, PPW, CMA, COUNCILS, PARKS VIC, Vicroads, VPA, Melbourne Water
  • IN RELATION TO CERTAIN STATUTORY FUNCTIONS AND POWERS

• CONSTRAINED APPLICATION OF THE ACT BUT RAISES IMPORTANT QUESTIONS AS TO INTERACTION OF LAND-USE PLANNING AND WATER LAW IN CONTEXT OF LONG-TERM STRATEGIC PLANNING
KEY FEATURES 4: INSTITUTIONS

• BIRRARUNG COUNCIL
  • INDEPENDENT STATUTORY BODY
  • ADVISORY ROLE
  • SUPERVISORY ROLE ON DEVELOPMENT AND IMPLEMENTATION OF YARRA STRATEGIC PLAN
  • ADVOCACY ROLE IN RELATION TO ‘PROTECTION AND PRESERVATION OF THE YARRA RIVER’

• COMMISSIONER FOR ENVIRONMENTAL SUSTAINABILITY SUPERVISORY ROLE
  • ADDITIONAL REPORTING ROLE ON THE ENVIRONMENTAL CONDITION OF ‘YARRA RIVER LAND’
  • PERIODICAL (NOT MORE THAN 5 YEARS APART)
OPPORTUNITIES

Opportunity for more integrated river management in urban setting

Opportunity for long-term planning and delivery

Opportunity for greater institutional oversight, transparency and diversity of 'voices' in collaborative (shared governance) model

Establish a successful model of urban...
Risks

Reliance of administrative discretion at key decision points

Ministerial declaration of 'Yarra River land', 'Yarra Strategic Plan area'

Negotiation, preparation, endorsement and approval of Yarra Strategic Plan

Express identification in YSP which provisions will be legally binding on 'responsible public entities'

Risks associated with high degree of political and bureaucratic buy-in required to achieve legislative ambition
### Risks

- **Risks associated with ambiguities, limitations and/or complexities in the legislation**
  - Complex procedures for production and approval of YSP
  - Geographic limitation in application of YSP ('Yarra River land', 'YSP area', tributaries?)
  - Potential constraints in application of YSP to designated public entities (legally binding vs consideration in exercise of discretion)
  - Exemptions (e.g., major transport projects)
  - Clear land-use planning focus but uncertainty as to application to water

- **Risks associated with designing and applying novel legislation in a complex urban setting**
Risks

• Risks associated with cycles of political, public and bureaucratic interest and buy-in, given long-term ambition (*risks of declining/cyclical ambition or interest*)

• Risks associated with resource constraints for protection or restoration (*risks of implementation and BAU*)

• Risks associated with constrained, ineffective, under-resourced or sabotaged public interest advocacy (*risks to the river's 'voice'*)