



# Special Purpose ‘River Laws’ and Land Use Planning

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# Scheme of the *Yarra River (Birrarung) Act*

- › Recognition and protection of the river as ‘one living and integrated natural entity’
  - River as ‘entity’ not legal personhood but a form of statutory fact
  
- › Nineteen principles directed to the protection of health and values of the river
  
- › Strategic planning framework, centred on the Yarra Strategic Plan
  
- › New obligations on certain local councils and public authorities
  
- › New institutional oversight:
  - Birrarung Council
  - Commissioner for Environmental Sustainability



Original artwork by Sarah Firth

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# Land and land-use planning in Victoria, Australia

- › Detailed statutory codes and controls over use and development of land (distinct from title or ownership)
- › Primarily a State responsibility (in the federal system)
- › Important source of environmental protections and controls (where nexus between land-use and environmental matters)
- › Control of water as a resource functions under separate and distinct water laws
- › Land-use planning does apply to waterways, wetlands, etc insofar as they touch on land (eg land includes ‘land covered by water’)

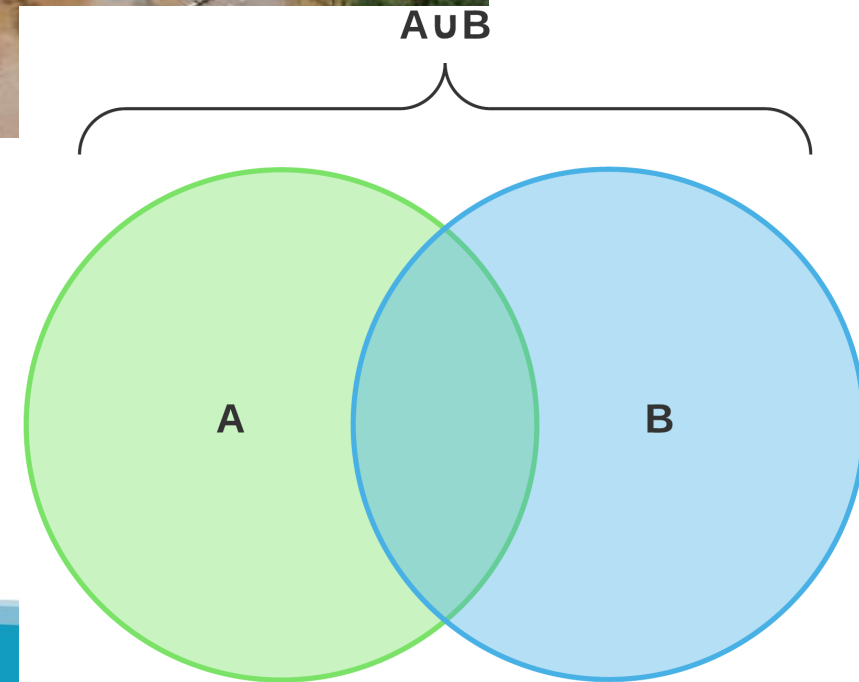


# Integrated decision-making: legal basis for decision under planning law

- › Applies to land-use and development
  - Decisions concerning approvals of use or development of land (permitting)
  - Decisions to amend the planning rules (planning scheme)
  
- › ‘integrated decision-making’
  - Includes environmental, social, and economic objectives (triple bottom line approach)
  - Generally facilitative of development
  
- › ‘net community benefit’ or ‘acceptable outcome’ test
  - Decision-makers are to ‘balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.’
  - Decisions can include negative characteristics, may only achieve planning objectives partially, or run contrary to others

# Interaction between planning legislation and the *Yarra River (Birrarung) Act*

- › Two separate statutes covering overlapping subject-matter
- › Statutory provisions under planning law can be ‘read up’ where the Act favours such an approach
- › Ordinary legal rules on interpretation of statutes apply



# Land, land–use planning and the Yarra River

## Statutory subject matter: the ‘Yarra River (Birrarung)’

- › Wider than land, development, and land use
  - Potentially includes waters and in–stream ecosystems, although uncertain
- › Wide and liberal interpretation of subject matter warranted

## ‘Protection’

- › Planning law: usually concerns constraints or negative controls
- › As one living and integrated natural entity: broader than protection in planning law
  - Protection includes conservation and rehabilitation?
  - Protection to include resilience?

# The Yarra Strategic Plan

## YSP provisions expressed to be binding

- › Can require a planning outcome or action to be implemented
- › Direct application of requirements

## YSP provisions and Yarra protection principles are relevant considerations

- › YSP, protection principles may apply as mandatory considerations
- › Preamble, purposes, or objects may apply as relevant considerations

# An enhanced legal test for land-use and development decisions in the Yarra River corridor

- › Planning decisions to be read in light of rules, principles and intentions of Yarra River law
- › ‘acceptable outcomes for the Yarra River (Birrarung)’ test
  - Actions or policies should achieve a *net gain for the environment* (reflecting section 9(4) of the Yarra River (Birrarung) Act)
  - Economic benefits are either not relevant, or diminished
  - Social principles



Photograph: ces.vic.gov.au



# Limitations and ambiguities

## Geographic

- › Geographic reach of the Act:  
river corridor, wider catchment
  
- › Concept of ‘Yarra river land’  
pivotal
  
- › Also ‘Yarra Strategic Plan Area’
  
- › Main force is confined to the  
public land corridor
  - Not exclusively the case

## Political and bureaucratic procedure

- › High-level, convoluted  
bureaucratic & political support  
required for YSP to pass
  
- › Possible outcomes:
  - May constrain substantive outcomes
  - Consensus endorsement and approval  
providing significant institutional and  
political authority

# What can or will 'river laws' do?



# Wider considerations and questions for design of protective ‘river laws’

- › What is the effect of legislative ‘recognition’ of natural places or entities?
  - What enhanced or greater protections apply under this type of law?
  - Can this model drive *paradigmatic* change (ie how rivers are perceived and experienced?)
  
- › How can the law best overcome the fragmented management of land, water, biodiversity, culture in relation to rivers, especially in urban areas?
  - Can ‘river laws’ drive restoration/rehabilitation agenda (eg urban greening and ‘re-wilding’)?
  
- › Multiple emerging legal strategies for river protection and/or restoration – which are preferable? Feasible?