



# **SUBMISSION**

## **Land (Regulated Watercourse Land) Regulations**

**26 April 2021**

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## EXECUTIVE SUMMARY

The Victorian Farmers Federations (VFF) is the peak body representing the environmental stewards of regulated water courses – the licensees. Our members, and licensees more broadly, raised almost universal opposition to the legislative change to remove the prohibition on camping on licenced frontages.

The VFF opposed the legislative change but recognising the will of the Government to implement this policy our focus is now on protecting landholders and the sensitive riparian environment and the valuable partnership between farmers and government that has existed since the formation of Landcare in 1986. The manner in which the legislation and regulations have been formulated and the disregard for the concerns of licence holders has seriously damaged this partnership.

Despite the damage and the opposition, the VFF believes there are reasonable regulatory changes that can help to rebuild the partnership. This submission will outline these regulatory changes.

The VFF is concerned that the proposed regulations are not prescriptive enough, are based on regulations that operate in very different environments and pose unacceptable risks to farm businesses and the environment.

The prohibition on camping existed for a reason. It was recognised that these are unique environments and that camping interfered with the agricultural uses permitted. Since the introduction of the prohibition the Victorian Government has further recognised the sensitive nature of Victoria's riparian environments and the unique role of licence holders. Licence holders and landholders have been encouraged to fence, revegetate and manage riparian land for its environmental values in conjunction with permitted agricultural uses. Riparian environments have also been recognised as areas of cultural heritage sensitivity. All the while appropriate and low impact recreational activity has continued to occur along licensed frontage, often in partnership with private landholders to facilitate access and share local knowledge.

The removal of the prohibition on camping is a backwards step in the Victorian Government's commitment to improve Victoria's riparian environments. How big that step is depends on the regulations and how they are implemented and enforced. The proposed 'free for all' regulations are a monumental back step, putting at risk the 'Landcare' partnership developed between farmers and the government. But it doesn't have to be this way, pitting farmers against campers and fishers. This is not the way things have been done historically and the VFF believes there is no need to force a confrontational regulatory environment on licence holders, campers or fishers.

Our submission proposes sensible amendments to the regulations that would allow improved management, oversight and enforcement to protect the environment, licence holders, their farms and stock and campers and other recreational users. Our recommendations are based on Victorian Government best practice and have been developed in consultation with the licence holders, utilising their unique understanding of these riparian environments.

It is important VFF note our concern about the consultative process that has been conducted and recommend real and meaningful consultation with licence holders. Their only contact to date has been a

letter in the mail. Licence holders are dismayed that their reward for stewarding this land for generations is to have this impactful change forced upon them.

## OUR POSITION

VFF is the peak body representing the environmental stewards of regulated water courses – the licensees.

DELWP has acknowledged that they are unable to provide the ‘hands on’ level of management required to improve the biosecurity and biodiversity of these areas.

It is therefore disappointing that the process of farmers managing land for production and biodiversity that led to the ‘Landcare’ partnership between Government and Farmers being formed in 1986 has been seriously damaged by this process.

Partnerships are built on trust and respect. This submission will look at what changes are required to rebuild this partnership.

### Key concerns with process

Given the time between the ‘election promise’ and the draft regulations it is disappointing to see very little attempt to talk to ‘local experts’ about what the existing risks and issues are and how modern, 21<sup>st</sup> century regulations could be created. The timing of the regulations, prior to the review of Victoria’s public land legislation has caused further confusion regarding how the regulations will work given a different legislative framework.

Many of the problems inherent in the regulations stem from not only failing to discuss the regulations with licence holders but total failure of the regulations to even recognise there is a licence holder with certain obligations under that licence. While Regulation 6 considers the application of the regulations to traditional owner groups there is no such regulation in regards to licence holders.

This may be partly due to the use of the camping regulations applying to state forests as the base case without considering whether this is an appropriate comparison, what the differences are and therefore how the regulations would need to be tailored to a riparian area. Forests generally have hundreds of square metres of area to each metre of perimeter and their boundaries are generally not ‘hugging’ a watercourse or private land. They have a plethora of vegetation available for firewood, and a network of access – fire and management tracks. They rarely have licences other than ‘bee sites’ and rarely have camping occurring near livestock or dwellings. None of these characteristics apply to watercourse land, nor has there been an effort made to make the necessary changes to the draft regulations to address very different circumstances. Nor has there been any regulatory impact statement.

Figure 1 overleaf clearly illustrates the difference between a large parcel of Crown land to ‘regulated’ land which is a narrow strip of land hugging the watercourse with very little area that is not proximate to the watercourse. Even without the added issues of emergency / vehicular access, the nature of floodplains, the difference in vegetation and the prevalence of licensed activities such as grazing, it is clear that the presumption that what works in a ‘forest reserve’ will work in a watercourse

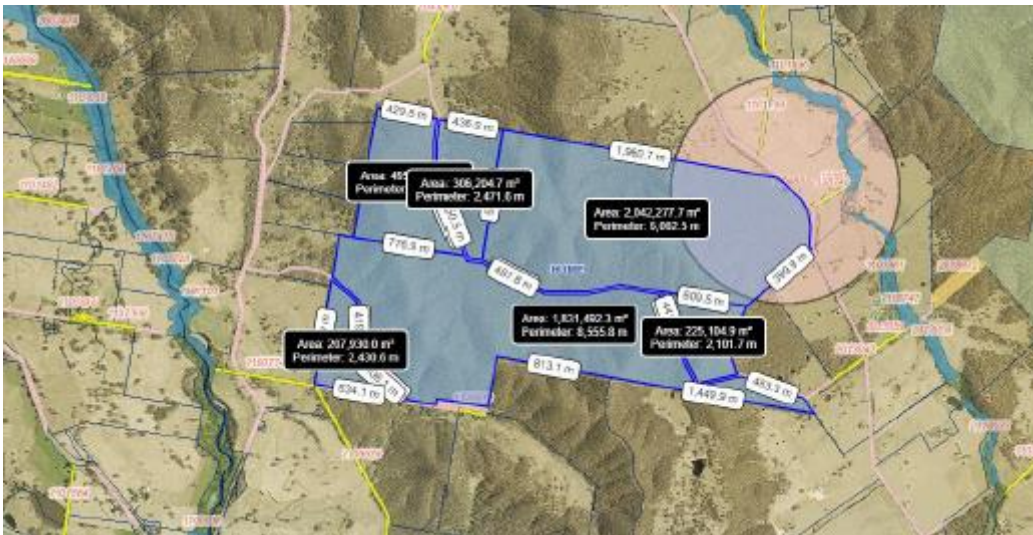


Figure 1

Failing to consider these differences, to consider the obligations of licensees or to give clear notice as to what licensed land will be subject to these regulations could be considered a procedural failure. The Government has failed to give the ‘most impacted’ party information on how the regulations affect their licences and have failed to be given mapped information about how the regulations apply to them. Licensees are unsure about penalties that could be applied to them for meeting their licence requirements and their licences force both an indemnity to the Crown and the need to cover public liability.

The regulations are silent on the duties and obligations of the licensee. At the moment works required under the licence would be a breach of the regulations. Actions under the regulations, such as taking of firewood by the recreational users, would see the licensee in breach of the Native Vegetation regulations (primarily Clause 52.17 of the Victoria Planning Provisions, the Aboriginal Heritage Act (watercourses as culturally sensitive land or the Heritage Act (registered sites and archaeology)).

Riparian areas are often risky areas – unstable land subject to rapid change in conditions with poor emergency communications (or response). It would be irresponsible to show areas as ‘available’ for camping that are unsafe – as the target community cannot be expected to know what these risks are. It is the actions of the Crown that will generate visitation to these sites – and any consequence of encouraging not only visitation but long term stays should therefore be met by the Crown.

The regulations are reliant on a voluntary code which is being developed by a fishing interest group without consulting key stakeholders. Issues such as ‘biosecurity’ and ‘public safety’ are important issues that should not rely on a code focused on a small percentage of potential users and without input from the predominant users of this land, the licence holders. It will also be critical that land managers and key regulators are not only involved in development of the code but in the refinement of the regulations.

Many issues such as vehicular access have not been addressed – as covered elsewhere in Crown Law. If the key driver of activity is to be the ‘app’ and if the ‘code of conduct’ is based on the regulations, in the interest of transparency and public understanding these issues must be recognised in the regulations and the code of conduct. Ensuring lawful emergency access is available at sites will assist in sudden emergencies such as flood and fire.

Registration will be critical to the proper function on these regulations – it will allow ‘inspections’, It will provide information regarding usage to ensure monitoring of carrying capacity and environmental health, it will help encourage ‘good behaviour’ and it will allow investigation of any illegal activity and allow vendor declarations to be made (federal biosecurity requirements).

Without registration and inspection there is a great risk of campers not properly addressing biosecurity or not complying with the regulations which cause harm or loss to private property and/or assets on licensed land. It is not fair to expect a landholder to not seek a remedy for loss of property caused by a ‘recreational user’ or be responsible in law for their actions.

VFA throughout this process has been promoting an ‘app’ so that people know where they can camp. All of Australia is now very familiar with the process of ‘checking in’. QR codes at entry / emergency signage points would be a simple way to achieve registration to support the enforcement of these regulations. A penalty should be provided for camping without registration.

### Remedies

1. Redraft the regulations to reflect the nature of riparian areas under licence as outlined in the body of this submission, including siting / setbacks, biosecurity, regulatory conflict. The objectives of the regulations should be widened to ensure the regulations clearly deliver safe and biosecure passive recreation of the land in a way that does not conflict with the licensed use of the land for sustainable farming.
2. Refine ‘mapshare’ so that it only identifies areas where the requirements of the regulations are met (i.e. camping is allowed).
3. Provide a copy of the app map from ‘mapshare’ and the parameters used in its preparation to licence holders and neighbours for checking accuracy (buffering of parameters) and identification of any areas of public safety risk or environmental or cultural sensitivity.
4. Provide assurances to licensees that the indemnity clause in their licence does not apply to damages or injury caused by ‘recreational users’ under these regulations and that the Crown will be responsible for public indemnity under these regulations. This could include a reporting function in the ‘app’.
5. Undertake an annual review of the regulations, including number of campers, locations, length of stay, number of breaches reported, level of loss incurred, and response time to reports of breaches by ‘category’. This review may lead to changes in the regulations to address risk or inability to enforce the regulations or in the temporary or permanent closure of sites for camping.

*Regulation 1(a) should be amended to read “regulate the passive recreational use of certain regulated watercourse land without impact on federal or state biosecurity protocols, the sustainable farming of the area in accordance with its licence, public safety, animal welfare and property;”*

*Regulation 1(b) should be amended to read “provide for the management of campfires on certain regulated watercourse land where parameters relating to risk and available firewood are met.”*

*Regulation 5 should be amended to include (f) is the licensee or agent of the licensee or a specific regulation, similar to regulation 6, be prepared for license holders*

*If regulation 5 is not amended then each relevant clause must be amended to recognise the rights and requirements of the licensee take precedence over the regulations.*

*Regulations should be amended to ensure that the licensee is not responsible for injury, loss maintenance, fire protection works, rubbish removal, or fencing and other works relating to the recreational use of the land which is outside the parameters of the licence. Any clauses in the licences that seek to indemnify the government from claims relating to recreational use of the land should be removed.*

*Regulation 9, 30 and 36 must be amended to ensure licensees are properly consulted in decisions relating to permits, commercial use and seasonal or permanent revocation of camping.*

6. Ensure that the 'app' includes a 'check in' requirement and that this is required to occur via the regulations.

*New regulations are required in Part 5 – access to require:*

- *Mandatory registration of overnight access via a 'covid safe' style application with QR code at access point or via telephone to the 1300 number stating the 'registration' number of the site (emergency signage);*
- *That where there is not a 'public' road or access track vehicular access will be prohibited; and*
- *Removal of any soil or plant material from clothing or property, including vehicles, before entry to or movement between sites.*

*Include a penalty of at least 20 penalty units is applied to 'unregistered camping'.*

## **Background to directions – crown land management & biosecurity**

Over the past decade the Crown has been responding to a mix of public safety and environmental impact concerns to increase the regulatory oversight of camping in forested areas and national parks. It is the belief of the VFF that camping and longer term occupation of regulated water courses are more likely to have serious environmental impacts, have a unique set of safety risks involving interactions with livestock and the nature of these sites as floodplains with native species prone to limb drop in wind and hot / dry conditions, and increased biosecurity concerns due to disease and seed carried in by campers, (including food) and biosecurity / health implications of food scraps being left behind where stock can access.

There is very little understanding of 'biosecurity' beyond weed control in the Victorian Public Service outside of Agriculture Victoria. When 'biosecurity' was raised at the riparian forum over 2 years ago the response was that it was not an issue. It is critical that DELWP discuss federal biosecurity law and plans with the Commonwealth and with the farming sector. In 2017 Federal legislation was amended requiring "vendor declarations" before the sale of commodities. This includes knowing who has been on the land that the commodity has been produced on (including licensed land) and what chemicals have been used on the land.

In early 2021 the Government acknowledged that "much of Victoria's current public land legislation is outdated and does not reflect contemporary views and values of public land. It is also complex and does not adequately support efficient and effective public land management."<sup>i</sup> Just because passive recreational



access has been allowed in areas for 150 years does not mean that biosecurity or safety issues have changed given technology and transport. 2020 and covid is a prime example of why biosecurity matters.

If the government is committed to best practice modern regulations then these regulations should have been prepared based on risk and how this could be managed through regulations in relation to consequence and likelihood.

This year alone Parks Victoria has published a draft plan to end free camping in the Grampians National Park, to require registration for camping at designated sites and encourage 'accommodation' outside of the Park. This reflects safety and environmental concerns that equally apply to waterway land. It could be argued that the narrow nature of these areas, presence of sensitive waterways and the interface with livestock increases risk in terms of likelihood and consequence.

At the moment there are 3 'plans' on Engage Victoria that seek to specify where you can camp on specific Crown land reserves. This includes access, toilet facilities, common food preparation and campfire facilities. The regulations should recognise the 'direction' that modern crown land management is heading and seek to support the 'net gain' outcomes from generations of 'stewardship' that are threatened by the current regulations. If camping is to be allowed on this land, why is best practice management not being employed?

The current draft regulations would allow occupation of a site for 50 weeks of the year. This is akin to permanent occupation. Long term camping is governed by the *Residential Tenancies Act 1997* and the Residential Tenancies (Caravan Parks and Movable Dwellings Registration and Standards) Regulations. In the June 2019 review of these regulations the Government made the following statement:

*The Victorian Government recognises the value of the caravan parks industry to those who visit, live in and operate caravan parks. For that reason, the Regulations establish a series of requirements to ensure that people can use caravan parks safely and with confidence. The purpose of these requirements is to establish a minimum benchmark of services and amenities that all parks must achieve as a condition of their operation. The requirements include:*

- *registration of all caravan parks with local councils*
- *standards for the design, construction, installation and maintenance of UMDs in caravan parks*
- *incorporation of fire safety requirements prepared by the fire authorities*
- *the type and standard of amenities, such as sanitary facilities, that must be provided in caravan parks*
- *preparation of emergency management plans to protect the health and safety of residents and short-term occupiers* <sup>ii</sup>

All of these considerations are valid considerations in relation to sensitive areas which may be subject to permanent occupation. In the years prior, there was a program by DELWP seeking to close down caravan parks to evict long term residents from DELWP caravan parks based on a permanent occupation policy.<sup>iii</sup> These facilities are often the step above homelessness, and from a social justice perspective basic facilities and access to services should be provided to long term 'residents'.

Long term occupation not only has significant environmental consequences but social justice implications.

### Remedies

7. Utilise the regulations in a strategic and precautionary way by identifying areas that meet the regulatory parameters and where camping can occur with minimal risk.
8. Use registration to determine 'popular' sites where camping sites and facilities are provided (eg Mitta Mitta)
9. Limit term of occupation to 5 days per recreational visitor and a maximum of 2 weeks per year (per site per visitor)
10. Amend the regulations to properly address biosecurity risks – including siting parameters, behaviours and penalties.
11. Require registration.

### **What makes regulated water courses different from forests?**

Core to the list of amendments to the regulations and supporting documents and processes being made by the VFF is the 'land manager' knowledge of the unique challenges these linear and constantly changing areas present.

It is understandable that DELWP wants consistency in regulations where this is feasible. It is also understandable that they have little hands on management experience of linear reserves with licensed uses. DELWP does however have an understanding of public / private interface issues (although generally camping is not near that interface) and has some general principles in relation to the "good neighbour program".

The key issues stem from little attempt to undertake an analysis about what is different about forests versus riparian areas; what are the 'good neighbour' issues and are there any differences in usage that need to be considered.

The following is a 'high level' list of obvious 'differences' which should have been considered in drafting the regulations and undertaking a regulatory impact statement:

- Crown frontages generally have a low ratio of area per metre of perimeter;
- Crown frontages are sensitive riparian environments, important for the protection of water quality and biodiversity. They are generally unsuitable for camping because they are narrow, have limited access and are often near farms and residences;
- Waterways are dynamic areas. Their location or nature can change rapidly. Increasing the likelihood of 'access' and significantly increasing the length of stay increases the risk of environmental damage or injury as well as the consequence and likelihood of harm. Consequences in relation to indemnity and insurance clauses in licences have not been considered or adequately explained to licence holders;
- These areas are, by their nature / category always 'licensed' for agriculture use in conjunction with active management requirements. Licence holders have undertaken works including revegetation, fencing, weed and erosion control and grazing management – which will be put at risk if not properly considered. Notification of licence holders in regards to permit and commercial operations have not been considered;
- Licences have requirements and obligations which are not considered by the regulations. Licence holders are responsible for breaches of legislation as well as clean-up of sites;



- Regulatory conflict and regulatory fairness has not been considered. If a camper removes dead vegetation for firewood under the regulations the licence holder may be fined for breaching the Native Vegetation Regulations;
- Riparian areas are generally not heavily timbered – not a large amount of ‘firewood’ for collection. Interfering with vegetation which is stabilising riverbanks or compacting soil that will have water quality and landform impacts (eg if active recreation – bikes etc are used when denuded area is ‘muddy’ or movement of watercourse during floods);
- Generally do not have ‘access tracks’ where most campers, emergency services and enforcement personnel in forests access areas by vehicle; and
- Enforcement of ‘unlawful’ camping reported by licence holders has been poor. Led to degraded environment and safety issues.

## Discussion of key areas of change

As outlined in this submission it is private landholders that have traditionally managed this unique category of crown land that is diverse in its nature. It is disappointing that the public land manager has not sought the views of the cohort of ‘licensees’ that have been not only entrusted with managing this land for generations, but which the government acknowledges they do not have the resources to undertake the active management these areas require.

The following section outlines the key areas of concern that have been raised by the ‘stewards’ of these areas and the regulatory changes, education and guidance, internal practice, information, registration and emergency response and resourcing (infrastructure and enforcement) required if the outcomes promised in parliamentary debate is to be delivered in practice.

### Second round of consultation – redrafted regulations

Given the extent of change that is required to make these regulations fit for purpose it will be essential that a second round of consultation is undertaken before they are enacted.

Included in this ‘consultation’ will be the provision of licence specific information on how the regulations are proposed to apply to the licensed area and how regulatory conflict between the regulations, the licences and other statutes have been resolved.

### Each licence holder should receive a plan for comment and checking four months before regulations are finalised

Licence holders often know the ‘regulated area’ better than the public land manager. They have observed the land in a range of conditions – high winds, rains and floods, drought, code red days. They have fought fires on the land, moved stock to avoid floodwaters and observed landscape change over time. They know where any physical risks are. They know where sensitive areas are.

The crown land management layer is a good resource but it does include errors. In addition the topography information in remote areas are often at a 10 metre interval – which will not show steep slopes or areas of risk. Topography is often 50 years old so watercourses / water infrastructure changes are not always known. This is significant in riparian environments where high flows and floods can move a watercourse, creating a new main channel or billabongs.

Mapshare does not current display the land to which this regulation theoretically applied. This will make the 'app' a challenge to create. In working on the 'back end' of the public land layer this would also be the opportunity to share this information with licence holders so any errors in status could be flagged and the location of physical parameters for which setbacks are required identified so that the 'app' only displays sites where camping can occur safely and without breach of the regulations.

It is critical that the management and stewardship experience of the licensee is sought in the functioning of the regulations and the preparation of codes of conduct. It is disappointing that recreational fishing has been given the exclusive responsibility for this process, excluding organisations with land management and biosecurity experience.

### Remedy

*DELWP needs to provide all licence holders and neighbours of 'regulated land' with a map of the areas they believe are regulated and meet the setback and siting requirements within the regulations at a minimum of four months prior to the regulations coming into effect to allow quality assurance to be undertaken.*

### **Registration – traceability, management, security and biosecurity**

Registration is a key issue that is required to underpin the proper functioning of the regulations and to avoid perverse outcomes for licensees. 2020 has shown how simple it is to 'register' and how this can be built in to the VFA 'app' or the 1300 number. In addition it will allow inspection during each camping stay to determine any need for refinements, and ensure that 'enforcement' of any breach of regulation, biosecurity, trespass or property damage can be resolved. Patterns of breaches may require infrastructure, security / monitoring or closure of sites.

Initially, registration and the 'app' should only show areas available for 'camping' that are known to meet all setbacks within the regulations and are known to be safe and suitable for camping.

The regulations need to be clear in regards to 'access' requirements. Expecting casual campers to be familiar with other crown land and biosecurity statutes is unrealistic. There is inherent risk to life and property if these requirements are not clearly specified.

### Remedy

*New regulations are required in Part 5 – access to require:*

- *Mandatory registration of overnight access via a 'covid safe' style application with QR code at access point or via telephone to the 1300 number stating the 'registration' number of the site (emergency signage);*
- *That where there is not a 'public' road or access track vehicular access will be prohibited; and*
- *Removal of any soil or plant material from clothing or property prior to entry to the land.*

*Division 5 of the regulations must be amended to require a permit for camping until the area has been assessed for safety and ability to comply with the regulations. Mapshare needs to clearly identify areas where a permit is required.*

*The Voluntary Code must include information on biosecurity protocols and proper behaviour to minimise risk to life and property.*

*In addition to the biosecurity changes to Part 5 of the regulations a Voluntary Code must include information on biosecurity protocols and proper behaviour to minimise risk to life and property.*

*Regulation 18(2) should be deleted (collection of firewood).*

*Regulation 19 must be amended to recognise biosecurity 'hygiene' protocols in relation to soil, wood, vegetation etc.*

*The government must establish 'emergency markers' and a dedicated response time for reporting of serious issues. Ambulance dispatch time would be the appropriate model and compliance with meeting the Code 1, 2 or 3 times must be reported.*

**The regulations should establish a default position that camping is an unsuitable use of licensed Crown frontages where all regulatory requirements cannot be met.**

The current regulations include a set of parameters for 'compliant' camping however the minimum setback for camping (20m) would not allow even the basic 'waste' issues to be complied with as waste must be disposed of at least 50m from a waterway. This width would also exacerbate amenity issues, risk / safety and the increased potential for impacts on private land.

The final regulations should contain a range of siting criteria and public safety assessments that sites must demonstrate that they can be met before the site is shown as 'available' for camping.

### Remedy

*Part 5 – Access needs to be amended to prohibit camping on areas which do not meet the siting and safety requirements of the regulations.*

If this is not delivered it will be essential for permits to be required until areas are deemed suitable for camping.

*Part 3 of the regulations need to be amended to require permits for any site that does not meet the following criteria:*

- *Camp sites that meet all setback criteria are identified and marked (as per Mitta Mitta example on engage) and camping prohibited in other areas;*
- *In consultation with the licensee, the government should fence off camping areas so that campers do not interfere with stock on the licensed land;*
- *Camp sites are designed with public safety, biosecurity and public / private interfaces in mind – including:*
  - *setting aside (and constructing) camp fire and meal preparation areas at least 30m from private land and 20 m from waterways*
  - *the implementation of portable toilet systems (where appropriate) or signage ensuring that faeces are disposed of at a minimum of 50m from any watercourse, 30m from private land, crops or fenced off grazed areas and at a minimum depth of 30cm.*
  - *a minimum of 250m from a bee site*
  - *erection of signs near bee sites stating no camping (expense of the crown)*
  - *at least 500m from a dwelling for privacy and safety, including of vulnerable residents (children, elderly)*
  - *be accessible by safe, and fenced, tracks from public roads;*
  - *be in areas that contain adequate phone reception (for emergency purposes);*

- *be in areas that are not prone to erosion, flash floods, limb drop or have any known hazards (river snags, cliffs, mine shafts etc); and*
- *Camp sites will have an ESDA recognisable identifier sign and QR code for registration.*

*Regulation 35(1)(b) should be replaced with ‘unless the land has a minimum width of 85m’.* This ensures that a minimum width to allow for safe and legal camp sites to be identified.

*Regulation 35(2) should be amended to allow the regulated land manager to establish a greater distance than mentioned in VFF version of R 35(1)(a) and (b)’.* This ensures that a minimum width to allow for safe and legal camp sites to be identified in areas of additional risk or environmental sensitivity.

*The Regulations [r35(6)] should be amended to reduce the 28 night stay limit to 5 days with a maximum number of days per annum per site of 14 days.*

This ensures that there is fairer access to these reserves which are physically constrained. It also helps ensure that environmental damage from camping is minimised. Provide information relating to your situation.

*All references to recreation in the regulations should refer to “passive recreation” which should be defined and all active and vehicular forms of recreation be prohibited with penalties applying.*

*The Government must commit to achieving a 50% inspection rate for camping of 2 days or less and 100% of all stays over 2 nights. Inspection will be made during a stay by an enforcement officer;  
Areas where a permit is required should be mapped and presented on the app.*

### **VFF criteria – siting, length of stay, infrastructure, activities**

Little is known by the government in relation to these riparian areas. The current mapping layer does not easily identify what will be ‘regulated land’, or areas that will allow the siting and setback requirements of the land to be met. The application for permits will ensure that investment is made into developing a layer on Mapshare that excludes land that does not meet the physical requirements and will encourage inspection of the land to identify areas where public safety would be at risk from access.

500m represents a safe distance in relation to safety of children and the security of adults that they can undertake day to day activities without feeling at risk.

30m provides a buffer to minimise accidental damage to private land from camping activities, spotting from camp fires or livestock interaction with waste products (biosecurity risk).

250m from a bee site minimises the risk of interference with the hives for both biosecurity and public health reasons. Many campers commonly use ‘bee sites’ for camping due to lack of education and signage. Feedback from bee keepers is there is often evidence of interference with bee hives, with impacts on bee health. “No Camping” signs at bee sites will ensure cleared, open bee sites remain available for their purpose

Dogs and guns increase not only public safety risks but are a threat to livestock. Enforcement of these regulations will be ineffective and there is not discussion of compensation for property loss or injury caused by these clauses.

Camping should be considered (temporary) residence with owners subject to infringement under the Domestic Animals Act 1994 in reference to stray dogs or cats found on private property, dogs not adequately confined to the premise, dogs disturbing livestock (provisions for landholders to destroy dogs found disturbing animals in areas which they are confined), attack of another dog or persons.

Compensation should be based on the current market value of the animal, including loss of progeny.

The current protections/exemptions for landholders who undertake baiting programs or to destroy animals threatening livestock must apply to any 'dog' on the property. If the government does not prohibit dogs then education on the likely presence of baits and the laws applying to dogs harming livestock must be included in education.

Risk is increased due to camping – not only does it increase the time spent on the site, harm can occur at night – for example unrestrained dogs predating livestock, or 'spotlighting' spooking livestock who stampede over campers.

### Remedy

*Part 5 of the regulations need to be amended to prohibit camping on any site that does not meet the following criteria:*

- *Camp sites that meet all setback criteria are identified and marked (as per Mitta Mitta example on engage) and camping prohibited in other areas;*
- *In consultation with the licensee, the government should fence off camping areas so that campers do not interfere with stock on the licensed land;*
- *Camp sites are designed with public safety, biosecurity and public / private interfaces in mind – including:*
  - *setting aside (and constructing) camp fire and meal preparation areas at least 30m from private property and assets (water troughs etc) to protect assets and minimise biosecurity risk*
  - *the implementation of portable toilet systems (where appropriate) or signage ensuring that faeces are disposed of at a minimum of 50m from any watercourse, 30m from private land, crops or fenced off grazed areas and at a minimum depth of 30cm.*
  - *a minimum of 250m from a bee site*
  - *erection of signs near bee sites stating no camping (expense of the crown)*
  - *at least 500m from a dwelling for privacy and safety, including of vulnerable residents (children, elderly)*
  - *be accessible by safe, and fenced, tracks from public roads;*
  - *be in areas that contain adequate phone reception (for emergency purposes);*
  - *be in areas that are not prone to erosion, flash floods, limb drop or have any known hazard (river snags, cliffs, mine shafts etc); and*
- *Camp sites will have an ESDA recognisable identifier sign and QR code for registration.*

*Regulation 35(1)(a) should be amended to prohibit camping: within 50m of any watercourse, water access point or water trough (including on private land); within 500m of any residence; and to prohibit camping, campfires, food preparation /consumption and waste disposal within 30m of private land; and 250m of a registered bee site.*

### **Prohibition of dogs**

*Regulation 24 (1)(a) should be deleted.*

*Regulation 16 should be amended to read that access is for passive recreational use and that motorised recreational use, active recreational use, guns and companion animals are restricted. The regulation should also refer to the protection of amenity, public health and safety, livestock safety, biosecurity, protecting natural / cultural values including neighbouring land are relevant considerations in restricting or prohibiting access.*

If dogs and guns are not prohibited in the regulations then *Regulation 7(1) should be amended to require that the use of guns or dogs must not be within 100m of private land, grazed areas or cropped areas.*

In addition, the regulations should then clearly state that:

*Camping will be considered a (temporary) residence with owners subject to infringement under the Domestic Animals Act 1994.*

*The VFA app should exclude sites that do not meet these criteria.*

### **Communication with / recognition of licensees is markedly improved.**

As discussed previously there is much confusion regarding how the regulations would apply to licence holders if enacted and how the regulatory impact of the regulations on rights and obligations on the licensee have been considered. Key areas to address in the regulatory review and follow up communications include:

- Do the provisions of a licence override regulations?
- Should permits / commercial use require licensee consent?
- Will licences be amended so that so that no indemnity is granted to the State from any action ensuing from or injury to a 'recreational' user accessing the land under these regulations?
- Will licensees be able to make a claim against the government for loss of property caused by a recreational user?
- Will direct contact numbers be available to report any issues and seek action – example is closure of site due to emergency risk or regular non-compliance?
- Will the licence holder continue to be 'presumed' responsible for any breach of statute or subordinate document in an area where campers have been?
- Will the licence holder still be responsible for clean-up of waste dumped on site by recreational users?
- Should the government institute temporary or permanent site closure in response to damage for occupation above the carrying capacity, illegal behaviour or property damage?

Being able to 'close' a site or deem an area 'permit only' would help ensure that the regulations are fair to all parties and encourage good behaviour. Updating the app to show status of land and any special considerations would help ensure the app does not mislead the community.

### **Remedy**

Revision of the regulations to clearly address environmental, safety and biosecurity factors in determining the availability of the site for camping then these can be mapped. Land where camping cannot be undertaken "legally" should not appear. Land with a safety risk which is temporary should not appear while it is 'temporarily' closed. Permanent risks or areas with repeated serious breaches should be

‘permanently closed’. This will reduce the risk to private landholders feeling they need to intervene and will make it easier for the public and enforcement officers.

*Regulation 5 should be amended to include (f) is the licensee or agent of the licensee.*

*If regulation 5 is not amended then each relevant clause must be amended to recognise the rights and requirements of the licensee take precedence over the regulations.*

## Duties and obligations

The regulations are silent on the duties and obligations of the licensee. At the moment works required under the licence may be a breach of the regulations. Actions under the regulations, such as taking of firewood by the recreational users, would see the licensee in breach of the Native Vegetation regulations, the Aboriginal Heritage Act or the Heritage Act.

*Regulations should be amended to ensure that the licensee is not responsible for injury, loss maintenance, fire protection works, rubbish removal, signage or fencing and other works relating to the recreational use of the land which is outside the parameters of the licence. Licences should remove any clauses that seek to indemnify the government from claims relating to recreational use of the land.*

Without registration and inspection there is a great risk of campers not properly addressing biosecurity or not complying with the regulations which cause harm or loss to private property and/or assets on licensed land. It is not fair to expect a landholder to not seek a remedy for loss of property caused by a ‘recreational user’ or be responsible in law for their actions.

Current camping areas are known to have problems with rubbish being left and camp fires being unattended. Even more remote sites without vehicular access are not only more likely to have these issues but the consequences of breaches are increased. <sup>iv v vi</sup>

## Remedy

*Areas where registration and regular routine site inspection during or at end of stay cannot be guaranteed should not be shown as available to camping on the app.*

*Regulation 9, 30 and 36 must be amended to ensure licensees are properly consulted in decisions relating to permits, commercial use and seasonal or permanent revocation of camping.*

*Regulation 25 should be amended to ensure amenity is maintained (noise, odour, dust, light).*

*Regulation 26 should be amended to exclude the licensee and be expanded to include agricultural improvements and assets.*



## Biosecurity

Biosecurity is a multi-faceted issue. Ensuring access does not increase the spread of disease or weeds is one critical issue. Biosecurity issues also impact on the ability of farmers to sell their produce – with increasing vendor declaration requirements. This is not just for ‘quality assurance’ but for public safety. For example certain chemicals can ‘bio accumulate’. Providing ‘swill’ to pigs can lead to zoonotic disease. The waste disposal from campers and the potential of faecal contamination of grazing areas provides the very real risk of reverse zoonosis with the spread of antibiotic resistant bacteria and diseases such as “beef measles” and its potential to jeopardise international trade.

For example, cattle will be exposed to increased risk of beef measles and other disease<sup>1</sup>. It will be difficult for licensees to fulfil biosecurity requirements under the current regulations.

Beef measles is described by NSW Department of Primary Industries as a disease that “causes small cysts in the muscles of cattle and their presence can lead to all or part of the carcass being condemned. Cattle get *Cysticercus bovis* from ingesting foodstuffs contaminated with eggs passed from humans.” This is an example of a biosecurity risk whose likelihood is increased through the regulations as “factors that increase the risk of cattle being infected with *Cysticercus bovis* include grazing on land that has: 1. Human faecal contamination ...Cattle may also become infected by eating foodstuffs or concentrates that have been contaminated by human faeces.”<sup>vii</sup>

### Remedy

*The regulations must require ‘biosecurity wash down’ protocols before accessing licensed land. Where necessary, wash down facilities with biosecurity bins should be provided and detailed biosecurity education included in guidelines, including food preparation and disposal.*

*The regulations also envisage a wide range of materials being brought on to the site, including wooden materials. Untreated wood does carry lichen, fungi, dirt, seeds, insects and spores which can be a biosecurity risk.*

*The regulations should be reviewed to carefully consider wood products – for example regulation 19 (3) (a) and (b) need to be revised for biosecurity risk. For example (b) could be limited to a wooden fishing rod and a wooden walking stick that have been treated and sealed.*

## Safety - Funding, enforcement and infrastructure

Farmers are concerned that they will be forced to intervene when campers are on land which is not a water frontage under these regulations. They are concerned that they may be subject to violence or retribution on the erroneous belief that access is lawful. If the regulations remain any ‘penalty’ or ‘breach’ could be avoided by the recreational user entering non regulated land.

Neighbours and licence holders have decades of experience with the inability of the Crown to ensure campers in state forests of unlicensed waterways act in accordance with regulations. They are aware of campfires left unattended, large amounts of rubbish being dumped in areas, and threats being made when reports of threatening or dangerous behaviour has been made.

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<sup>1</sup> Bovine measles is an infectious and contagious disease under the Livestock Disease Control Act 1995 [https://agriculture.vic.gov.au/data/assets/pdf\\_file/0008/613925/Order-Declaring-Diseases-and-Exotic-Diseases.pdf](https://agriculture.vic.gov.au/data/assets/pdf_file/0008/613925/Order-Declaring-Diseases-and-Exotic-Diseases.pdf).

Good governance requires proper consideration to the ability to enforce the requirements of the Act through the regulations and that both statutory instruments will properly manage risk, including through funding enforcement.

### Remedy

*Regulation 11 and 12 should be amended to allow authorised officers to seek unauthorised activity by campers on private land, and establish mandatory reporting of trespass where they refuse to cease occupation of land not subject to these regulations.*

*Regulation 14 should be amended to allow temporary and permanent closure of regulated land for an expanded range of reasons including biosecurity, natural hazards / landform or vegetation risk and repeated or a single serious breach of regulations leading to safety risks or property damage greater than \$1,000.*

*Regulation 16 should be amended to read that access is for passive recreational use, motorised recreational use, active recreational use, guns and companion animals can be restricted. The protection of amenity, safety, livestock safety, biosecurity, and natural / cultural values on neighbouring land should be considered in restricting or prohibiting access.*

*The public land manager must seek the views of the licensee and neighbours annually in relation to the use of regulation 16.*

*The public land manager must consider all compliance and risk issues reported in the previous year as part of the annual review. Repeated dangerous behaviour or a change in conditions should trigger an immediate review.*

### Consideration of all risks

All risks should be considered in determining special requirements. As the physical nature of these areas and their condition can change regularly and annual discussion should be undertaken. This would also allow consideration of any patterns of overuse or unlawful behaviour which require a change in land status.

*Regulations must be introduced to require registration as well as 'inspection' during the period of camping by a Public Land Manager.*

Currently DELWP and Parks Victoria have areas where registration is required. Current and recent consultations on Engage both relate to the cessation of free camping in the Grampians National Park (registration and defined sites) and the introduction of defined camp areas and services in other areas. This demonstrates that the Crown is acknowledging environmental and safety risks on land that they manage. As many of these areas are remote it is essential that there will be the likelihood of being fined if not complying with the regulations.

*The Government should ensure that where camping is provided for under a future regulatory regime, that it allocates sufficient resources to manage the impacts of camping and the behaviour of campers and that there is no expectation that licensees carry any additional burden.*

### Inspections during stays

*Budget must be allocated to properly resource registration, signage and enforcement / inspections and camping infrastructure. **Signage, fencing and security – DELWP expense***

*A grant program must be established to meet 100% of fencing off camping areas (public safety), off river water infrastructure and to allow fencing off of regulated land (50% funding).*

## Administrative changes

The attached document annotates the draft regulations in line with this submission. There are a range of more technical considerations to be considered to ensure the regulations are fit for use. A brief description of these issues follows.

## Definitions

The following definitions should be revised

- Dwelling – currently this should apply to a tent. Replacing structure with building or utilising the definition in the Planning and Environment Act is suggested.
- Campfire or Firewood– should specify the need for a contained ‘fuel based’ facility or designated campfire site where there is sustainable fuel reserves, given concerns regarding availability of ‘firewood’ and biosecurity risk of introducing firewood from off site.
- Cultivate – definition is required to relate more specifically to the agricultural meaning.

The following definitions should be inserted

- Biosecurity risk – as per definition in the *Biosecurity Act 2015*
- Commercial. The regulations reference the prohibition of commercial activities without a permit, for example regulation 30. Farming would be a commercial activity under the ‘Macquarie Definition’, and farming under licence occurs on all “regulated land” to which these regulations apply. As there is no acknowledgement of how the regulations apply to the licence or licensee, there is a potential 20 penalty unit fine to the licensee.
- Recreation. This should be a ‘nested’ definition. Only ‘passive’ recreation should be permitted under the regulations. Active, motorised etc forms of recreation should be prohibited.
- Registration. Referring to the ‘app’ or other method to show a record of occupation of sites.
- Waterway – should apply to setbacks and the Water Act 2007 definition used. Any ‘setback’ provision in the regulations be amended to read ‘waterway’ not ‘watercourse’.

Passive recreation may be defined as a non-motorised activity that:

- Offers constructive, restorative, and pleasurable human benefits and fosters appreciation and understanding of open space and its purpose;
- Is compatible with other passive recreation uses;
- Does not significantly impact natural, cultural, scientific, or agricultural values; and
- Requires only minimal visitor facilities and services directly related to safety and minimises passive recreation impacts.

## Using Mapshare rather than gazettal

In addition to reviewing Regulation 14 to bring it in line with other frameworks which allow for longer term or permanent closure of sites (or restriction of activity) in response to risk, the method of ‘notifying’ that change should be changed to ensure ‘app’ users are getting current information.

For instance the Blowhole at Hepburn was closed for over two years following a rockfall. Simple laminated notices were put on the site. ‘Gazetta’ is not a user friendly tool and may actually lead to a perverse outcome of sites not being closed due to the internal process and cost to ‘gazette’ a site – especially for such a short period. Just as Parks Victoria will use their website to warn people of ‘changed conditions’ the ‘app’ should be easily updated to show an area as being temporarily or permanently closed.

## Notifications

*Any regulatory clause which refers to a ‘permit’, ‘commercial activity’ or ‘written permission’, for example regulation 22 should require consultation between the regulated land manager and the licensee as to the appropriateness of that use or action.*

Under regulation 40 campfires can be prohibited and areas set aside. The regulations should be amended to ensure the regulated land manager must consider requests / advice from the licensee or neighbour in regard to safety / risk to life and property in determining the need for prohibition of campfires on regulated land.

## Trespass and referral to Victoria Police

Where trespass is noticed by the regulated land manager refusal to cease trespass should be immediately reported to Victoria Police.

## Regulatory clarity

### Native vegetation regulations

Riparian areas are generally sparsely vegetated. Licensees have obligations in regard to protecting vegetation and undertaken revegetation which will be threatened by this regulation. The Crown has not assessed the substantive differences between waterways and ‘forests’ in regard to availability of vegetation.

The ‘native vegetation regulations’ apply to these areas. It is confusing to have two contradictory set of regulations applying to the land.

*Regulation 23 – Firewood should be amended to state that a person other than the licensee must not on regulated land cut or take any vegetation for firewood. Any firewood collection by the licensee must be in accordance with the Native Vegetation Regulations.*

*Where it can be shown that there is a ‘sustainable’ supply of firewood a provision could be inserted to modify the opening of firewood collection based on a fit for purpose modification of the ‘firewood’ areas.*

## Amenity

Good behaviour and other clauses to not reinforce other legislative obligations. Reference to amenity should be made to ensure that users of this land and enforcers understand their obligations under the *Public Health and Wellbeing Act* and the *Environment Protection Act*.

*Regulation 25(1) should be amended to read “behave on regulated land in a manner that is likely to be a nuisance or cause nuisance to any person or livestock.”*

*Regulation 25(2) (a) should be amended to read “a person should not behave on regulated land in a manner likely to cause danger or injury to any person or livestock, or cause any loss of amenity to any person.”*

## Penalties

There are a range of penalties which need to be increased to recognise the seriousness of the offence in relation to biosecurity, animal welfare, property loss or safety. These are included in the attached document – outlining how the regulations could be amended to begin to address the issues raised within this submission. For example the penalty in relation to introduction and planting of vegetation (by a recreational user) should be 100 penalty units to recognise biosecurity risks that could devastate biodiversity and economic values.

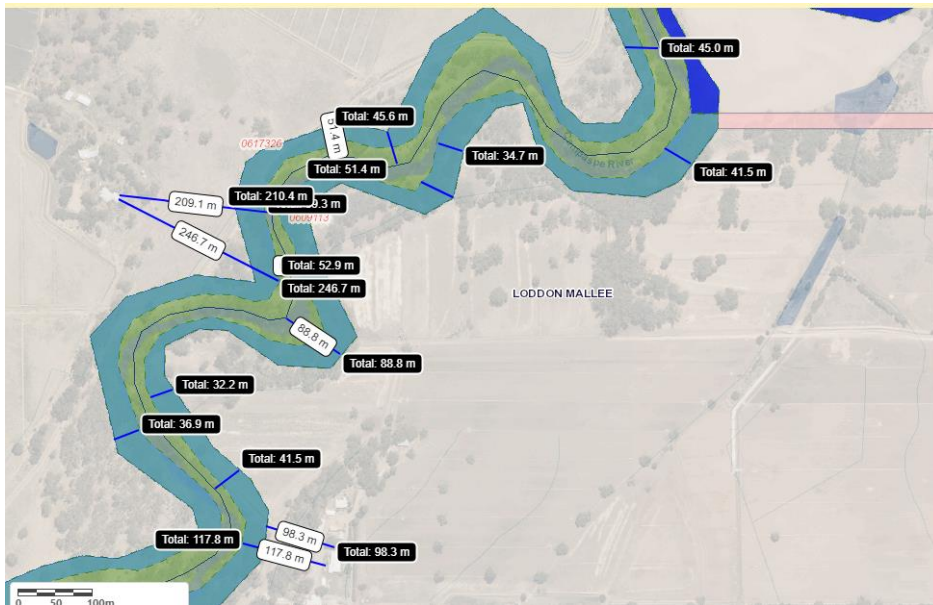
## Mapping / case studies

It is clear that little ‘proof of concept’ testing has been undertaken in assessing whether the ‘draft regulations’ based on ‘large holdings with limited private land or farming interface’ are fit for purpose given the nature of the Crown land reserves to which they are proposed to be applied. A limited number of examples of ‘regulated’ land where a range of access and siting / setback considerations should be assessed for whether the regulations will achieve positive environmental and social outcomes.

## Campaspe

Narrow watercourse in two different crown land management categories. ‘Regulated’ land generally under 50m from watercourse. Vegetation generally not in “regulated” land. Dwellings near the waterway. No easy vehicular access.

As with many other areas the public land is not zoned for ‘recreation’ (public park and recreation zone) but for ‘conservation’ (public conservation and resource zone) and the area is deemed to have cultural heritage significance as it is within 200m of a waterway. The regulations do not apply the precautionary principle to the land.



#### PLANNING INFORMATION

**Planning Zone:** [FARMING ZONE \(FZ\)](#)

[FARMING ZONE - SCHEDULE 1 \(FZ1\)](#)

[PUBLIC CONSERVATION AND RESOURCE ZONE \(PCRZ\)](#)

[SCHEDULE TO THE PUBLIC CONSERVATION AND RESOURCE ZONE \(PCRZ\)](#)

[PUBLIC USE ZONE - SERVICE AND UTILITY \(PUZ1\)](#)

**Planning Overlay:** [FLOODWAY OVERLAY \(FO\)](#)

[FLOODWAY OVERLAY SCHEDULE \(FO\)](#)

[HERITAGE OVERLAY \(HO\)](#)

[HERITAGE OVERLAY - SCHEDULE \(HO213\)](#)

[SPECIFIC CONTROLS OVERLAY \(SCO\)](#)

[SPECIFIC CONTROLS OVERLAY - SCHEDULE 2 \(SCO2\)](#)

**Areas of Aboriginal Cultural Heritage Sensitivity:**

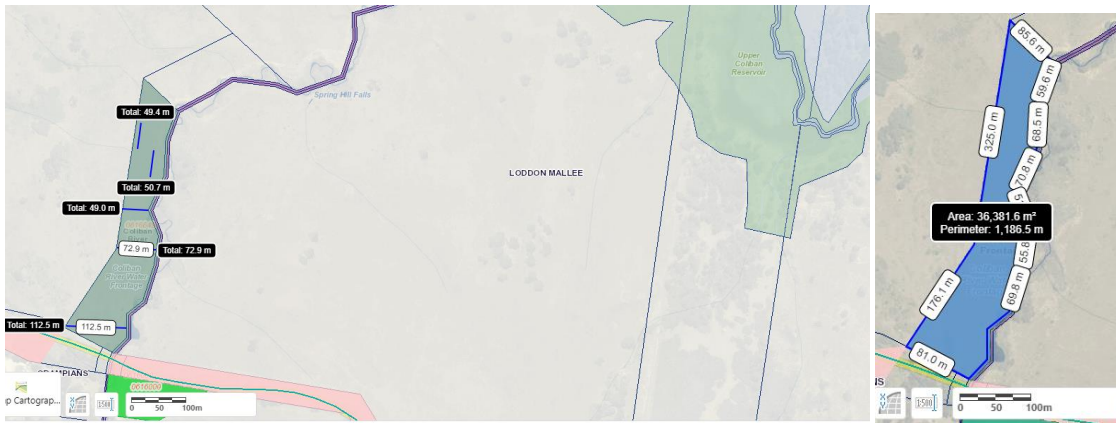
All or part of this property is an 'area of cultural heritage sensitivity'.

## Upper Coliban

This waterway would be available for camping. It has road access and ranges between 49 to 112 metres in width. There is very little 'firewood' available for collection and is in an open potable water supply area just upstream from the reservoir. It is 30 hectares in area with a perimeter of over 1.1 kilometres. Under 6 hectares would be available for 'waste disposal' without a setback to private land and less than 2 hectares or 7% per cent of the site suitable in regards to disposal of waste.

This parcel of 'regulated' land is in close proximity to a water supply reservoir. Although it appears to be wide enough to allow camping, when you factor in all of the appropriate setbacks only the 'yellow polygon' area would be 50m from a watercourse, or the 'orange polygon' where a setback to private land is met as well. It would be appropriate to determine a couple of sites in this vicinity to fence off as camp sites.





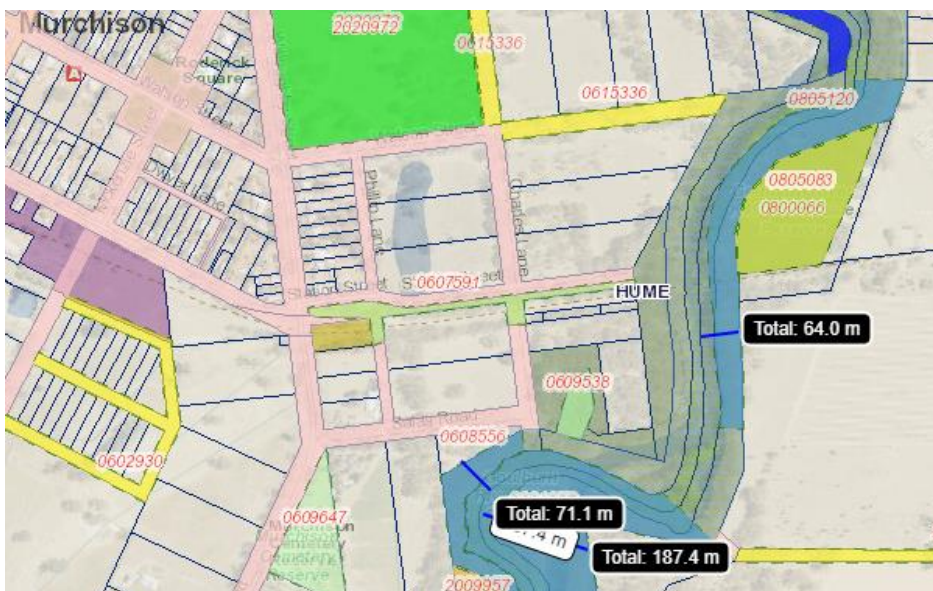
30m<sup>2</sup> area per metre of perimeter.



Indicative areas for waste disposal – factoring in separation to private property.

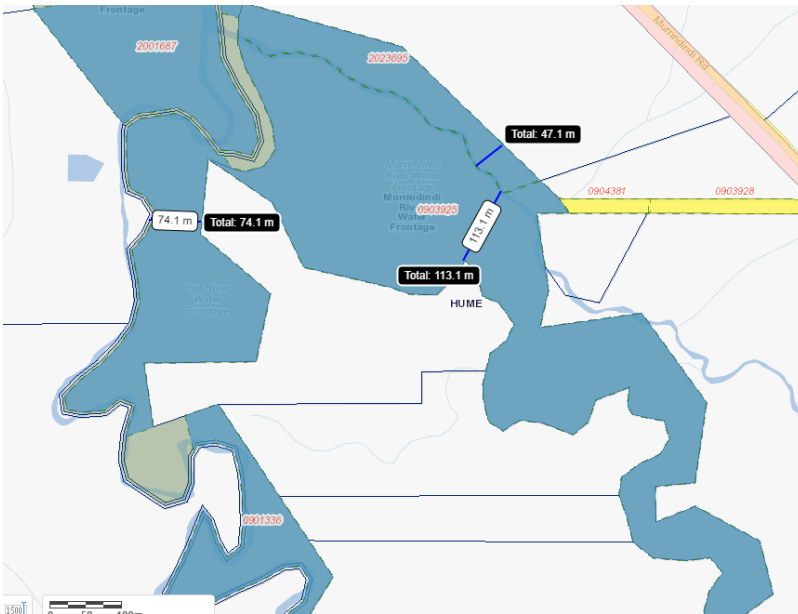
## Murchison

Although the regulations seem to exclude metropolitan parks and the Yarra, there are many ‘urban’ situations where the regulations may be used for people who would should be given housing support / social housing. This could also see people ‘camping’ near towns with motels and caravan park facilities for a term which should be covered by residential tenancy laws.



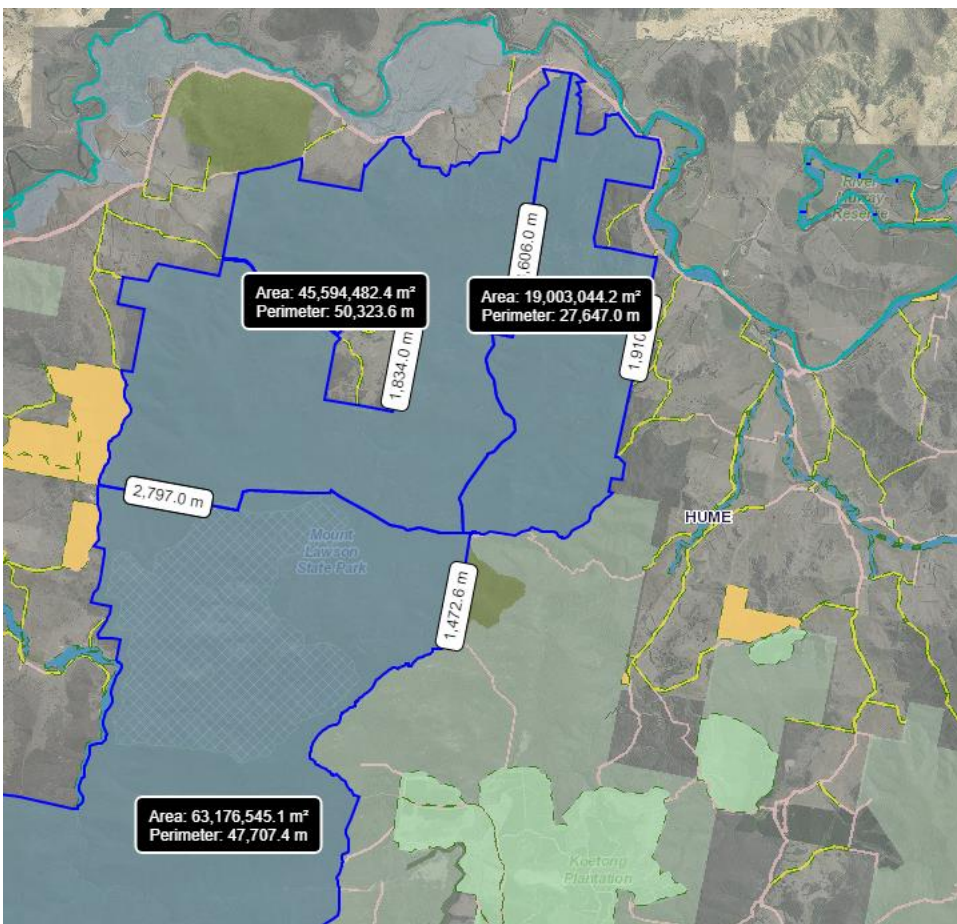






### Areas with other options for camping

Mount Lawson State Forest has over 1200m<sup>2</sup> per metre of perimeter. The watercourse land adjacent to the east has less than 3 percent of the area to perimeter of the state park. Camping in the park does provide recreation options, including fishing, with fewer risks and impacts.



## CONCLUSION

The VFF did not and does not support the removal of the prohibition of camping on licenced water frontage. Nevertheless, the VFF has engaged with the Government at every opportunity, clearly stating the serious concerns of licence holders. Disappointingly, almost none of licence holders concerns have been taken seriously or accounted for in the legislation, the regulations or the consultative process.

This submission has outlined how the Government can minimise the risks identified by licence holders. Licence holders are the most impacted group of people by the proposed regulations yet, to date, consultation with them (and other key stakeholders) has been poor. The real and present danger in the community about this process has threatened the 'Landcare' partnership between farmers and government. The VFF is committed to working together to repair that important relationship but we need meaningful change and commitment from government to do so. As the regulations are currently drafted we are unable and unwilling to help the government repair the relationship or to implement the regulations.

Emma Germano  
President  
**Victorian Farmers Federation**

## Endnotes

### The Victorian Farmers Federation

Victoria's agricultural production accounts for over \$13 billion of Victoria's economy and over 25 per cent of the State's exports per annum. Victoria's farmers produce high quality food and fibre, produced to high standards of safety, with little taxpayer support, and to some of the strictest environmental and highest animal welfare controls in the world.

The Victorian Farmers Federation (VFF) represents a farming community which creates a profitable, sustainable and socially responsible agriculture sector connecting with consumers.

We have a proud history representing Victoria's farm businesses since 1979 – primarily family farms that produce the eggs, grain, fruit and vegetables, meat, and milk that help to feed Victoria's six million people, and the bigger global community, every day.

The VFF consists of commodity groups: dairy (United Dairyfarmers of Victoria), grains, horticulture (including Flowers Victoria), intensives (chicken meat, eggs and pigs), and livestock – and expert committees representing; water, land management, agricultural and veterinarian chemicals, farm business and rural development, and workplace relations.

Our purpose is to make Victorian farmer's lives better; enhancing Victoria's future.

Our mission is to ensure a community of farmers creating a profitable, sustainable and socially responsible agricultural industry connecting with all Victorians.





Victorian  
Farmers  
Federation

## Our place in Victoria



### What we do



- Victoria's **20,775 farms** cover **10.6 million hectares**
- We are **24.2%** of Australian farmers
- **91%** family operated, with only **2%** foreign owned



- We employ **87,800** people mostly in regional areas
- **\$4739** of food consumed each year by every Australian
- As a net exporter we have long term food surity



- Our annual production is **\$13.16 billion**, **3.5%** of Victoria's economy
- **27.8%** of Victoria's exports are agricultural product valued at **\$11.9 billion**

### How we do it



Farmers invest **\$80 million** in R&D



Every R&D \$1 converts to **\$12** in farmer generated impact



**2.7%** productivity growth through innovative efficiency gains



Farmers receive less than **1.5%** in government support



**63%** reduction in greenhouse gas emissions between 1996-2016



Water consumption reduced by **7%** from 2014-2015



Land conservation has increased to **18%** of total land mass.



Farmers spend **\$20,000** annually on feral animals and pest weeds



**3.5 million** beef cattle



**140 million** chickens



**1.1 million** dairy cows producing **6.186 billion** litres of milk



**65,992** sows



**13.1 million** breeding ewes and a fleece clip of **66,100 tonnes**



**6.5 million** tonnes of grain



**\$2.35 billion** in horticultural production

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- <sup>i</sup> <https://engage.vic.gov.au/renewing-victorias-public-land-legislation>
- <sup>ii</sup> DELWP Caravan Park and Moveable Dwellings regulations – sunset review consultation paper
- <sup>iii</sup> <https://www.theage.com.au/national/victoria/park-residents-face-eviction-20120129-1qo26.html>
- <sup>iv</sup> <https://www.abc.net.au/news/2021-04-08/farmers-blast-disrespectful-campers-for-leaving-wall-of-rubbish/100053364>
- <sup>v</sup> <https://news.cfa.vic.gov.au/-/private-fires-a-leading-cause-of-bushfire>
- <sup>vi</sup> <https://www.abc.net.au/news/2020-11-19/victoria-bushfire-fears-over-campfires/12894632>
- <sup>vii</sup> [https://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0010/432892/cysticercus-bovis-in-cattle.pdf](https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0010/432892/cysticercus-bovis-in-cattle.pdf)