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# BIRRARUNG COUNCIL

THE VOICE OF THE YARRA RIVER

2019 FIRST YEAR REPORT

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The Yarra River is known as Birrarung, meaning River of Mists, to the Wurundjeri Woi-wurrung. In this report we refer to the Birrarung, the Yarra or simply the River.

### **Acknowledgment of Country**

We acknowledge and respect the Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

### **Accessibility**

If you would like to receive this publication in an alternative format, please contact the National Relay Service on 133 677 or [www.relayservice.com.au](http://www.relayservice.com.au). This document is also available on the internet at [www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/birrarung-council-the-voice-of-the-yarra](http://www.water.vic.gov.au/waterways-and-catchments/protecting-the-yarra/birrarung-council-the-voice-of-the-yarra)

# CHAIR'S MESSAGE



This report presents the first year of operation of the Birrarung Council. The Council was appointed by the Minister for Water under the *Yarra River Protection (Willip-gin Birrarung murron) Act 2017*. We serve as the voice of the River, both as an advocate and as a provider of high level, strategic advice to the Victorian Government on the health, wellbeing and future of the Birrarung.

Our Council brings together Traditional Owners as well as others with rich connections to the River. The core strength of the Council is the diversity and variety of backgrounds, skills and experience. We all share a passion for the Birrarung, for proper governance for the River, and for advising and advocating in the River's best interests. We bring a 'bird's eye' perspective to issues on the River, one which sits above the immediacy of agency, sectoral and single issue concerns.

Through our processes of enquiry and engagement over the past year, the Council has begun to establish itself with agencies, local councils and government as an independent and authoritative voice for the River.

We look to the coming year as a time where we continue to provide our unique perspective, and deepen our relationships with other stakeholders across government and community. Our key focus will be on accountability of those delivering on the goals and principles embodied in the Yarra Protection Act and on ensuring that our Birrarung is here for future generations. If we are to achieve the goal of the Birrarung as the 'one living and integrated natural entity' contained in legislation, then all stakeholders must find new ways to work together to look after Country.

A handwritten signature in black ink, appearing to read 'Chris Chesterfield'. The signature is stylized and cursive.

Chris Chesterfield

# CONTENTS

1

**CHAIR'S MESSAGE**

3

**WHY THE COUNCIL WAS CREATED**

4

**ONE LIVING AND INTEGRATED ENTITY**

5

**OUR VISION**

6

**COUNCIL MEMBERS AND OUR WORK**

8

**ACHIEVEMENTS SO FAR**

11

**THE YEAR AHEAD**

12

**LONGER TERM OUTLOOK**

13

**APPENDIX 1: FORMAL PROCEEDINGS WITH  
STAKEHOLDERS**

14

**APPENDIX 2: COUNCIL MEMBERS' ATTENDANCE**



# WHY THE COUNCIL WAS CREATED

*Photograph: The historic moment in June 2017, prior to the introduction of the Yarra River Protection (Wilip-gin Birrarung murrong) Bill, in which Wurundjeri Woi-wurrung Elders addressed the Victorian Parliament in both English and Woi-wurrung language for the first time, to explain their connection to the Birrarung and the importance of protecting it for generations to come. Credit: Jim McFarlane*

The River is at the heart of Melbourne’s imagination and is at the centre of the city’s identity. The River and its corridor and catchment enjoys wide support among the people of Melbourne and the Yarra Valley. The Birrarung Council has been created as a statutory body under the *Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017* (the Act), to provide independent advice to Government on how to protect the River and secure its health for future generations to come.

This legislation made Victorian Parliament history as the first Act to be co-titled, and with part of its preamble written in Woi-wurrung, assuring Traditional Owners a permanent voice in the planning for and management of the Birrarung. It is also the first time in Australia that a river and its surrounding public land has been recognised as one living and integrated entity for protection and improvement.

Under the Act the Council is an advocate as well as an adviser. In addition, a key part of the Council’s role in future will be reporting on the implementation of the Yarra Strategic Plan, an initiative established under this new legislation. This is a time of major change in terms of policy, strategy and projects which affect the River. These changes provide significant and unique opportunities to protect and enhance the River, so the creation of the Council is indeed timely. Its first meeting was held in November 2018.

## Functions and powers of the Council

- (1) The main functions of the Council are—
- (a) to provide advice to the Minister—
    - on the protection and improvement of Yarra River land
    - on the development, implementation, operation and effectiveness of a Yarra Strategic Plan, including its contribution to the protection and improvement of Yarra River land, and environmental, cultural and heritage values
  - (b) to advocate for protection and preservation of the Yarra River.

*Source : s 48, Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017*



# ONE LIVING AND INTEGRATED ENTITY

The *Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017* recognises the Yarra as a living entity. This is the first time in Australia's history that a river has been formally understood as a living system within our legal frameworks. The Birrarung now joins a small but growing number of rivers and other natural entities around the world that are recognised in law as living beings.

In many cases, this recognition has been explicitly grounded in the relationship between the river and the people(s) who live along and near it. For example, in Aotearoa New Zealand, the recognition of the Whanganui River as a legal person was a way to recognise the worldviews of the Whanganui iwi (Māori), and their guardianship relationship to the river. In Colombia, the court recognised the Río Atrato as a legal person in order to give effect to the human right to a healthy environment for local and Indigenous communities living along the river[i].

***“ What is good for the Yarra is good for us all”***

*Source: Yarra River 50-year Community Vision*

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# OUR VISION

The Birrarung Council serves as the 'voice of the Yarra River', and will champion the interests of the Yarra River as one living and integrated natural entity, as reflected in the Yarra River 50-year Community Vision and Nhanbu narrun ba ngargunin twarn Birrarung – *Ancient Spirit and Lore of the Yarra* (the Traditional Owners response to the Yarra River Protection (*Wilip-gin Birrarung murrn*) Act 2017).

# COUNCIL MEMBERS AND OUR WORK

## **Membership**

Represented on the Council are Traditional Owners, environmental and agricultural industry groups, water industry experts, landscape architects, Yarra River land bodies, local government and community groups. The Council members bring a wide range of knowledge and experience, in addition to a commitment shared by all to champion the protection of the Yarra across environmental, cultural and heritage dimensions.

## **How we work**

The way in which we work is fundamental to our effectiveness as an advice and advocacy body. We are therefore committed to being: independent, transparent, accountable, consultative, expert and considered. In preparing our advice we draw on our own expertise as well as seeking formal briefings to ensure that advice is informed and strategic.

***“ The Council is to act independently of responsible public entities”***

*Source : s 47 Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017*



*Photograph: The Council members from left to right: Mr Allan Wandin (Wurundjeri Woi-wurrung Elder), Ms Prue Digby, Mr Andrew Kelly, Ms Bronwyn South, Mr Warwick Leeson OAM, Ms Kirsten Bauer, Ms Margaret Gardiner (Wurundjeri Woi-wurrung Elder), Mr Christopher Chesterfield (Chair), Ms Alexandra Lee, Dr Erin O'Donnell and Mr Ronald Jones (Wurundjeri Woi-wurrung Elder).*

### **Who we work with**

One of the most enriching aspects of the past year has been working with the Traditional Owner members to build a collective Council understanding of Wurundjeri Woi-wurrung appreciation of the River and its corridor. This is not a journey that is completed in a year but will continue through the life of the Council. We will work with Elders, beyond our Council members, and communities to protect the River and its heritage.

We also work with state government, including public entities and statutory authorities such as Melbourne Water, local governments and a range of non-government organisations. A key relationship is with the Department of Environment, Land, Water and Planning. The Department has responsibility for leading land use planning initiatives such as the Bulleen-Banyule Land Use Framework and statutory planning controls such as planning scheme overlays designed to protect the River corridor from intrusive development. The Council maintains a strong involvement in these initiatives.

### **Who receives our advice and advocacy**

Our advice is directed to Government through Ministers, primarily the Minister for Water. We are also required to produce an annual report to Parliament, once the implementation of the Yarra Strategic Plan commences.

We advocate on behalf of the River to those conducting planning processes affecting the Birrarung; to State government on certain matters such as planning issues; to government authorities, including those responsible for major projects such as the North East Link; and to local government authorities on an as needs or project by project basis.

# ACHIEVEMENTS ADVICE



## **The Foundation of Advice**

2018-19 saw the Council establish itself and commence its role of providing advice and advocacy in relation to the Birrarung. We have made progress in building a collective understanding of Traditional Owner views and cultural understandings of the River and its corridor. This understanding is fundamental to our advice function.

## **Advice to the Minister**

The Council's advisory responsibilities include responding to Ministers' requests for advice as well as initiating advice on key issues. Over the course of the year, the Council has provided detailed formal advice directly to the Minister, informed by learnings from our enquiry process.

## **Advice on the Yarra Strategic Plan**

The *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017*, which established the Birrarung Council, also made provision for a Yarra Strategic Plan to provide a long term vision for the River, actions over the next 10 years for new initiatives and collaborative actions and guidance for local planning. The Yarra Strategic Plan is being developed and will be implemented by a collaboration between the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation and 15 state and local government agencies involved in managing the River (the Yarra Collaboration Committee).

A key part of the legislation under the Act requires the Council to advise on the development of the Yarra Strategic Plan and this has been a focus of our work in the past year. The Council has carefully followed the evolution of the Yarra Strategic Plan being prepared by the lead agency, Melbourne Water and overseen by the Yarra Collaboration Committee. The Council has met a number of times with the Committee Chair and project team and provided comment on drafts of the Plan in the lead up to the public consultation process. The Council has also prepared for its role in assessing the scope and adequacy of the public participation processes. Finally, the Council has worked to build an appreciation of the Community Vision for the Yarra which is at the core of the Plan.

The Council has been concerned by the delays in the release of the draft Plan and is pleased that the public engagement process opened in late January 2020 for a two month period. Its work to date prepares the Council for its future role under the Act in advising on the implementation, operation and effectiveness of the Yarra Strategic Plan and preparing an annual report on those matters for Parliament.



# ACHIEVEMENTS ADVOCACY AND ENQUIRY

## **Formal submissions**

In its role as the 'voice of the Yarra River', in June 2019 the Council lodged submissions in response to two public consultation processes that have major implications for the future of the River:

- the draft Yarra River - Bulleen Precinct Land Use Framework Plan and
- the North East Link Project (NELP) Environment Effects Statement (EES).

Council Chair Chris Chesterfield also made a presentation at the public hearings conducted for the NELP EES process. This presentation outlined the pattern of rivers making way for roads in Victoria's past history of infrastructure development. It set out the case for a fundamental shift so that, in future, new infrastructure planning respects the River and is constructed so as to protect rather than harm our unique and irreplaceable living asset. Both the Birrarung Council's written submission on the NELP and the video record of the Chair's presentation at the public hearing were made available to the public through the NELP website.

## **Council's Enquiry process**

Council has implemented a formal enquiry process whereby key public entities such as local government and Melbourne Water can outline how they are responding to the principles of the *Yarra River Protection (Wilip-gin Birrarung murron) Act 2017* and are working to give effect to the 50 year Community Vision and Traditional Owner aspirations. Enquiry and engagement sessions have been well attended by CEOs and senior leaders of presenting organisations. These meetings have collected valuable information and perspectives, but also provided an important way to build stakeholder understanding of the Birrarung Council's role as the 'voice of the Yarra River' and its expectations of agencies involved in managing and protecting the Yarra. The information gained will be a key input to the preparation of the Council's future annual reports to Parliament.

### **Building relationships**

Eight local government authorities will play a major role as protectors of the Yarra under the forthcoming Yarra Strategic Plan, along with other public sector entities and the Traditional Owners which make up the Yarra Collaboration Committee. In advance of commencing its role as monitor of the Plan's implementation, the Council has commenced building constructive relationships with those local government stakeholders who have the Birrarung running through their municipalities.

The Council has so far met with five of the eight local government councils that form part of the Yarra Collaboration Committee (refer to Appendix 1 for further details). The Council has heard from these councils about their past, present and future efforts in relation to the River and has noted how they are aligning their activities with requirements of the legislation and working to give effect to the Yarra River 50-year Community Vision and Traditional Owner aspirations.

The Council has been encouraged by this strong start to meeting new responsibilities under the Yarra River Act. It notes that responsible local government councils each face their own challenges and are at different stages in their response to the Act.





# THE YEAR AHEAD

## 2019

2019 was the establishment year for the Council. In parallel, the Yarra Strategic Plan was being developed, which is now due for finalisation later in 2020. The timing of the Strategy finalisation will shape the future work program of the Council.

## 2020

In 2020, the Council will provide strategic advice on the next iteration of the Yarra Strategic Plan, and the scope and adequacy of its public participation process. The Council will continue to consolidate its processes and relationships. It will seek opportunities to advocate for the protection and preservation of the River. The Council will also prepare for the commencement of its role in advising on the implementation of the Yarra Strategic Plan. (This important statutory function will constitute the key work for 2021).

## Priorities for 2020

In the coming year the Council will:

- provide ongoing advice to the Minister on the protection of the River
- provide input to assist the final development of the Yarra Strategic Plan
- provide advice on the scope and adequacy of public participation processes for the Plan
- deliver further advice on, and input to the draft Yarra River - Bulleen Precinct Land Use Framework Plan
- advocate for the Yarra River Action Plan and for the effective administration of the *Yarra River Protection Act (Wilip-gin Birrarung murrong) Act 2017*
- advocate for the effectiveness of the Yarra Planning Controls as a key part of current initiatives for the protection of the River
- encourage greater community use, appreciation and respect for the River
- continue to work with relevant local government authorities in relation to their role as protectors of the Birrarung, and provide support and advice where appropriate
- prepare strategic advice on challenges posed by climate and population growth and specifically the impact on waterways
- further develop our advocacy role so that we have maximum impact as “the voice of the Yarra River”
- submit an annual report on the Council’s work.



# LONGER TERM OUTLOOK

The Council has responsibilities, under the legislation, to provide advice on the operation and effectiveness of a Yarra Strategic Plan. This includes the Plan's contribution to the protection and improvement of Yarra River land, and to the environmental, cultural and heritage values of Yarra River land, including the health of the River. Once the Yarra Strategic Plan is in place and being implemented by the Yarra Collaboration Committee stakeholders, the Council will begin its statutory role of monitoring and reporting on this implementation. In the future, the Council will use an annual report to communicate its assessment of how the implementation of the Plan is proceeding. It is anticipated that this annual reporting will commence in 2021, although this is contingent on the finalisation of the Yarra Strategic Plan.

The Council looks forward to the release of the final Yarra Strategic Plan and fulfilling its legislated responsibility to advise on the implementation, operation and effectiveness of a Yarra Strategic Plan.

## **Contact Us**

The Secretariat for the Council is provided by the Department for Environment, Land, Water and Planning. To contact us, please email: [birrarungcouncil@delwp.vic.gov.au](mailto:birrarungcouncil@delwp.vic.gov.au)

The Council's website is at:

[www.water.vic.au/waterways-and-catchments/protecting-the-yarra/birrarung-council-the-voice-of-the-yarra](http://www.water.vic.au/waterways-and-catchments/protecting-the-yarra/birrarung-council-the-voice-of-the-yarra)

## **References**

[i] MACPHERSON, E. J. 2019. Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience (Cambridge UK, Cambridge University Press).

# APPENDIX 1

## FORMAL PROCEEDINGS WITH STAKEHOLDERS

### Enquiry Process

PROJECT	IN ATTENDANCE	MEETING DATE
North East Link	Director Land Planning and Environment - Katie Watt	June 5 2019

### Meetings with Local Government Councils

COUNCIL	IN ATTENDANCE	MEETING DATE
City of Manningham	CEO Andrew Day and staff	August 7 2019
City of Boroondara	CEO Phil Storer and staff	August 7 2019
City of Banyule	Acting CEO Geoff Glynn and staff	September 4 2019
City of Yarra	CEO Vijaya Vaidyanath	September 4 2019
City of Melbourne	CEO Justin Hanney and staff	October 2 2019

### Meetings with Local Government Councils to be held in 2020

Shire of Nillumbik  
 City of Stonnington  
 Yarra Ranges Council

# APPENDIX 2

## COUNCIL MEMBERS' ATTENDANCE

MEMBER	MEETING									
	1	2	3	4	5	6	7	8	9	10
	26/11	10/12	6/2	6/3	3/4	5/6	3/7	4/8	4/9	2/10
Chris Chesterfield	●	●	●	●	●	●	●	●	●	●
Kirsten Bauer	●	●	●	●			●	●	●	
Prue Digby	●	●	●	●	●	●	●	●	●	●
Margaret Gardiner			●	●	●					
Ron Jones	●	●	●	●	●		●		●	●
Andrew Kelly	●		●	●	●	●	●	●	●	●
Alexandra Lee	●	●	●	●	●	●		●	●	●
Warwick Leeson	●	●	●	●	●	●	●	●	●	●
Erin O'Donnell	●	●	●	●	●	●	●	●		●
Bronwyn South	●	●	●	●	●					
Allan Wandin	●	●	●	●			●			●

The Yarra River Protection (*Wilip-gin Birrarung murron*) Act 2017 requires that the Birrarung Council must include at least two members who are nominees of the Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation. The Wurundjeri Woi-Wurrung Traditional Owners on Council are Elders Margaret Gardiner, Ron Jones and Allan Wandin. Board members Margaret Gardiner and Bronwyn South took leave of absence from the Council during 2019.