

# Renewing Victoria's public land legislation

## Opportunities for enabling self-determination: For discussion with Traditional Owners

### Purpose

This paper has been developed by the Department of Environment Land Water and Planning (DELWP) to set out initial proposals for enabling self-determination in the renewal of Victoria's public land legislation, for discussion with Traditional Owners.

The proposals have been developed through:

- preliminary discussions with Traditional Owner groups
- considering submissions made to DELWP, including from the First Principles Review Committee
- drawing on Traditional Owners' views and recommendations set out through other work.

It is intended to test and refine these initial proposals through discussion with Traditional Owner groups, to ensure that the renewed public land legislation enables self-determination, and reflects Traditional Owner rights, aspirations and values for management of public land and Country.

### Context

Much of Victoria's current public land legislation derives from 19<sup>th</sup> century legislation. It does not reflect modern values or adequately support contemporary public land management. In particular, the current legislation does not adequately recognise the Traditional Owners of Victoria's public land or enable self-determination.

Following the Victorian Environmental Assessment Council's (VEAC) *Statewide Assessment of Public Land*, the government committed to renewing Victoria's public land legislation, by creating a new Public Land Act to replace the *Crown Land (Reserves) Act 1978*, the *Forests Act 1958* and the *Land Act 1958*. Alongside the creation of the new Act, there would also be some more limited changes made to modernise the National Parks Act.

The new Public Land Act is proposed to include the following:

- A **simplified legislative framework** supported by objectives to provide clarity about the overall purpose and direction for the management of Victoria's public land under the Act and to guide decision making.
- A new system of **public land management categories** to overcome the complexity of the current system of public land reservations and legal statuses (e.g. temporary and permanent reservations), with a new **public land management record** to be a record of public land management information.
- A modernised **public land manager framework** to ensure land managers have sufficient autonomy and direction (aligned with risk) to manage public land efficiently and in the best interests of all the community.
- **Contemporary public land management tools** (e.g. guidance and direction; powers for strategic and management planning) to support public land managers in considering public land values and planning for appropriate use.
- A streamlined **tenures and authorisations framework** (to issue permits, licences, leases, and other authorisations) focused on strategically protecting public land values while enabling appropriate uses.
- **Modernised compliance and enforcement provisions** to better support the appropriate use of public land.

# Renewing Victoria's public land legislation

## Enabling Traditional Owners' self-determination in relation to public land

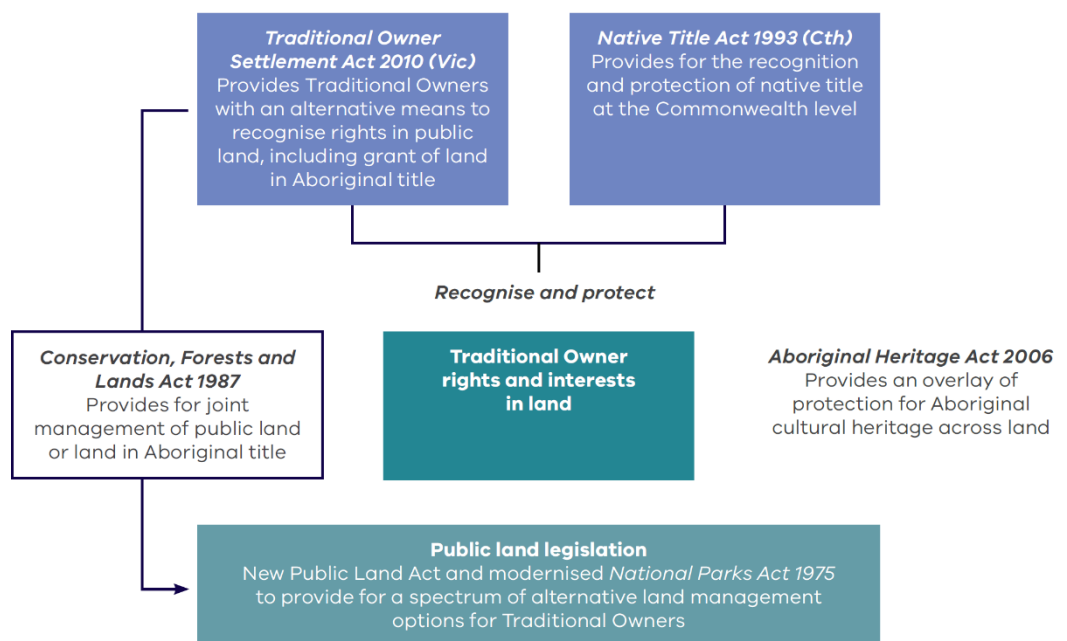
The reform of Victoria's public land legislation provides opportunities to address gaps and limitations in Victoria's current public land legislation that may raise barriers to enabling Traditional Owners' self-determination.

DELWP has developed some initial proposals to address these gaps and barriers, for further discussion with Traditional Owner groups, as summarised in the table below. This paper outlines each of these proposals in more detail, and notes key questions on which DELWP would particularly like to seek Traditional Owner groups' feedback and advice.

Current gaps and limitations	Proposals to support Traditional Owners' self-determination
<p><b>Recognition of Victoria's Traditional Owners</b></p> <ul style="list-style-type: none"> <li>Current public land legislation does not give appropriate recognition to Victoria's Traditional Owners.</li> </ul>	<p><b>Guiding objectives and principles</b> to promote Traditional Owners' self-determination and recognise Traditional Owners' knowledge of, and rights and interests in, public land management in new Public Land Act.</p> <p><b>Management purposes</b> relating to Traditional Owners to underpin public land management.</p>
<p><b>Cultural knowledge and practice</b></p> <ul style="list-style-type: none"> <li>Lack of formal mechanisms to enable Traditional Owners to incorporate their cultural knowledge and practice in land management.</li> <li>Need to allow for the recognition of a cultural landscape.</li> <li>Need to allow for the recognition of areas of particular cultural significance or for cultural practice.</li> </ul>	<p>Mechanism to <b>formally recognise strategies and plans</b> developed by Traditional Owners and incorporate into public land management decision making (e.g. Country Plans, the Cultural Landscapes Strategy).</p> <p>Mechanism to <b>formally recognise a cultural landscape</b> and incorporate into public land management decision making.</p> <p>Exploring ways to ensure recognition of <b>culturally significant areas and places</b> (complementing the <i>Aboriginal Heritage Act 2006</i>) and incorporate into public land management decision making.</p>
<p><b>Limitations in land management opportunities</b></p> <ul style="list-style-type: none"> <li>Barriers to direct appointment of Traditional Owner corporations as public land managers</li> <li>Opportunities to streamline the operation of joint management.</li> </ul>	<p>Enabling a <b>spectrum of public land management</b> opportunities for Traditional Owners (e.g. improved joint management; direct appointment as a land manager).</p>

## Broader context for Traditional Owners' rights and interests

As illustrated in this figure, the renewal of Victoria's public land legislation sits within a broader context for recognising and protecting Traditional Owner rights and interests. New public land legislation will be integrated with other Acts such as the *Traditional Owner Settlement Act 2010*.



# Renewing Victoria's public land legislation

## Proposal 1: Appropriate recognition

Renewing Victoria's public land legislation provides an opportunity to recognise the Traditional Owners of Victoria's public land. This section sets out:

- proposed **objectives and principles** relating to Traditional Owners
- proposed **public land management purpose** relating to Traditional Owners.

While proposed wording for the objective, principles and management purpose has been set out below, this is only intended to be a starting point to enable discussion with Traditional Owners as to how they would like these aspects of the legislation to be worded.

### Objectives and principles for the new Public Land Act

It is proposed that the new Public Land Act would set out broad objectives, accompanied by more detailed principles, to guide everyday public land management. Below is a proposed objective, and accompanying land management principles, relating to enabling Traditional Owners' self-determination, which could be included in the new Public Land Act, subject to discussion with Traditional Owners.

#### Traditional Owners' rights and interest in public land management

*Objective:* To enable Traditional Owner self-determination, and recognise and respect their knowledge of, and rights and interest in, public land management.

#### • Public land management principles:

- Traditional Owner self-determination in relation to public land should be enabled wherever possible, including through involvement in public land management.
- Traditional Owners should be empowered to access and care for Country and its natural resources, and apply cultural knowledge and practice in the management of public land.

#### Questions for discussion with Traditional Owners

- Are the proposed objective and principles appropriate? Should any of the wording be changed?
- Is there anything else relating to recognising Traditional Owners that should be reflected in this objective and its principles?

### Public land management category purposes

The new public land legislation will adopt a simplified system where all public land in Victoria would be categorised into a public land management category (e.g. State forest, coastal reserve). Each category would have a clear list of management purposes to guide the management of the land, as set out in the example below. Appendix 1 sets out all of the proposed public land management categories and associated purposes.

**Example of a public land management category and associated management purposes: Coastal reserve**

Public land management category	Management purposes
<b>Coastal reserve</b> Generally linear areas of coastal public land (foreshores) adjacent to, and sometimes extending a short distance into, bays, estuaries and the open coast, often with facilities for intensive visitor use	<ul style="list-style-type: none"><li>• Provide opportunities for recreation and education associated with enjoyment of the coastal environment, and facilities associated with this purpose.</li><li>• Protect natural coastal landscapes and ecosystems.</li><li>• Protect and maintain natural, historic, or cultural features.</li></ul>

It is proposed that all of these management purposes would need to be read alongside an overall purpose relating to Traditional Owners. Below is suggested wording, which is based on wording recommended by VEAC:

*'To protect the rights and interests of Traditional Owners and native title holders and their cultural values'*

There may also be an alternative key purpose that reflects Traditional Owner aspirations in relation to public land—for example, recognising that an individual area of public land is part of an overall cultural landscape.

## Questions for discussion with Traditional Owners

- Is the proposed management purpose relating to Traditional Owners appropriate? Should any of the wording be changed?
- Are additional purposes required in the other public land management categories (see Appendix 1) to ensure that aspects of significance to Traditional Owners are reflected?

## Proposal 2: Support for cultural knowledge and practice

### Formal recognition of Traditional Owner-led strategies

It is proposed to provide a mechanism in the new Public Land Act to support the incorporation of Traditional Owner cultural knowledge and practice in public land management through a new power that provides for the issuing or recognition of strategies. This would allow:

- Traditional Owners and the Minister to agree to issue a strategy jointly, after appropriate public consultation (as determined by the Minister and Traditional Owners).
- The Minister to formally recognise a strategy developed by a Traditional Owner group relating to the management of public land (e.g. Country plans, *Victorian Traditional Owner Cultural Fire Strategy*).

It is also proposed that the Minister would have a more general power to issue strategies under the new Public Land Act. For strategies issued by the Minister alone, there would be a requirement to involve relevant Traditional Owners in the development of the strategy.

Strategies would need to be considered by all public land managers in their decision making under the Public Land Act.

## Questions for discussion with Traditional Owners

- Would the proposals relating to strategies provide a formal mechanism for supporting cultural knowledge and practice?
- Are there any additional protections for cultural knowledge and practice you would like to see in the legislation?

### Recognising a cultural landscape

It is proposed to provide a mechanism through the modernised public land legislation to recognise a cultural landscape. This could potentially bring together multiple areas of public land, which would retain their individual categories and uses, but would be linked within the broader cultural landscape.

This would support the cohesive management of public land within the context of the cultural landscape, through:

- enabling the formation of a partnership between Traditional Owners and any other public land managers managing land within the cultural landscape
- allowing for the development of a cultural landscape management plan, which would need to be incorporated into management of land within the cultural landscape.

### Recognising culturally significant places within the broader landscape

In addition to recognising a broader cultural landscape, there may be areas or places that are of particular cultural significance and/or importance for ongoing cultural knowledge and practice.

DELWP would appreciate receiving Traditional Owners' feedback on the best way to recognise such areas. For example, this may include allowing for areas to be 'set aside' for cultural purposes within an area of land that has been designated as a particular public land management category (e.g. State forest), which could enable controls to be placed on the activities that may take place in the area, or restrict access to certain areas, other than by Traditional Owners.

## Questions for discussion with Traditional Owners

- How would you like to see cultural landscapes recognised and protected?
- What are your aspirations for the recognition of culturally significant areas and places?

## Proposal 3: Providing opportunities for public land management

It is proposed that the new Public Land Act would enable opportunities for Traditional Owners to be appointed as public land managers. Consistent with the principle of self-determination, it is not proposed to mandate any single way for Traditional Owners to be public land manager, but provide a range of alternatives.

### Discrete management

Current legislation does not allow for a Traditional Owner group to take on a discrete aspect of the management of a park or reserve. It is proposed that the new Public Land Act would allow a Traditional Owner group to be appointed to manage a defined geographical area within a park or reserve, or a discrete aspect of that park or reserve (e.g. a certain activity that takes place within a park).

Discrete management may provide an additional option in some circumstances where a Traditional Owner wishes to take on a particular aspect of land management. In this instance, another public land manager would be appointed to be responsible for the remaining aspects of management for that park or reserve.

### Joint management

Currently, the *Conservation, Forests and Lands Act 1987* allows for Traditional Owners and the State to undertake joint management through the appointment of a Traditional Owner Land Management Board (TOLMB) with members nominated by the Minister and the relevant Traditional Owner group entity. With some ten years of operational experience, various issues have emerged and Traditional Owners have sought reforms to the joint management framework. Some of these issues include:

- **TOLMB structure:** Currently, joint management must be undertaken through a TOLMB structure, which adds complexity that may not always be necessary, and may make it harder for Traditional Owner members to represent their Traditional Owner group effectively.
- **Administration and governance:** The current administrative and governance procedures for joint management could potentially allow for more flexibility, including allowing for change to occur over time.
- **Ongoing role:** There could be greater clarity over the ongoing role of the TOLMB once a joint management plan is developed.

The new public land legislation provides an opportunity to streamline the way joint management currently operates.

### Direct management

Under the new Public Land Act, it is proposed that Traditional Owners could be appointed as a direct public land manager, within the same framework as other such land managers (i.e. statutory land managers, local councils and other current committees of management).

Under this proposed new public land manager framework, the Minister would have the power to appoint a particular public land manager to manage a specified area of land as a 'Category A' or 'Category B' public land manager. Category A public land managers would have more autonomy than Category B public land managers (e.g. to issue licences and leases for longer terms), and would also be subject to greater governance requirements.

It is proposed that a Traditional Owner group entity could be directly appointed by the Minister as a 'Category A' public land manager.

## Questions for discussion with Traditional Owners

- Would it be useful to provide an option for 'discrete management'? What might be some types of areas for which it might be used?
- What improvements would you like to see to the current joint management framework?
- What is your feedback to the proposed option for 'direct management'? Is there anything the legislation needs to provide for to ensure it can work effectively?

# Renewing Victoria's public land legislation:

## Appendix 1: Public land management categories

Public land management category and description	Management purposes
<b>Land to be managed under the National Parks Act</b>	
<p><b>1 National park</b> Extensive area or areas often with national significance with outstanding natural values and diverse land types contributing to representativeness of parks and reserves in the state</p>	<ul style="list-style-type: none"> <li>• Protect the natural environment including biodiversity.</li> <li>• Protect and maintain natural, cultural, or historic places or features, and natural landscapes.</li> <li>• Provide opportunities for informal recreation associated with the enjoyment of nature, and education, where consistent with the purposes above.</li> </ul>
<p><b>2 Marine national park</b> Generally extensive area of intertidal and subtidal land and the waters above it, together with the associated flora and fauna, with outstanding natural values representing the diverse marine environments in the state</p>	<ul style="list-style-type: none"> <li>• Protect the natural environment including biodiversity.</li> <li>• Protect and maintain natural, cultural, or historic features and natural landscapes.</li> <li>• Provide opportunities for informal recreation associated with the enjoyment of nature, and education, where consistent with the purposes above.</li> </ul>
<p><b>3 Conservation park</b> Land often linear in shape with natural features, flora and fauna of landscape or conservation significance</p>	<ul style="list-style-type: none"> <li>• Protect the natural environment including biodiversity.</li> <li>• Protect and maintain natural, cultural, or historic features and natural landscapes.</li> <li>• Provide opportunities for informal recreation associated with the enjoyment of nature, and education, where consistent with the purposes above.</li> </ul>
<p><b>4 Marine sanctuary</b> Generally small area of intertidal and subtidal land and the waters above it, together with the associated flora and fauna, accessible to the public and with special natural and educational values</p>	<ul style="list-style-type: none"> <li>• Protect the natural environment including biodiversity.</li> <li>• Protect and maintain natural, cultural, or historic features and natural landscapes.</li> <li>• Provide opportunities for informal recreation associated with the enjoyment of nature, and education, where consistent with the purposes above.</li> </ul>
<p><b>5 Marine park/marine and coastal park</b> Area of coastal and/or intertidal and subtidal land and the waters above it, together with the associated flora and fauna, of high conservation significance and diverse values for recreation and sustainable resource uses</p>	<ul style="list-style-type: none"> <li>• Protect the natural environment including biodiversity.</li> <li>• Protect and maintain natural, cultural, historic, or geomorphic features and coastal landscapes.</li> <li>• Provide opportunities for informal recreation associated with the enjoyment of nature, and education, where consistent with the purposes above.</li> <li>• Provide for sustainable use of natural marine resources where consistent with the purposes above.</li> </ul>
<p><b>6 National heritage park</b> Landscapes with outstanding historic cultural and natural values</p>	<ul style="list-style-type: none"> <li>• Protect and maintain places or features of historic cultural interest and scenic landscapes.</li> <li>• Protect the natural environment including biodiversity associated with the above places, features, or landscapes</li> <li>• Provide opportunities for informal recreation and education, where consistent with the purposes above.</li> </ul>

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<p><b>7 Nature reserve</b> Area of land or wetland of particular importance for its significant flora, fauna, natural habitat, geology, or geomorphology</p>	<ul style="list-style-type: none"> <li>• Protect the natural environment, including significant species, communities and habitats of native flora and fauna.</li> <li>• Protect and maintain natural, cultural, or geomorphic features and natural landscapes.</li> <li>• Provide for low-levels of informal recreation associated with the enjoyment of nature, and education, where strictly consistent with the purposes above.</li> </ul>
<b>Land to be managed under the Public Land Act</b>	
<p><b>8 State forest</b> Extensive areas of land supporting native forest and other native vegetation with a range of diverse conservation and recreational values, and containing a range of resources to supply community demands</p>	<ul style="list-style-type: none"> <li>• Provide for a range of forest uses including recreation and education.</li> <li>• Provide for a range of forest products.</li> <li>• Protect the natural environment including biodiversity.</li> <li>• Supply water and protect catchments, waterways and waterbodies.</li> <li>• Protect and maintain natural, cultural, or historic features and scenic landscapes.</li> </ul>
<p><b>9 Forest park</b> Area of native forest providing opportunities for recreation and minor extraction of some natural resource products</p>	<ul style="list-style-type: none"> <li>• Provide opportunities for recreation and education.</li> <li>• Protect the natural environment including biodiversity.</li> <li>• Supply water and protect catchments, waterways and waterbodies.</li> <li>• Protect and maintain natural, cultural, or historic features and scenic landscapes.</li> <li>• Provide for a limited range of forest uses including the supply of forest products, but excluding sawlogs and pulpwood.</li> </ul>
<p><b>10 Regional park</b> Extensive areas of natural or semi-natural land close to population centres or major tourist routes or easily accessible areas</p>	<ul style="list-style-type: none"> <li>• Provide opportunities for informal recreation for large numbers of people associated with the enjoyment of natural or seminatural surroundings or semi-natural open space.</li> <li>• Protect and maintain natural or semi-natural, cultural or historic features and scenic landscapes.</li> <li>• Protect the natural environment including biodiversity to the extent consistent with the above.</li> </ul>
<p><b>11 Metropolitan park</b> Public park providing open space for recreation; may include natural or semi-natural environments to highly modified areas</p>	<ul style="list-style-type: none"> <li>• Provide opportunities for recreation, particularly informal recreation, for large numbers of people associated with the enjoyment of natural or seminatural surroundings or semi-natural open space.</li> <li>• Protect open space.</li> <li>• Protect and maintain natural or semi-natural, cultural, or historic places and features and scenic landscapes.</li> <li>• Protect the natural environment including biodiversity to the extent consistent with the above.</li> <li>• Provide for organised recreation where consistent with the purposes above and according to the specific characteristics of each park.</li> </ul>



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<p><b>12 Wildlife and game reserve</b> Areas of significant habitat and conservation values, particularly for waterbirds</p>	<ul style="list-style-type: none"> <li>• Protect and restore wildlife habitat and biodiversity and provide for sustainable seasonal hunting of game species.</li> <li>• Protect and maintain natural or cultural features and scenic landscapes.</li> <li>• Provide opportunities for recreation and education where consistent with the purposes above.</li> </ul>
<p><b>13 Bushland reserve</b> Area of land containing important elements of the natural environment or landscape that are of habitat or scenic significance</p>	<ul style="list-style-type: none"> <li>• Protect and restore the natural environment, including significant species, communities and habitats of native flora and fauna, remnant vegetation and areas with value as habitat linkages.</li> <li>• Protect and maintain natural or cultural features and natural landscapes.</li> <li>• Provide opportunities for informal recreation associated with the enjoyment of nature, or education, where consistent with the purposes above.</li> <li>• Provide for sustainable, controlled, low-intensity use of natural resources where consistent with the purposes above.</li> </ul>
<p><b>14 Historic reserve</b> An area of land containing important relics or historical associations ranging from large areas with several historic themes to small reserves with one theme</p>	<ul style="list-style-type: none"> <li>• Protect and maintain historic or cultural places, features, or objects.</li> <li>• Provide opportunities for recreation and education associated with appreciation of the history of the place, feature, or object.</li> <li>• Provide for sustainable, low-intensity use of natural resources where not incompatible with the purposes above.</li> </ul>
<p><b>15 Water frontage, bed and banks reserve</b> Generally linear area of land adjacent to a waterway or lake, and bed and banks</p>	<ul style="list-style-type: none"> <li>• Protect and restore the natural environment including biodiversity.</li> <li>• Protect water quality, protect adjoining land from erosion, and provide for flood passage.</li> <li>• Where necessary, provide for the passage of artificial flows of water stored within the catchment or transferred from other catchments.</li> <li>• Protect and maintain natural, cultural, and historic features and scenic landscapes.</li> <li>• Provide opportunities for recreation and education where consistent with the purposes above.</li> <li>• Provide for sustainable, controlled, low-intensity use of natural resources.</li> </ul>
<p><b>16 Coastal reserve</b> Generally linear areas of coastal public land (foreshores) adjacent to, and sometimes extending a short distance into, bays, estuaries and the open coast, often with facilities for intensive visitor use</p>	<ul style="list-style-type: none"> <li>• Provide opportunities for recreation and education associated with enjoyment of the coastal environment, and facilities associated with this purpose.</li> <li>• Protect natural coastal landscapes and ecosystems.</li> <li>• Protect and maintain natural, historic, or cultural features.</li> </ul>
<p><b>17 Coastal waters reserve</b> Area of intertidal and subtidal land and the waters above it within state jurisdiction not otherwise designated for a specific use</p>	<ul style="list-style-type: none"> <li>• Provide for the integrated management of Victoria's marine, estuarine and coastal area.</li> <li>• Provide opportunities for recreation.</li> <li>• Provide for sustainable use of natural resources.</li> </ul>

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<p><b>18 Community use reserve</b></p> <p>Land to be used for a particular community purpose such as local parks and gardens, organised sports and recreation areas, campgrounds, rail trails, buildings such as public halls and libraries, and areas for environmental education</p>	<ul style="list-style-type: none"> <li>• Provide for a particular community use of land, and associated facilities, including public access where compatible with this use</li> <li>• Protect the natural environment and protect natural, historical, or cultural features and scenic landscapes where compatible with the above purpose</li> <li>• Provide for a specific use, as defined by Ministerial order (for example: park and garden, recreation, recreation trail, public building)</li> </ul>
<p><b>19 Water production reserve</b></p> <p>Land in the catchment of or adjacent to a water supply storage or offtake</p>	<ul style="list-style-type: none"> <li>• Protect water supply, water quality and the operation of the water supply system, including: <ul style="list-style-type: none"> <li>– maintain waterways and waterbodies in a stable condition using environmentally sound techniques</li> <li>– provide for flood passage and drainage requirements of adjacent land, and, where necessary, provide for the passage of artificial flows of water stored within the catchment or transferred from other catchments.</li> </ul> </li> <li>• Protect and restore the natural environment including biodiversity.</li> <li>• Protect and maintain cultural and historic features.</li> <li>• Provide opportunities for recreation and education where consistent with the above purposes.</li> </ul>
<p><b>20 Utilities and government services reserve</b></p> <p>Land to be used for public utilities or government services such as transport infrastructure including roads; electricity and gas installations; schools; communications and survey fixtures; supply of minerals, stone, gravel, and sand; hospitals; police stations; water and sewerage services; cemeteries</p>	<ul style="list-style-type: none"> <li>• Provide for the provision of a particular public utility or government service</li> <li>• Provide for a specific use, as defined by Ministerial order (for example: road; railway; port; airport; municipal building; hospital; production of stone, gravel, or sand; cemeteries and crematoria, etc).</li> </ul>
<p><b>21 Unassessed public land</b></p> <p>Land that requires further assessment prior to more specific categorisation</p>	<p>Land not included in any of the above primary land categories, requiring assessment for re-categorisation into one of the primary reserve categories.</p>
<p><b>22 Uncategorised public land</b></p> <p>Land that cannot be included in the primary land categories for various reasons, particularly because it has been assessed as available and appropriate for sale</p>	<p>Land not included in any of the above primary land categories, which has been formally assessed as no longer required for public use, available for sale.</p>