

FREE LAND!

Unlike the legendary free lunch, there is indeed such a thing as free land. Before you all rush off to join the queue, it is available only to councils and other government authorities. We are talking here about Crown land used for operational purposes, and there is quite a lot of it.

As one commentator puts it, inner and middle Melbourne is 'awash' with under-utilised public land crying out to be recycled – and Melbourne 2030 is thirsty for development sites. So what's the hold-up? We believe it's largely a function of distorted economics.

The free lunch isn't free because, as the beneficiary invariably discovers, it comes with strings attached. Our free land also has adverse repercussions – but they fall more on the benefactor than the beneficiary. In short, the public at large suffers serious losses as a result of economic distortions arising from the state's Crown land monitoring and accounting systems.

For investors in the private property market, there's a cast-iron connection between the capital value of land and its annual return. Plug the figures into the formula (rental, outgoings, depreciation, annualised capital gains...) and out comes the capital value of the land. Use a little algebra to transpose the formula, now plug in the purchase price and out comes the rental income required to justify your investment.

Our private sector portfolio manager is constantly evaluating the performance of individual assets. If one property is not performing, then it will be put to another use, or refurbished, or sold. One way or another, for better or for worse, the market will force our manager's hand. But how about portfolios of Crown land assets?

Creative Accounting

Government agencies have no parallel incentive to optimise their portfolios of Crown land. The Kennett Government recognised this problem back in 1998, when it introduced an 8% Capital Assets Charge on

government agencies' portfolios. Hey Presto! Government portfolio managers would now feel the pain of under-performing assets, exactly as if they'd had to borrow the capital at 8%. Trouble is, the scheme is nothing but creative accounting.

As Treasury collects the 8% with one hand, it hands it back again through annual appropriations with the other. No government agency suffers from holding under-performing assets. Sure, they may incur rates and maintenance costs and so forth, but that's small change when compared to 8% of capital value.

The sleight of hand was exposed back in 2003, when the Education Department miscalculated its liability to Treasury's left hand, and ran straight off to Treasury's right hand for a top-up. As the Auditor General observed: "this brings into question whether the intended objectives of the charge (from both financial and asset management perspectives) are being achieved." Indeed.

We have no gripe about parks and gardens and foreshores and rivers. The values by which we measure their worth can't readily be expressed in dollars, so the notion of 'free' is pretty meaningless. Nor can we complain about school grounds and works depots and police stations and railway lines – provided that they are actually being put to good use. But that's the question – are they?

What's needed is a system for differentiating between performing and non-performing land assets, and devising effective price signals which send clear messages to the controllers of a public land portfolio: use it or lose it.

Five Years' Jail

Five years jail. That's the 1981 sentence handed down to each of two gentlemen – one a public servant, the other an estate agent – convicted of bribery, conspiracy, fraud and perjury related to government land dealings. It was the culmination of a 15-year series of scandals surrounding the Housing Commission's program of land acquisitions.

During the 1970s much of the Commission's budget, intended to support people in need of housing, was pocketed by land speculators. The professional standards of engineers, planners and valuers alike were grossly inadequate; control systems were absent or manipulated; public servants deliberately misinformed their Ministers; Ministers misinformed Cabinet; and the police seemed more intent on

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PUBLIC LAND FOR STRATEGIC PLANNERS

We are pleased to have been engaged by the Department of Planning and Community Development to provide this training course for staff of the Planning and Local Government Division



For details of course content, go to www.publicland.com.au then to [Professional development](#)

To inquire about forthcoming presentations, contact dorothy@publicland.com.au

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Free Land, *continued...*

foiling inquisitive journalists than in upholding the law. An independent Board of Inquiry and a subsequent Royal Commission were frustrated by a remarkable series of lost diaries, lost files, and lost memories.

As the cell doors were about to clang shut on our two aforementioned gentlemen, Premier Dick Hamer announced a new policy intended to return a measure of probity to government land dealings. His policy continues to this day – partly in the form of the Government Land Monitor.

The GLM is an office now located within the Department of Planning and Community Development. According to the official line, its remit is “to provide government with an assurance of accountability and integrity in land transactions. It must ensure that transactions are legal, in the public interest, and provide best results for government.”

Read that again, closely. The role of the Government Land Monitor is not to monitor government land. It is to monitor government land transactions.

The same applies to other elements of the probity-assurance system – the Victorian Government Purchasing Board, the Contracts Publishing System, and even the Land Acquisition and Compensation Act 1986. They come into effect only when there is a transaction.

Unfinished Business...

Agreed, transactions must be closely scrutinised: they are the point at which trouble is most likely. But who monitors actual public land holdings when no transaction is occurring?

Who determines whether public land is being wisely used? Whether it is contributing to the policy objectives which lay behind its acquisition? Whether it should be declared surplus and put to a better use?

Perhaps what's needed here is a Government Land Monitor, as against a Government Land Transaction Monitor. ■

The Elephant in the Room

It's a powerful image, but not very Australian. Perhaps we should say the Bunyip in the Bottom Paddock – or even the Cattle in the Creek.

On the subject of cattle in the creek, the Victorian Environment Assessment Council (VEAC) has now handed down its final recommendations for the Redgum Investigation Area, and we're seeing the predictable responses from all the usual suspects.



*The diprotodon
in the dunny?*

But there's something else that's simply being ignored – and it's BIG.

VEAC's recommendations on the grazing of Crown water frontages must be regarded as applying not only to the investigation area, but to the whole of the State.

The recommendation is that all riparian Crown grazing licences (in the investigation area) be phased out over five years, and that landowners be assisted to adopt a stewardship role for their abutting frontages.

However, if there's a new form of conservation agreement, its introduction can hardly be confined to the Loddon, Campaspe and Goulburn Rivers – it must be introduced statewide. And if grazing is to be phased out along these rivers, then surely it's time to get rid of it everywhere.

The Government will be preparing its response to the VEAC recommendations in parallel with its finalisation of the Biodiversity White Paper. Our guess is that the regional-level response to the former will pave the way for new statewide policy in the latter.

The usual suspects will soon notice the bunyip in the bottom paddock but, nevertheless, we may finally be rid of the cattle in the creek. ■

CROWN LAND LAW, POLICY & PRACTICE



Victorian Government
Solicitor's Office

We are pleased to have been engaged to provide this training course for staff of the Victorian Government Solicitor's Office

LAND LAW FOR MANAGERS OF RIVERS AND LAKES



NORTH CENTRAL
Catchment Management Authority

We are pleased to have been engaged by the North Central CMA to provide this training course for their waterway management staff

“All of the recommendations made by the Public Land Consultancy in its riparian land review for DSE would substantially improve the management of riparian land and should be implemented as rapidly as possible.”

Trust for Nature – submission to the Government's Biodiversity White Paper

Q
&
A

Can a Committee of Management be disbanded?

Question prompted by recent discussion with staff of the Victorian Government Solicitor's Office

These days virtually all Crown Land (Reserves) Act Committees of Management are incorporated bodies. Many were incorporated under other legislation prior to being appointed as CoMs – like Parks Victoria and Municipal Councils, which are bodies corporate set up under the Parks Victoria Act and the Local Government Act respectively.

If and when bodies such as these are abolished, we can be sure that they will have clearly identified successors in law who pick up liability for the defunct body's assets, liabilities and obligations. In cases such as these, persons who had dealings with the defunct body still have clear avenues to pursue their debts or grievances.

This orderly process does not apply, however, to those committees which are incorporated under the CL(R) Act itself. This is the way the Act works now:-

1. Crown land is reserved
2. An unincorporated Committee of three or more persons is appointed to manage the land
3. The Committee is then incorporated
4. The Incorporated Committee acquires assets, liabilities and obligations
5. Members come and go from the Incorporated Committee
6. The Incorporated Committee is dissolved
7. An unincorporated Committee is resurrected
8. The unfortunate individuals who happen to be members of the Incorporated Committee at the time of its dissolution become members of the now-unincorporated committee
9. They are jointly and severally liable for the Committee's remaining assets, liabilities and obligations and are pursued accordingly by its creditors.

This is how it should work (in fact, this is more-or-less how it already works for Cemetery Trusts appointed under the Cemeteries and Crematoria Act 2003):-

1. A body corporate is established
2. Members are appointed to it
3. It is given responsibility for one or more Crown Reserves
4. It acquires and disposes of assets, liabilities and obligations
5. Members come and go
6. On dissolution, all remaining assets, liabilities and obligations are transferred to some other body corporate – possibly another Incorporated Committee
7. If it is intended to permanently dissolve the entity, then its residual interests are transferred to the Secretary for Sustainability and Environment (itself a body corporate)
8. Anyone owed a debt by the Committee or with a grievance against it now pursues their case against the successor Committee or against the Secretary for DSE
9. The erstwhile members of the defunct Committee walk away and get on with their lives. ■

Q
&
A

Why do you use out-of-date terminology?

Question from a correspondent querying use of the terms 'Main Roads' and 'State Highways' in the brochure for our Roads training course.

Guilty as charged! Our brochure offers students the prospect of coming to understand a lexicon of road terminology, including various once-important terms, now repealed.

Terminology does change, but old habits die hard. You don't need to have attended our course to know that Main Roads and State Highways (and Tourists' Roads, and Forests Roads, and Stock Routes) all went out of existence in 2004, at the same time as the terms 'Arterial Road' and 'Public Road' suddenly took on statutory meaning. The law might have abandoned the old terms, but the public doesn't necessarily keep up with legislative change, so we have to retain them in our corporate memories. And so it is with a whole variety of nomenclature.

We're told that somewhere out of Noojee there's still a sign reading 'Department of Conservation, Forests and Lands.' CF&L (which was itself the successor to the Department of Crown Lands and Survey) died in 1990, and was replaced by the Department of Conservation and Environment, which was replaced in 1992 by the Department of Conservation and Natural Resources, which was replaced in 1996 by the Department of Natural Resources and Environment, which in 2003 morphed into the Department of Sustainability and Environment. But the old names all hang on.

The dreadful tautology 'Body Corporate' is a term that will haunt us for many years, despite having been replaced (thank goodness) by 'Owners Corporation.'

But perhaps the most persistent defunct term is 'Titles Office.' That esteemed repository of much of the state's cadastral data has been in existence since we-don't-know-when, so it's not surprising that 'Land Title Services' within 'Land Victoria' has such poor recognition. Even the people employed there will tell you they work at the 'T.O.' ■

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LAND LAW FOR MANAGERS OF ROADS, STREETS AND LANES

vicroads

We are pleased to have been engaged to deliver this course by the VicRoads South-East Projects Office at Hallam

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Training Course Schedule August - October 2008

Aboriginal Heritage (half day course)	Tuesday 26 August Thursday 25 September	Melbourne Ballarat
The Land, its Traditional Owners and the Law	Thursday 21 August Tuesday 28 October	Melbourne Melbourne
Vegetation and the Law	Thursday 23 October	Melbourne
Land Law for Coastal Authorities	Tuesday 26 August Thursday 09 October	Geelong Melbourne
Land Law for Managers of Roads, Streets and Lanes	Thursday 28 August Tuesday 23 September Tuesday 07 October Thursday 16 October	Bendigo Colac Sale Melbourne
Land Law for Managers of Rivers and Streams	Thursday 11 September Tuesday 21 October	Melbourne Bendigo
Crown Land Law, Policy & Practice	Tuesday 19 August Tuesday 16 September Tuesday 30 September Tuesday 28 October	Sale Benalla Preston Melbourne
Land Law for Service Utilities	Thursday 30 October	Melbourne
Public Land for Strategic Planners	Thursday 4 September Tuesday 14 October	Melbourne Preston

No more than 10 students per course ■ Cost \$495 including course notes ■ Discounts for host organisations
To register, contact Dorothy Jenkins on (03) 9579 2635 or email dorothy@publicland.com.au
For details of all courses go to: www.publicland.com.au/professional_development.html



Whitten Oval

Quote of the Month goes to Western Bulldogs chairman, David Smorgon.

Commenting on the \$18 million redevelopment of Whitten Oval, he told *The Age* -

"Massive developments of this scope on Crown land are fraught with complications."

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