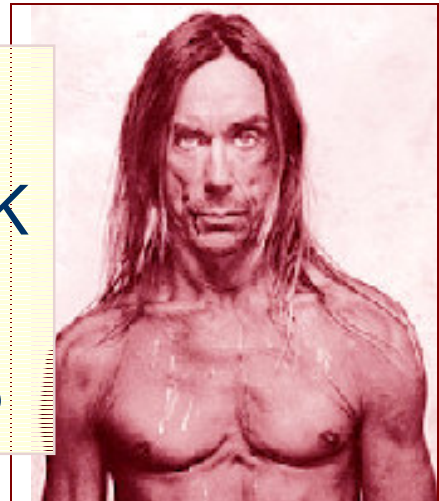




ROD  
QUANTOCK  
v.  
IGGY POP



January's Big Day Out in Princes Park, Carlton, generated both decibels (from Iggy Pop and his ilk) and protests (from Rod Quantock and his).

But the amendment to the Victoria Planning Provisions, which slipped a new clause into all Victorian Planning Schemes a few days earlier, passed almost without comment.

**62.03 Events on Public Land**

*Any requirement in this scheme relating to the use of land or the construction of a building or the construction or carrying out of works does not apply to: an event on public land; or temporary buildings or works required for the event; - where that event has been authorised by the public land manager or by the council under a local law...*

The amendment was requested by the City of Melbourne, which argued that (a) major events within its boundaries already go through a comprehensive approval process, and (b) the Big Day Out should not be delayed by appeals to VCAT. The contradiction between these two arguments went unnoticed, and Minister Hulls decided to exempt events not only in Melbourne, but right across the state.

The principle behind the amendment is that a public land manager should be able to use and develop public land for any purpose under its relevant land management legislation, without the need for a planning permit. That principle in turn relies on the somewhat dubious proposition that the 'relevant land management legislation' is itself sound.

In the case of Princes Park, Carlton, the legislative cake beneath the planning scheme's icing is pretty stale. In 1873 the land was reserved for 'public park' and granted to joint trustees under the provisions of the *Land Act* 1862. In 1917 the trustees appointed the City of Melbourne as Committee of Management.

Reflecting the 1862 Act, the *Crown Land (Reserves) Act* 1978 now requires Council to manage the land 'for the purpose for which it has been reserved.' The Governor-in-Council has authorised Council to issue licences for purposes 'consistent with' that purpose. It seems that Council came to the view that the Big Day Out was 'consistent with' the purpose 'public park.' Rod Quantock and many others would disagree.

Views on what's an appropriate use of a public park have certainly changed since 1873, but so have views on accountability and due process. Arguably, a few individuals shouldn't be able to thwart major events without good cause – but they should at least be allowed a formal opportunity of having their case heard.

Decisions about the purpose, management and tenure of reserves are not testable in VCAT, which isn't empowered to review decisions made under the *Crown Land (Reserves) Act*. Local laws (referred to in the amendment) are made according to a robust process – involving exhibition, adherence to prescribed principles, and a sunset clause – but local laws are inoperative if they conflict with CL(R) Act regulations.

Regulations under the CL(R) Act are not made through any such process, and are notoriously archaic and inaccessible. In Melbourne's Kings Domain, unrevoked 1936 regulations forbid the breaking-in of wild horses. In the case of Princes Park, the regulations enjoin persons not to 'play or operate a musical instrument... so as to interfere with the reasonable convenience of any other person.' Tell that to Iggy and the Stooges.

What's needed is a rethink of the range of uses permitted in various parks and gardens, the process by which such a range of permitted uses might be agreed upon, and what avenues of recourse (other than stand-up satire) should be available to disgruntled citizens like Rod Quantock.

How about statutory management plans for parks and reserves? Or a new 'Major Events' Act specifying when, by whom, in what circumstances and through what process the normal rules governing parks and reserves might be varied? ■



The Public Land Workshops  
2006

## Community Use of Public Land



Our next Public Land Workshop will focus on legal and policy questions surrounding the many sporting, civic and not-for-profit groups using public land, including Crown land.

### CALL FOR PAPERS

Readers are invited to offer suggestions for speakers and topics. Here are a few thoughts of our own...

- *The Economics of Community Use: Grants, Rents and Implied Subsidies*
- *Tenure: Management Agreements, Contracts, Leases, or Section 86?*
- *Subsidiarity: What are appropriate roles for State and Local Governments?*
- *Risk Management and Insurance*
- *The Ethics of Community: Voluntarism, Competition and Commercialisation*
- *Landlord-Tenant relations: Negotiating Leases, Conflict Management; and the Retail Tenancies Act*

**Melbourne, May 2006**

(Date and venue to be advised)

[dgj@publicland.com.au](mailto:dgj@publicland.com.au)

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## Auditing the Peppercorns

Part of Geelong Town Hall stands on land leased from the Crown for 999 years. The rental? One peppercorn if demanded.

This curious provision reflects the difficulties governments have had, over the years, to find formulae under which public land can be made available for civic or recreational purposes at less than full market value. Until recently, the Victoria Racing Club leased Flemington racecourse for the princely sum of one shilling per annum. A more common arrangement is for land to be reserved and the relevant council or authority appointed as Committee of Management – in which case they pay no rent, and can hang on to their peppercorns and shillings, as the case may be.

When it comes to setting rents for community tenants, government and councils face some difficult policy considerations. A less-than-market rental can be regarded as an implied subsidy – or even a *hidden* subsidy, because it usually goes unquantified, unrecorded and unaudited.

So how are community rights to be allocated?

The easy way is to continue the status quo: this site has always been occupied by the tennis club, so let them continue to occupy it.

Sometimes, however, there may be good reason for a formal review – even opening up the possibility of the site being reallocated to the netball club.

What rent should a community tenant pay – or to put it another way, how much implied subsidy should they receive?

DSE's own policy of \$104 per annum is simple, but has its limits. What happens when the community tenant develops a commercial off-shoot – like the surf club which transfers its kiosk from volunteers to a private operator? Clearly, the \$104 should continue to apply to part of the operation, and a market rent to the other part – but the demarcation between community and commercial may not be as straightforward as a line around part of the building site-plan.



The Auditor General tells us that "*the provision of subsidies for community and or commercial entities by councils is an issue which will be considered for future audit examination...*"

...continued

Who qualifies as a community tenant? There's no problem with the not-for-profit association whose objectives clearly align with council's Corporate Plan, but what about the single-issue campaign group, the eccentric closed-shop club or society, and the sectarian religious movement?

A frequently encountered case is the open, voluntary, sporting club which transforms, step by step, into a fully commercial, licensed restaurant and gaming facility. At what point in this process did it cease to qualify for a subsidised rental?

Auditor-General Wayne Cameron touched on related issues in his October 2005 report to Parliament.

He defines grants as including 'gifts, donations and subsidies,' but then goes on to examine only those grants which take the form of cash payments. Nevertheless, as Mr Cameron has since confirmed for us, his recommendations are also relevant to the provision of non-cash subsidies.

He recommends that Councils :

- establish consistent frameworks (including documented policies and procedures) for administering all forms of financial assistance provided to third parties
- establish appropriate monitoring procedures for grants, commensurate with the assessed risk characteristics of different grant types and value
- require grant recipients to provide appropriate documentation to acquit their grants, and ensure it is received and examined for adequacy
- annually evaluate the outcomes of grant programs, and use this assessment to inform the future operation of these programs
- maintain adequate information systems to ensure that lists of grants are complete, accurate and up-to-date, and contain the information they are required by legislation to make available to the public.

In an earlier report (1996), the A-G looked more specifically at peppercorn rentals.

In a sample of 15 councils, he found a few cases of fully commercial ventures enjoying rental subsidies from ratepayers. A majority of councils in his sample had at least one case of peppercorn rentals being charged for premises with gaming and licensed entertainment. Some had no periodic review, and there were instances of lease terms for an indefinite period.

*In 1996, these cases were attributed to the deficiencies of 'former councils' – but that's an excuse which wouldn't stand up any more.* ■

The AG's reports are at [www.audit.vic.gov.au](http://www.audit.vic.gov.au)

*Readers of Terra Publica should not act on the basis of its contents which are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. They do not, nor are they intended to, constitute legal or specific advice. The Public Land Consultancy is available to provide advice on public land matters and will, on request, arrange legal advice for clients from its associate Maddocks, of 140 William Street, Melbourne.*

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- Public Sector Administration
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9534 5128

## Professional Development Courses March - May 2006

Land Law for Managers of Parks, Gardens and Reserves	Tuesday 4 April Tuesday 2 May	Melbourne Ballarat <i>Presenter: Dr Geoff Parr-Smith</i>
 <p><b>Vegetation and the Law</b></p> <p><b>Presenter:</b> <b>Brendan Sydes</b> <i>Principal Solicitor, The Environment Defenders Office</i></p>	Thursday 2 March	Montrose *
	Thursday 9 March	Bell Motor Inn, Preston *
	Tuesday 14 March	Bayside City Council *
	Monday 20 March	Brimbank City Council *
	Thursday 23 March	Bell Motor Inn, Preston
	Thursday 30 March	Corangamite CMA, Colac
	Friday 7 April	DSE Offices, Colac
	Tuesday 11 April	Bendigo
	Thursday 20 April	Hamilton
	Thursday 27 April	Traralgon
Thursday 4 May	Benalla	
Thursday 11 May	Melbourne	
		* Sorry, fully booked! Contact us to arrange further presentations
Crown Land Law, Policy and Practice	Tuesday 28 March Tuesday 9 May	Maddocks, Melbourne Dandenong <i>Presenter: David Gabriel-Jones</i>
Land Law for Managers of Roads Streets and Lanes	Tuesday 21 March Thursday 6 April	Bendigo Dandenong <i>Presenter: David Gabriel-Jones</i>
Land Law for Managers of Rivers, Lakes and Catchments	Wednesday 8 March Tuesday 11 April	Melbourne Water Dandenong <i>Presenter: David Gabriel-Jones</i>
Land Law for Coastal Authorities	Tuesday 4 April	Melbourne <i>Presenter: David Gabriel-Jones</i>

*For full details of all our courses, go to:-  
[www.publicland.com.au](http://www.publicland.com.au) then to:- Professional Development*

### ENQUIRIES AND REGISTRATIONS

To book into one of these courses, or to arrange a course at your offices, contact our Training Course Co-ordinator, Dorothy Jenkins

[dorothy@publicland.com.au](mailto:dorothy@publicland.com.au) Phone 9579 2635

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Cost - \$440 per participant  
including GST, course notes and  
working lunch

Duration - 9:00 a.m. to 4:30 p.m.

Maximum Class Size - 10