



THE ALL-DAY BREAKFAST

Nowhere are the challenges facing city planners more tangible or more pressing than in the public domain. Streets and lanes, forecourts and footpaths, markets and schoolyards, waterways and beaches – that’s where the impacts of demographic change, economic growth and cultural shifts will be most evident; that’s where Melbourne’s planners must not only respond to change, but actively participate in shaping it.

Opposition will come from nimby devotees to living in *status quo* neighborhoods and cultures, and troglodytes unable to see beyond *status quo* policies, systems and laws. They may well be reinforced by timid politicians and conservative academics, but in the end they will be defeated by the All-Day Breakfast.

The roots of urban planning in Australia are the 18th Century fiction of *terra nullius*, and the ‘garden city’ reform agenda of post industrial revolution England. The former gave us the endless-supply-of-land syndrome; the latter gave us the quarter-acre block, the dormitory suburb and one of the greatest *per-capita* rates of car usage on the planet. Slowly, the people of Melbourne are dragging their policy-makers out of this quagmire of unsustainability.

Despite the negativism of nimby-agglomerates like Save Our Suburbs and Protectors of Public Land, Melbourne people are celebrating an emerging twenty-first century cultural paradigm. We are redefining the boundaries between work, leisure and retirement, between weekday and weekend, between commerce, culture and recreation, and even between day and night. Your neighborhood has entered the modern era when the footpath café offers all-day breakfast (with, of course, Wi-Fi).

These tectonic shifts will also, inevitably, reshape and liberate the urban public domain.

The white picket fence of the mid-20th century defined not only the private world of the detached house behind it, but also the public realm of the street and park outside it. The resultant legacy is that persistent dichotomy which designates some land as ‘public’ and other land as ‘private’ – a revolutionary notion for planning pioneers like Ebenezer Howard and his followers (like Walter Burley Griffin), but fast losing relevance in a world of profound economic, environmental and social realignments.

The public domain has for too long been on the wrong side of this white picket fence. All too often it has been the mock rural landscape to be observed from the passing car, rather than a living townscape to be actually inhabited. It has been the residual, un-designed, *negative* space lying between designed, *positive* built developments – but it deserves better. It now falls to policy-makers, planners and architects to reposition the public domain as core business territory for councils, investors, communities, and families.

Central to this paradigm shift will be a new generation of municipal strategic planners. Their tool kit will still include familiar instruments like 173 Agreements and development contributions – reactive instruments which ride on the back of private sector investment decisions. Added to these will be new instruments hitherto neglected at the bottom of the tool-kit: powers to pro-actively establish council-based enterprises and partnerships; powers to harvest land in superfluous roads and moribund reserves; and powers to reconfigure freehold property which has had the value sucked out of it by layer upon layer of subdivision.

The winner will be Melbourne. Just imagine: sitting in the sun, listening to a good busker, scrolling through your emails, watching the rainbow lorikeets and savouring the eggs benedict. ■

Two Professional Development Courses from The Public Land Consultancy

NEW

PLANNING LAW
A STRATEGIC OVERVIEW

PUBLIC LAND FOR
URBAN PLANNERS

DETAILS
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Professional Development Courses from The Public Land Consultancy

PLANNING LAW
A STRATEGIC OVERVIEW

A new one-day professional development course designed for -

- Senior officers of Victorian councils or statutory authorities requiring a strategic overview of planning law and their agencies' responsibilities
- Middle-level professional officers requiring a sound conceptual understanding of planning systems in Victoria
- Private sector professionals including lawyers, planners and surveyors needing to update their professional skills

Planning Law – Legal Concepts

What planning can and can't do
Planning law in the context of other laws
Existing and ancillary uses

Planning Law – the Statutory Basis

The Planning and Environment Act
The Subdivision Act 1988
Other planning-related Acts

Planning Law – Roles and Responsibilities

The Minister for Planning
The Department of Planning & Community Development
Councils as Planning Authorities
Councils as Responsible Authorities
Referral Authorities

Planning Processes -

Making planning scheme amendments
Obtaining, amending and enforcing permits

Planning Law – the Legal System

VCAT and the Courts
Enforcement, penalties and authorised officers

Hot Topics and Emerging Directions:-

Development contributions
Review of the Planning and Environment Act
Costs in VCAT
Melbourne @ 5 million and climate change

Presenter Andrew Walker

Andrew practises at the Victorian bar, and was previously Corporate Counsel with the City of Melbourne.

He is a Law Institute Accredited Planning and Environment Law Specialist and a lecturer in Planning Law at the University of Melbourne



PUBLIC LAND FOR URBAN PLANNERS

- Many urban precincts include a large proportion of public land – roads, reserves and railway land – often under-utilised or poorly configured.
- This course aims to provide strategic planners and other council officers with a tool-kit for the rationalisation or adaptive re-use of these spaces

Urban Land Status and Control

Land status – the various forms of freehold and Crown land found in urban areas
Public land ownership, control, management and tenure
Municipalities and their land-related powers

The Use and Development of Road Reserves

Types of roads and lanes: Government, Freehold and Arterial...
Ownership and control of roads and lanes
How road reserves can be created, deviated, and discontinued
How road reserves can be developed and put to commercial use – at the surface and at other strata

The Use and Development of Railway Land

Ownership and control of railway land
How railway land can be used and developed at the surface and at other strata

The Use and Development of Public Spaces

Ownership and control of Crown reserves, freehold reserves, creeks and foreshores
How these spaces can be created, regulated, altered, used for commercial purposes, and disposed of
Commercial use of reserves and public spaces
Car parks – how they can be funded, acquired and controlled

The Legislative Tool-Kit

Rating and entrepreneurial powers under the Local Government Act
Powers of compulsory acquisition
Powers under the Subdivision Act 1988
Part 9A of the Planning & Environment Act
VicUrban, the Growth Areas Authority and their respective Acts
Site specific legislation: Whitten Oval Footscray, the St Kilda Triangle, and University Square Carlton

Presenter David Gabriel-Jones

David has been practising and consulting in these areas for many years.

He has recently been engaged by the Departments of Planning and Transport to advise on reconfiguration of public land in the Ringwood, Footscray, Geelong and Sunshine Activity Centres.

Cost

\$495 per student including GST, course notes and working lunch
Discounts for host organisations

Registrations and Inquiries

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Forthcoming presentations

See Page 4
or check our website at
www.publicland.com.au/professional_development
Maximum class size – 10

Q & A

If a house backs onto a reserve, does it have rights of access across the reserve?

Question asked by a municipality where pedestrian gates are metamorphosing into hard-paved driveways accessing double garages.

If your house backed onto a nice reserve, then of course you'd put an innocent people-gate in your back fence. Makes sense: the kids could go out and play on the grass. Then you'd start using the reserve as a second entry; then you'd widen the gate so you could get the Range Rover in and out; then you'd put down gravel; and then you'd get the council to bituminize that strip of the reserve which used to be grass before it got all churned up.

This is not a fanciful scenario. In some cases it may indeed be possible for reserves to transform into legal roads. On freehold reserves 20 years of unchallenged and uninterrupted use could result in the land becoming a common law 'easement by prescription,' or 'easement of long user.'

If you've notched up the required 20 years, you could then argue that, as a 'right of way' our strip of freehold reserve has also become a road for the purposes of the Local Government Act. If your reserve has thus become a road, then the next logical step is to subdivide, because your back yard now has its own separate legal access.

Council still has a few tricks up its sleeve. If we accept that the easement by prescription qualifies as a road, then it follows that Council can deal with it under the Local Government Act – which provides for traffic management measures, closures, and discontinuations. What our abutting owner has taken 20 years to achieve can be undone by a couple of council resolutions.

Maybe there are circumstances where it's good planning policy to allow access across reserves, or even to convert reserves into roads, and there are ways in which this can be achieved. But there will be many other circumstances where the erosion of reserves is to be vigorously resisted – so watch out for those innocent pedestrian gates. ■

Common law easements are strange beasts – and you'll find more about them in Terra Publica of December 2006.

Are the Geelong Cats really at the top of the AFL ladder?

Question arising from an article in the Geelong Advertiser, 7 June 2010

Of the Cats' 36 premiership points, 12 were obtained illegally. As the Geelong Advertiser somehow discovered (not from *Terra Publica*), it's against the law to play Sunday sport at Kardina Park. Offenders are liable to a fine of £5, which for persistent offenders rises to £10.

The regulations in question were gazetted in 1930, and stood until a week after the article appeared, when they were suddenly revoked by a Special Gazette dated 15 June 2010.

Meanwhile, regulations for Lincoln Square, Carlton continue to prohibit the singing of obscene ballads, and regulations for Melbourne's King's Domain prohibit jogging (on Sunday), or lying on the grass (on any day).

Why do regulations under the *Crown Land (Reserves) Act 1978* survive? Where is the process for their review? Why do we have to wait for an embarrassment to the Minister before DSE gets around to acting?

CL(R) Act regulations are not statutory rules. They do not sunset after 10 years, as is the case with all modern regulations, including council Local Laws. The bigger problem is not their immortality, but the very need for most of them to exist at all.

What to do? Here are four strategic options.:-

- The *status quo* strategy: deal with archaic regulations one-by-one, if and when they're discovered by the media and turn into embarrassments for the Minister
- Strategy number two: rescind them all now (not recommended: some may still be necessary)
- Strategy number three: convert them all to statutory rules (not recommended if they were then all to sunset simultaneously)
- Strategy number four: work through them reserve by reserve, on a regional or municipal basis, through some appropriately transparent process. It may be a task suitable for the incoming Victorian Natural Resource and Catchment Council.

At the same the VNRCC could take a look at a heap of redundant Acts (do we really need the Jeparit Land Act of 1922?) and Crown reserve purposes (like the car park alongside Luna Park, which is reserved for the recreation of elderly persons and underground drainage. No kidding).

But let's hope they leave untouched the King's Domain regulation prohibiting the breaking in of wild horses. If we are going to allow people to lie on the grass after a spot of Sunday jogging, we wouldn't want them to be trampled underfoot. ■

Our Professional Development Program June to September 2010

	Melbourne (various CBD locations)	Western Victoria	North-Western Victoria	North-Eastern Victoria	Gippsland
Planning Law – A Strategic Overview	Fri 30 July Melbourne Thurs 26 Aug Melbourne	Mon 9 August Geelong	Mon 6 Sept Bendigo	Mon 13 Sept Wangaratta	Mon 20 Sept Traralgon
Environmental Law – A Strategic Overview	Thurs 17 June Melbourne Fri 13 August L/V		<i>Date to be set Mildura*</i>	Thurs 24 June Wangaratta	
Land Law for Managers of Roads Streets and Lanes	Tues 6 July Melbourne Mon 27 Sept Melbourne	Thurs 22 July Geelong Wed 4 Aug Ballarat	<i>Date to be set Mildura*</i>		Thurs 1 July Traralgon
Land Law for Managers of Rivers and Lakes	Mon 26 July Melbourne	Thurs 9 Sept Geelong	<i>Date to be set Mildura*</i>	Thurs 19 Aug Shepparton	Mon 28 June Traralgon
Land Law for Service Utilities	Thurs 10 June L/V Wed 14 July Melbourne	Thurs 29 July Ballarat Fri 27 August Geelong	Wed 4 Aug Mildura Thurs 12 Aug Bendigo		Thurs 24 June Traralgon
Public Land Leases and Licences	Fri 6 August Melbourne	Fri 4 June Ballarat	<i>Date to be set Mildura*</i>		Fri 16 July Traralgon
Crown Land Law, Policy & Practice	Mon 5 July Melbourne Fri 16 July L/V Wed 18 Aug Melbourne	Mon 19 July Portland		Mon 21 June Beechworth	Mon 7 June Leongatha
Public Land for Urban Planners	Thurs 12 August Melbourne Wed 22 Sept Melbourne	Tues 31 August Geelong	Native Title and Aboriginal Heritage <i>Watch for our forthcoming courses in conjunction with some of the State's Registered Aboriginal Parties (RAPs)</i>		
Land Law for Coastal Authorities	Mon 12 July Melbourne				

Inquiries and registrations – Lesley Simons – email lesley@publicland.com.au
For **course details** go to www.publicland.com.au/professional_development

HAPPY CUSTOMERS...

- ✪ We conducted an internal evaluation of your course, and you passed with flying colours! The staff thought you (and the course) were excellent. Should other councils need a 'reference' for you, I am more than happy to oblige...
– Training Manager for a provincial city council
- ✪ The best training course I have been to in years
– Field Manager with a rural water authority
- ✪ 'Having attended a previous session with you I will highly recommend your training to my team'
– CEO of a rural municipality
- ✪ (The Roads course) "Should be mandatory for all VicRoads staff"
– Senior Engineer, VicRoads
- ✪ "Highly relevant - the most relevant training ever completed by myself at (major consultancy firm)"
– Infrastructure Project Manager