

W Heath Robinson  
A device for testing golf clubs

## Who's got the Policy Spanner?

We don't need engineers to explain the latest collapse of Arthurs Seat chair lift.

**The collapse was not due to a mechanical fault, but to a failure of government policy relating to the use of Crown land.**

In April 2003, when the chairlift last collapsed, Minister Hulls offered a partial explanation:

"This was an old design, one of very few that still exist. It was 1959 technology that did not stand the test of time."

What the Minister didn't explain was why a 1959 structure had survived for so long.

In 1959 the chairlift operator was granted a Crown lease under the Land Act for 21 years. Although the lease had no options to renew, the operator was nevertheless granted a further 21 years in 1980, without having to go to tender. In 2001 (you guessed it) he was granted a third term of 21 years, again without having to go to tender. All up, that's 63 years.

As one international expert told us:

"There are very, very few chairlifts or cable-cars dating back to the 1950's. It is possible to replace components and keep a lift in service for a very long time, but ..."

Why did the Crown Lands Department and its successors hand out these renewals? The reason stems from their view that at the end of a lease a tenant must walk away with nothing.

At Arthurs Seat, the lessee argued on each occasion that he had been a good tenant and that he should not be forced to abandon his substantial financial investment. It's an argument deserving some sympathy, but sympathy is no substitute for sound policy.

No Crown tenant, especially a commercial tenant, should expect automatic lease renewals. Competition Policy (and that thing we used to call *probity*) demands that allocation of tenure rights be awarded through an open process. The same applies to mid-term renewals: a commercial tenant should not get a *de facto* extension of a lease by seeking to have the clock set back to zero.

But these requirements do not sit comfortably with commercial reality. What developer is going to allow their investment to fall under the cloud of a tenure sunset? It's a gross simplification to suggest that amortisation must coincide with lease term – *i.e.* that assets must be fully depreciated at reversion.



Déjà vu all over again: 2003 (left); 2006 (right)

The walk-away-with-nothing policy fuels demands for excessive lease terms. It is a formula for run-down leased premises, for impeding economic activity, and for sub-optimal standards of service to the public.

There is in fact a way of filling the policy gap – of reassuring investors without ditching competition policy. It's the simple notion of recognising *tenants' residual interest*.

New South Wales has adopted just such a policy in the case of marinas.

There, a tenant who makes a substantial capital investment mid-way through a lease term can be credited with an agreed residual interest at termination.

If a lease site is awarded to a party other than the outgoing tenant, then the residual value of the outgoing tenant's improvements is paid by the incoming tenant. If a lease is not going to be re-issued at expiry (perhaps the site is to be used for some other purpose) then the outgoing tenant will be compensated by the state.

If rights to the Arthurs Seat site had been open to tender in 1980, or in 2001, then under the NSW policy the international chairlift industry would surely have bought out the residual interest, built a more modern structure, given the Mornington peninsula an all-weather tourist attraction, and assured the punters of a safe ride. ■



VALE

**Lorraine  
Marshall**

2-2-1943 – 25-5-2006  
Land Use Planner

*Lorraine will be  
remembered at many  
places, including...*

*The Bullum Bullum Aboriginal  
Place, Kororoit Creek*

*The Gurdies, Grantville*



*Pterostylis striata*

*Cherry Street Grasslands,  
McLeod*

*The banks of the Little Yarra  
River, Gladysdale*

*The Wonthaggi Bushland  
Reserve*

*The Queenstown Cemetery,  
Smiths Gully*

*Plenty Gorge Park*

*The Upper Beaconsfield  
Recreation Reserve*

*Glenfern Road Bushland,  
Upwey*

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## FEEDBACK

*Last month's Terra Publica on the subject of roads  
generated quite a bit of interest...*

Is an Unused Road still a Public Highway? We hear there's a 35-page opinion floating around from the Government Solicitor on this one, which comes to the conclusion that the answer is either yes, no, or maybe. Which just goes to prove our point: what's needed is policy development, not attempts to analyse archaic legislation.



*Melbourne City Council  
blames this piece of nonsense  
on the Commonwealth Games  
Authority.*

VicRoads vigorously defends the *Road Management Regulations 2005*, which purport to allow the discontinuation of an Unused Road without public consultation. We stick by our view that the regulation, as well as being bad policy, attempts to go beyond its primary legislation and is therefore null and void.

Miles Lewis, writing as an unrepentant pedestrian, offered various complaints about cyclists, footpath cafes, parked motor bikes, and queues at ATMs. You've been misinformed on motor-bikes, Miles: councils do have power to control them (see the minutes of Melbourne City Council 25 Sept 2003). As for ATMs, however, councils have now lost any power they had under planning schemes – Minister Hulls has just exempted ATMs from the need for a planning permit. ■

## ROADS for Surveyors

GRAND HOTEL MILDURA

Thursday 22 June 2006 10:30 am – 5:00 pm

*A one-day professional development opportunity for  
surveyors attending the 2006 Surveying Conference.*

- the ownership and control of roads
- developments above and below roads
- encroachments onto road reserves
- road closures and discontinuations.

The day's program will be based on our one-day course "Land Law for Managers of Roads Streets and Lanes" which has been of benefit to several hundred engineering and planning staff from many councils and VicRoads.

*This course earns 6 FPET Points for Surveyors'  
Board of Victoria accreditation* ■

## The Coastal Management Act, Ten Years On

By Geoff Wescott

To understand the status of Australia's marine and offshore areas, visit [www.ga.gov.au/image\\_cache/GA3746.pdf](http://www.ga.gov.au/image_cache/GA3746.pdf)

Just over ten years ago Victoria passed its first comprehensive coastal legislation: the *Coastal Management Act 1995*. The Act established a strategic planning framework for the Victorian coast largely based on the Victorian Coastal Strategy, drafted by the Victorian Coastal Council.

Beneath the Strategy "Coastal Action Plans" are produced by three Regional Coastal Boards. There have been two coastal strategies produced (1997 under the Kennett Government and 2002 under the Bracks Government). A revised strategy is due by January next year.

Ten years of coastal planning and management allows enough time to reflect on the effectiveness of a piece of legislation and the author has prepared an independent critique of the Act and forwarded it to the Government.

In general Victoria coastal planning and management, when compared to overseas and interstate systems, is comparatively good – but it could be even better.

Probably the major improvement required of the Act is to integrate coastal planning more closely into existing strategic and local planning regimes. The "Coastal Spaces" project of the State Government, established following public concerns about coastal "ribbon development" and the inappropriate development of coastal towns, has highlighted this lack of integration.

Nevertheless 'Coastal Spaces' has not suggested any substantial changes to current approaches. This appears to be a major challenge for the Government and reform of the inappropriately named Coastal Management Act (it predominately deals with planning) is needed.

Other concerns with the Act are that it fails to define the "coast" and hence does not clearly emphasise that the "coast" includes private and public land and also marine areas – coastal waters out to the State jurisdictional

limit (three nautical miles). A greater emphasis on "public sea" is overdue as the Victoria marine environment is little planned and/or regulated at all.

The relationship between Victoria's coastal planning and management and the catchment management approaches (through Catchment Management Authorities) also needs clarification, as important ecological areas such as estuaries appear to be at risk of "falling between the cracks". The author's report proposed far greater use of Coastal Action Plans to enhance integration at all levels of planning and management, on both sea and land.

The review proposes placing the Act and its agencies under the Department of Premier and Cabinet, to allow a "whole of government" approach to coastal planning and management, and to improve the likelihood of receiving the increase in funding and resources the coast desperately needs.

Other changes favoured included returning specifications in the Act for community representation on the Coastal Council and Boards. These were removed by Kennett and, despite electoral commitments by Bracks, have not been returned to the Act as yet.

Other immediate concerns are doubts about the Government's commitment to a full and comprehensive review of the current (2002) Victorian Coastal Strategy, weakening of community based programs such as Coast Action / Coast Care and concern about the amount of specialist coastal expertise in major coastal managers such as Parks Victoria.

The Government's real commitment to coastal planning and management will be tested this year; the Act needs an overhaul and in particular funding needs to be substantially increased. There remains some doubt though that there is real political will to meet the challenge. ■

*Professor Wescott chaired the Coastal Reference Group which recommended the introduction of the Coastal Management Act and was a member of the Coastal Council from 1995 – 2001*

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## PROFESSIONAL DEVELOPMENT

*Our Training Courses for Winter 2006*

### ***Land Law for Managers of Roads, Streets and Lanes***

Melbourne	Tuesday 6 June	Wangaratta	Tuesday 18 July
Sale	Tuesday 13 June	City of Stonnington	Thursday 20 July
Mildura	Wednesday 21 June	Dandenong	Tuesday 25 July
Hamilton	Tuesday 4 July	Colac	Tuesday 1 August
		Maryborough	Tuesday 8 August

### ***Vegetation and the Law***

Melbourne	Tuesday 20 June	Traralgon	Thursday 6 July
Benalla	Thursday 29 June	Dandenong	Thursday 13 July
		Hamilton	Friday 21 July

### ***Land Law for Coastal Authorities***

Geelong	Monday 20 June
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### ***Land Law for Managers of Parks, Gardens and Reserves***

Preston	Wednesday 5 July
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### ***Crown Land Law, Policy & Practice***

Preston	Thursday 29 June
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### ***Land Law for Managers of Rivers Streams and Lakes***

Goulburn-Murray Water Tatura	date to be fixed
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### **OUR PRESENTERS**

#### **David Gabriel-Jones,**

*Principal,  
The Public Land Consultancy*

#### **Andrew Walker**

*Accredited Specialist in  
Environmental Law,  
Hunt and Hunt, Solicitors*

#### **Brendan Sydes**

*Principal Solicitor,  
The Environment Defenders Office*

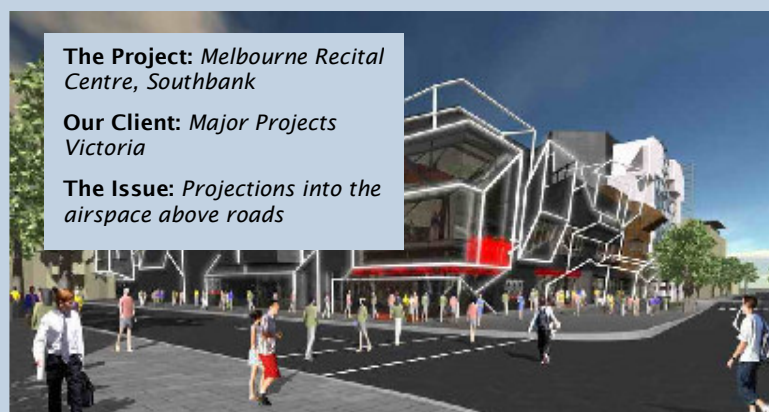
#### **Dr Geoff Parr-Smith**

*Principal,  
Terra Forma Pty Ltd*

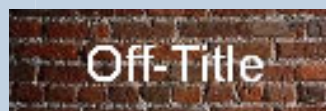
### **Inquiries and Registrations**

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