

A Caffè Latte and a Vanilla Slice

Where to find the good life? In Melbourne there's nothing but lukewarm caffè latte and falling share prices. In the country there's drought and locust plagues... but at least people in the country have *community*.



Snake Valley Country Women's Association

From Toongabbie to Patchewollock the volunteer ethic is alive and well. In Natimuk (population 400) there are 55 volunteer groups. In any country town, alongside the CFA, the CWA, the SES and the School Council, you're likely to find half a dozen committees managing public land – from the recreation reserve to the showgrounds and the war memorial – and what's more, managing them reasonably well.

Melbournians leave public land management the local council or to Parks Victoria, and then complain about their mismanagement over lukewarm lattes (except in Brimbank, where they storm the Council chamber, as you'll see by checking out 'Sydenham Soccer Club' on youtube).

Melbourne – urban lethargy?

Is Melbourne really so different from the rest of Victoria? As an article of faith (not as a result of any empirical research) *Terra Publica* believes that if put to the test, Melbourne people would prove to be as committed, resourceful and willing as their country counterparts when it comes to managing their communities' public land.

According to our thesis, Melbournians have become latte-sipping observers not through any intrinsic urban lethargy, but because of deficient administrative systems. If only sound governance mechanisms were available, they would jump up from their footpath cafés and start revegetating the local creek. More than that – actually *taking responsibility* for the local creek. Fanciful? Maybe; maybe not.

There are several formulae currently available for community involvement in public land management – but each has its limitations.

- 'Local' Committees of Management under the *Crown Land (Reserves) Act 1978* were the accepted form of delegated management a hundred years ago, but their enabling legislation has failed to move with the times. They may be appointed only over Crown land, not freehold land; they answer to DSE, rather than to the local Council – even if the land they manage is of purely local significance. They have no structured relationship to their true constituency, namely the local community. With very few exceptions, this formula has not been employed in metropolitan Melbourne.
- Section 86 Committees appointed under the *Local Government Act 1989* are not incorporated entities, but mere appendages of their parent councils. They are only vicariously responsible for their own decisions, cannot enter into contracts, employ staff, or even hold insurance. They can have no structured relationship either with their community or other stakeholders except through the council. Metropolitan councils seldom use them for land management – one notable exception being the committee which manages South Melbourne Market on behalf of the City of Port Phillip.



Morwell Rose Garden Committee

- Clubs and societies formed under the *Associations Incorporation Act 1981* are certainly corporate entities (that's the whole point of that particular Act) but they're answerable to their own membership rather than to any landowner on whose behalf they may operate. There are plenty of incorporated associations using public land in Melbourne – but they tend to be there as tenants or 'friends' groups, rather than as actual land managers. They could enter into some form of tenure or management agreement with a land owner, but it would essentially be a contract rather than a principal-agent agreement, with corresponding problems of dual accountability (see Q & A, page 2).
- Friends Groups are a well-established component of public land management. Some are incorporated under the *Associations Incorporation Act 1981*; some have the protection afforded

continued



'conservation volunteers' under the *Conservation, Forests and Lands Act 1987*. They often provide unpaid labour for an official land manager, such as Parks Victoria, but seldom recognise or utilise the full range of skills, resources and goodwill available from the wider community.

These structural deficiencies apply state-wide – so why associate them specifically with the Melbourne metropolitan community-engagement vacuum? Perhaps it's something to do with distances or population densities, or council resources and economies of scale, or litigiousness and risk exposures, or demography and social cohesion... Frankly, we don't know. Readers with insights on this question are welcome to write in!

Towards a New Paradigm

But even if we can't fully explain the phenomenon, we are sticking to our thesis. Melbourne needs a new paradigm for community involvement in public land management. Here are the essential elements of our next-generation delegated managers:-

- They will have corporate definition. Our community groups must be able to form into legally-recognised corporate entities, capable of entering into contracts, receiving grants, holding assets and insurance, and suing and being sued
- As local land managers, they will have local accountability: their primary external relationship will be with their municipality rather than with DSE, in accordance with the principles of subsidiarity
- They will be entrusted to exercise authority – to make decisions, issue tenures, manage their own funds, employ staff, and even enforce regulations
- They will be status-neutral – that is, capable of taking responsibility for any public land of local significance, whether it be reserved Crown land or freehold reserves vested in the council
- Their objectives will be set by mutual agreement between the community and the council – and will be renewed at, say, three-year intervals.

And what about that Vanilla Slice?

And if we ever get some decent country values into metropolitan Melbourne, we might also get a decent vanilla slice to go with this lukewarm caffè latte. ♦

Q & A

Can our Sports Club be appointed as a Committee of Management?

Question asked on behalf of a club which would prefer not to be a rent-paying tenant.

No it can't – and there are good reasons why not. Here we're talking about a Crown land reserve – for which the *Crown Land (Reserves) Act 1978* authorises a wide range of committee structures, including "any board, committee, commission, trust or other body corporate or unincorporate established by or under any Act for any public purpose." Well, doesn't our club qualify?

Footy clubs, and LandCare groups, and the Scouts and historical societies, are all established for some purpose, but is it a 'public purpose?' When you look at their charters, many are established not for the benefit of the public, but for the benefit of their own members. No matter how open and public-spirited they may be, they will not pass the test set by the Act.

There's another good reason for not appointing a club as sole manager of a publically-owned reserve – and this applies whether we're talking about a Crown reserve or a freehold reserve owned by the council.

In the interests of good governance, landlord and tenant should be separate entities. Our club/tenant should be answerable to a clearly defined ground manager/landlord, which in turn should hold the club/tenant accountable for its compliance with the occupancy agreement.

What if the same people sit on the club's board and the reserve Committee of Management? Often it makes sense to have user representatives on the landlord body, but there are limits. As we say elsewhere in this edition, community involvement is to be encouraged – but it's rather disturbing to find racecourses (for instance) where the Board of the Racing Club and the Committee of Management are virtually identical. Far too cosy. ♦



Further Professional Education and Training

The Board's FPET Sub-Committee has assessed the content of each of The Public Land Consultancy's courses and has allocated FPET points as follows:

Crown Land Law, Policy and Practice

- 6 Cadastral Survey Practice points

Land Law for Coastal Authorities

- 6 Cadastral Survey Practice points

The Land, its Traditional Owners and the Law

- 3 Cadastral Survey Practice points
- 3 Other (Development Planning) points

Land Law for Managers of Roads, Streets and Lanes

- 6 Cadastral Survey Practice points

Land Law for Managers of Rivers and Lakes

- 3 Cadastral Survey Practice points
- 3 Other (Development Planning) points

The Board encourages Licensed Surveyors to attend courses run by The Public Land Consultancy.

Anita Davids, Executive Officer
Surveyors Registration Board of Victoria

Q & A

What's the significance of headings in Acts of Parliament?

Question raised by two clients, one attempting to interpret the Crown Land (Reserves) Act 1978, the other the Water Act 1989.

A student at one of our training courses fell about laughing when he learned that there is an Act of Parliament telling us how to fathom the meanings of other Acts of Parliament. It's called the *Interpretation of Legislation Act 1984*, and it can be quite important in understanding Acts like the *Crown Land (Reserves) Act 1978* and the *Water Act 1989*.

The CL(R) Act has a heading to section 17D which reads "Leases for purposes other than those for which the land is reserved" (our emphasis) – but the body of the section seems not to restrict its use in the way indicated by the heading. So can we issue 17D leases for purposes which are the same as the purpose of the reserve?

Section 8 of the *Water Act 1989* is a contentious provision, whose interpretation has profound repercussions for the fencing of river frontages. Its heading reads "Continuation of private rights to water." In attempting to decipher section 8, we might be tempted by the words 'continuation of' to look back at the earlier *Water Act 1958* to see what pre-existing rights were being 'continued.'

Enter the *Interpretation of Legislation Act 1984*. It tells us to ignore section headings in Acts passed before 1 January 2001. (But note: headings to Parts, Divisions and Schedules are treated differently.)

You can indeed issue 17D leases for purposes the same as the purpose of the Crown reserve; and in order to figure out whether constructing a fence deprives a landholder of water rights you can't simply turn to what the earlier version of the *Water Act* had to say on the subject.

So there you have it: pre-2001 section headings are not a part of the Act that they're part of – even if they're printed right there on the page.

Why can we still hear that guy laughing? ♦

Q & A

Can a council require DSE to re-assign an Unused Road licence?

Question asked by a council officer being harassed by landholders abutting an unused government road.

Last time we looked at the *Local Government Act 1989*, it didn't set municipalities up to be mediators between disputing neighbours – but this nevertheless seems to be a role councils are called upon to perform. The Act certainly uses phrases like 'fostering community cohesion' and 'peace, order and good government' – so we guess a council may take on a bit of mediation if it chooses to.

The case in question involves an unused government road which has been licensed to party 'A' for many years. Party 'B' on the other side of the fence, as part of a package of grievances against 'A' is demanding that council initiate the transfer of the licence to him. What should Council do?

It has to be recognised that DSE controls this road, not Council. It's a state of affairs not expressly provided for in the legislation, but it may be inferred from the fact that licences over unused roads are issued under the *Land Act 1958* by the Minister for Environment and Climate Change, whose agent is DSE.

Councils have a statutory role only when a government road is declared to be unused, and when it is returned to public use. You'll find the relevant provisions in section 400 and 407 of the *Land Act 1958*. Between these two events, a council may, of course, offer opinions to DSE on the administration of the licence, but the formal choice of tenant is a matter purely for DSE.

It should also be noted that section 407, which triggers the cancellation of a licence, is based on the test 'desirable in the public interest.' A council should therefore take care that any decision it takes under section 407 is driven by 'public interest' considerations rather than some specific party's private interest – otherwise the decision would be open to challenge.

All in all, this seems to be a case where council, despite its objective of fostering 'peace, order and good governance,' can decline to become involved.

Perhaps we should just tell 'A' and 'B' to kiss and make up. ♦

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.

Our Professional Development Program

	Western Victoria	North-Western Victoria	North-Eastern Victoria	Gippsland
Crown Land Law, Policy & Practice	16 Jun 09 Warrnambool	29 Jan 09 Bendigo	20 Feb 09 Shepparton	5 Feb 09 Traralgon
Land Law for Managers of Roads Streets and Lanes	17 Mar 09 Warrnambool 2 Apr 09 Horsham	23 Oct 08 Mildura 8 Apr 09 Bendigo	12 Nov 08 Benalla 7 May 09 Wangaratta	7 Oct 08 Sale 4 Mar 09 Traralgon
Land Law for Managers of Rivers and Riparian Land	26 Feb 09 Warrnambool 21 May 09 Ballarat	21 Oct 08 Bendigo 22 Oct 08 Mildura	21 Apr 09 Wangaratta	4 May 09 Traralgon
The Land, its Traditional Owners and the Law	18 Feb 09 Horsham 15 Apr 09 Colac	4 Mar 09 Bendigo 5 May 09 Mildura	16 Jun 09 Wangaratta	16 Dec 08 Traralgon
Public Land for Urban Planners	25 Nov 08 Geelong	19 Feb 09 Bendigo	20 Nov 08 Wangaratta	5 Mar 09 Traralgon
Land Law for Service Utilities	12 May 09 Geelong 3 Jun 09 Ballarat	4 Dec 08 Bendigo 17 Feb 09 Mildura	10 Feb 09 Benalla	28 Apr 09 Traralgon
Land Law for Coastal Authorities	2 Dec 08 Warrnambool			23 Jun 09 Sale

Melbourne – December 2008		<p>Public Land for Urban Planners</p> <p><i>Many urban precincts include a large proportion of public land – roads, reserves and railway land – often under-utilised or poorly configured.</i></p> <p><i>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.</i></p> <p>Some public land innovations studied in this course</p> <ul style="list-style-type: none"> • The St Kilda Triangle – process successes and failures • Melbourne Central – Use of space above and below roads • Martha Cove, Dromana – canal over road and foreshore • Austin Park, Lara – reconfiguration of dysfunctional precinct • Whitten Oval, Footscray – from football to wider civic uses • Melbourne University – car-park below Carlton gardens
Land Law for Managers of Rivers and Riparian Land	8 Dec 08 Maddocks, Melbourne	
Public Land for Urban Planners	10 Dec 08 Maddocks, Melbourne	
Land Law for Managers of Roads, Streets and Lanes	15 Dec 08 Bell Motor Inn, Preston	

For details of all courses go to: www.publicland.com.au/professional_development.html

To register, contact Dorothy Jenkins on (03) 9534 5128
or email dorothy@publicland.com.au