



The No-Thank-You Gift

The State's Auditor-General has discovered some ungrateful recipients of 'gifted assets.' In his post-Christmas report *Asset Management and Maintenance by Councils* he finds that:-

"Some councils indicated they would prefer not to have the responsibility for managing ('gifted') assets, which commonly include buildings and parks and recreational facilities, because they are unable to dispose of them but are obliged to maintain them at a substantial cost."

The gifts in question are Crown land reserves, they were gifted many, many Christmases ago, and the Santa Claus who doesn't want them back is DEPI.

Actually, not gifted, just made available. The recipient does not have ownership, merely custody. And that's the nub of the problem.

So it's a little surprising to find that in a parallel report *Oversight and Accountability of Committees of Management (CoMs)*, the A-G comments approvingly on DEPI's proposal to make further such 'gifts' to councils.

"DEPI has ... committed to engage with local government to identify opportunities to reassign to councils reserves with local-level values—that is, reserves that are not of regional or state significance."

Between his two parallel reports, the A-G has identified an issue which, in the words of the *Audit Act 1994* concerns a 'wastage of public resources and a lack of financial prudence in the management or application of public resources.'

Unfortunately, he has failed to join up the dots.

It all comes down to the nature of the Crown reserve portfolio. Much of it is not of state significance, but of local significance. It shouldn't be controlled by Spring Street, but by the local council. (Bear with us, municipal readers – we're not advocating wholesale cost shifting!)

We're talking about tennis courts and bowling clubs, local playgrounds and ornamental plantations, town showgrounds and saleyards. For each one, do the benefits outweigh the costs? Does retention stack up against other available options?

Often the answer will be yes; but for some the answer will be no. People no longer get to the public hall by horse and buggy; the tennis club has built new courts just round the corner; and the Agricultural Society now uses the showgrounds in the next town.

"There may be further opportunities," the A-G hypothesizes, *"to amalgamate CoMs that have similar purposes and manage reserves that are close to each other. For example if there are two public halls in close proximity, two separate CoMs may not be necessary."*

Looking into it a little further we find that both halls, although hypothetical, are in a state of disrepair. We'll find that one hall has (let's say) ten bookings per year, the other has five. It's not one CoM which is superfluous, it's one hall.

Amalgamating two CoMs may result in marginal efficiencies, but the newly conjoined CoM is still accountable to an inappropriate and remote superior, and must still go cap-in-hand to the local council for grants to maintain its two under-utilised reserves.

Taking a lead from the Audit Act, let's throw in some 'financial prudence.' Let's sell one hall, and use the sale proceeds to renovate the other. Both parcels of land are better used: the sold hall gets converted by its new owners in accordance with the planning scheme, and the community gets nice new kitchens and toilets in the public hall that has been retained.

Makes sense. What doesn't make sense is the attribution of ownership of these local assets, which causes the sale proceeds to be lost to the local community. Our sensible rationalisation scenario falls down, because the purchasers' cash disappears into the Consolidated Fund.

So it is with local tennis courts and bowling clubs, local playgrounds and ornamental plantations, local saleyards and showgrounds. Decisions about their upgrade, retention, rationalisation or disposal should be made locally – not by Spring Street.

The only way to allow rational decisions about such Crown reserves is to grant the recipient full ownership. Give the Council power to keep them, or recycle them or sell them. (And what about Santa's socks? Just donate them to the op-shop.) ■

Page 3 – Our Forthcoming Half-Day Tutorial-Workshops

Page 4 – Our Calendar of One-Day Professional Development courses

From *Terra Publica*, May 2005

Walk the Talk

by Lyn Murrell

“On Tuesday 4th January 2005, I commenced a solo, unassisted walk of Victoria’s coastline from the South Australian border to arrive at the NSW border by the end of April 2005.

I completed the walk ahead of schedule on 16 April. I was backpacking and camping with no support crew etc. It is my understanding that this has not been undertaken previously.



As a community representative on many coastal organizations over the past 30 years, I have been witness to much "talk" about how best to demonstrate an appreciation of this wonderful asset and how to manage the many pressures being exerted on the very finite resources Victoria’s coastline possesses.

I felt I now had the time and opportunity to "walk the talk", thereby being able to create a greater awareness for myself and hopefully pass on this direct experience to others who may care to listen.

My two specific goals were to create greater awareness and to test out first-hand the feasibility of linking existing walking trails to create a "Great Victorian Coastal Walk".

* * * * *

On his epic journey around Victoria’s coastline, what land did Lyn Murrell walk on?

Who owns, controls and manages it? What if he wet his boots while wading below LWM?

For the answers, sign up for our half-day tutorial-workshop...

Understanding the Coastal Cadastre

FRIDAY 6 JUNE 2014

9:00 am – 12:30 pm

Venue - *The Law Institute of Victoria*

Q
&
A

At what point does an *urban* Arterial Road become *non-urban*?

Question asked by a Works Supervisor from a rural municipality.

It’s a point somewhere near the edge of town. An important point for road managers, because that’s where responsibility for maintenance passes from Council to Vicroads.

On the non-urban side, Vicroads is ‘Responsible Road Authority’ (RRA) for the full width of the road reserve; on the urban side Vicroads remains RRA for the through traffic lanes, but Council becomes RRA for the rest of the cross-section*.

The question has two answers – the legislators’ answer and the engineers’ answer.

The *Road Management Act 2004* provides (at section 3) the legislators’ definition of this urban/non-urban point:-

urban area means, in relation to a road, an area in which—

- (a) a speed limit of 60 kilometres per hour or less applies not being a speed limit which applies only because of a temporary reason such as roadworks or a street event; or
- (b) there are buildings on land next to the road, or there is street lighting, at intervals not exceeding 100 metres for—
 - (i) a distance of at least 500 metres; or
 - (ii) if the length of the road is less than 500 metres, over the length of the road;

Not only is this a complex definition, but the point it defines is not fixed. If buildings get erected on adjacent land, or extra street lights go in, the point may move. A less than satisfactory state of affairs, which brings us to the engineers’ answer – provided for in section 15 of the *Road Management Act 2004*.

15 Arrangements to transfer road management functions

- (1) A road authority may enter into an arrangement with another road authority ... to transfer a road management function of the road authority that would otherwise apply...

In other words, the Council engineer and the Vicroads engineer can stand on the roadside and agree between themselves where the demarcation point is going to be. Of course, they will need to confirm their agreement in writing, and make sure it goes onto both agencies’ files. ■

* Within urban areas the demarcation between Vicroads and council is clarified in the Vicroads Code “Operational Responsibilities” – currently under review.

Half-Day Tutorial-Workshops

Council Reserves

their Ownership, Control, Management, Protection and Disposal

A critical review of the law governing your Council's portfolio of Crown reserves and freehold reserves

Tutorial –

- The ownership, control, management, and disposal of Crown and freehold reserves

Discussion –

- What are the problems? The Auditor-General's findings, February 2014.
- Opportunities for improvement. Is the legislation delivering good outcomes? What reforms should we be considering?

Friday 30 May 2014

9:00 am – 12:30 pm

Venue - *The Law Institute of Victoria*

*Grant Arnold, Associate with
The Public Land Consultancy*

Understanding the Coastal Cadastre

Tutorial –

- The legislation, common law and administrative arrangements governing Victoria's coastline
- The status, ownership, control and management of foreshores and off-shore waters.

Discussion –

- Reforms to Municipal coastal boundaries; the doctrine of accretion; powers and functions of coastal agencies
- The Coastal Management Strategy – does it address the jurisdictional issues facing coastal managers?

Friday 6 June 2014

9:00 am – 12:30 pm

Venue - *The Law Institute of Victoria*

*Richard O'Byrne, Associate with
The Public Land Consultancy*

Encroachments onto Council-Controlled Land

Councils, both urban and rural, must address encroachments on reserves, roads and lanes.

Tutorial –

- legislation and case law relating to encroachments and trespass
- The roles played by planning permits, building permits and grants of occupancy rights – and why the first two are worthless without the third.

Discussion –

- Which encroachments are desirable enhancements to the public domain, which are benign, and which are unacceptable trespasses?

**Friday 23 May ... Melbourne
Tuesday 20 May 2014 ... Shepparton**

*David Gabriel-Jones,
Principal, The Public Land Consultancy*

Unused, Discontinued and Little-Used Roads

The end of the road management spectrum not seen by the authors of the *Road Management Act 2004*...

Tutorial –

- Legislation and case law relating to streets, roads and lanes

Discussion –

- Discrepancies between Acts – useful loopholes or serious anomalies in public policy?
- The *Road Management Act 2004* is now 10 years old. What amendments are necessary if it is to usefully address unused, little-used and discontinued roads?

**Friday 16 May ... Melbourne
Monday 26 May ... Ballarat**

*David Gabriel-Jones,
Principal, The Public Land Consultancy*

***We can also present these
Workshops at your Council offices***

Enquiries and Registrations
Jacqui Talbot Phone (03) 9534 5128
jacqui@publicland.com.au

Our Program of One-Day Training Courses
April to July 2014

<p>Land Law for Managers of Rivers and Lakes <i>Presenter – David Gabriel-Jones</i></p> <p>Wednesday 16 April 2014 Hamilton Wednesday 18 June 2014 Melbourne*</p>	<p>Land Law and Coastal Adaptation <i>Presenter – Richard O'Byrne</i></p> <p>Monday 14 April 2014 Phillip Island Friday 20 June 2014 Melbourne* Wednesday 16 July 2014 Traralgon</p>
<p>Leases and Licences of Public Land <i>Presenter – Karen Hayes, Property Coordinator, City of Yarra</i></p> <p>Tuesday 15 July 2014 Melbourne*</p>	<p>Land Law for Managers of Roads, Streets and Lanes <i>Presenter – Andrew Walker, Victorian Bar</i></p> <p>Friday 9 May 2014 Melbourne* Wednesday 21 May 2014 Traralgon</p>
<p>Native Title and Aboriginal Heritage <i>Presenter – David Yarrow, Victorian Bar</i></p> <p>Friday 18 July 2014 Melbourne*</p>	<p>Environmental Law for Councils as Land Managers <i>Presenter – Grant Arnold</i></p> <p>Thursday 1 May 2014 Melbourne*</p>
<p>Crown Land Law <i>Presenter – David Gabriel-Jones</i></p> <p>Tuesday 3 June 2014 Melbourne*</p>	<p>Managing Volunteers and Grants <i>Presenter – Richard O'Byrne</i></p> <p>Tuesday 29 April 2014 Melbourne*</p>
<p>Land Information <i>Presenter – (to be advised)</i></p> <p>Tuesday 3 June 2014 Melbourne*</p>	<p>Re-Imagining Urban Public Land <i>Presenter – David Gabriel-Jones</i></p> <p>Tuesday 27 May 2014 Melbourne*</p>
<p>Planning Law - a Strategic Overview <i>Presenter – Grant Arnold</i></p> <p>Friday 13 June 2014 Melbourne*</p>	<p>The Law and Risk Management <i>Presenter – Michael Beasley</i></p> <p>Tuesday 6 May 2014 Melbourne*</p>
<p>Building Law – a Strategic Overview <i>Presenter – Tom Vasilopoulos, Victorian Bar</i></p> <p>Date to be fixed Melbourne*</p>	<p>The Law and Subdivisions <i>Presenter, Dr David Mitchell, RMIT</i></p> <p>Friday 23 June 2014 Melbourne*</p>

* Our Melbourne courses are conducted either at the Law Institute of Victoria (470 Bourke Street) or at Graduate House at the University of Melbourne (220 Leicester St, Carlton).

Enquiries and Registrations: Jacqui Talbot – jacqui@publicland.com.au – phone 9534 5128

Cost: \$495 including GST, course notes and working lunch. Discounts for course hosts.

All Courses are one-day duration; 9:00 a.m. to 4:30 p.m.

For details of all these courses:

http://www.publicland.com.au/professional_development.html

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