

Accords, Agreements, and Conventions

Paris is home to the 2015 Climate Accord, Geneva the home of various international conventions. From Rio to Kyoto the world's big cities have lent their names to benchmark agreements. But when we come to public land, we find a couple of lesser-known towns: Ramsar and Burra.

Ramsar is a township of 33,000 people in the Ayatollahs' Republic of Iran, on the shores of the Caspian Sea. **Burra** is an even smaller settlement of 1100 people in outback South Australia.

Each is the site of a land management agreement made in the 1970s, agreements with on-going importance for public land here in Victoria. The Ramsar Convention on wetlands was auspiced by UNESCO, and the Burra Charter on heritage places was put together by the International Council on Monuments and Sites – ICOMOS.



Ramsar may be geographically and politically remote, but it impacts Victoria nonetheless. The **Ramsar Convention** applies to 11 specific wetlands around the State. If you want to do anything in or near those sites, Ramsar can be a determining factor.

In 2008 the Federal Court found that it did not prevent the proposal to deepen the Port Phillip shipping channel, but in 2021 it was a key consideration in the State government's decision to kill off the gas import terminal at Crib Point.

Burra in South Australia is a little closer to home. The **Burra Charter** defines the basic principles and processes to be followed in the conservation of Australian heritage places. If we want to refurbish the ballroom in Flinders Street Station, or add an observation balcony

to the dome of the Exhibition Buildings, then the approvals framework takes us to the Burra Charter.

It identifies three systems for repair of heritage fabric namely: preservation, restoration and reconstruction. But is it effective? It comes into effect only when invoked through the Victorian Planning Provisions. Nothing in it will cause the preservation of HMVS Cerberus, rusting away off the coast of Sandringham. When the William Tell shelter in the Royal Botanic Gardens burned down, it was rebuilt in accordance with Burra – but only because the RBG board so chose.



What about Koondrook?

We look forward to a few more towns lending their names to land governance agreements:

- The **Koondrook** Agreement between NSW and Victoria will, we imagine, sort out management of the South bank of the Murray River – thrown into confusion by a 1980 decision of the High Court relating to a murder upstream from that town.
- The **Derrinallum** Strategy would guide the re-acquisition of freehold land which should never have been sold off by the Crown – such as Mount Elephant at Derrinallum, and the Corio Bay coastline of the Bellarine Peninsula.
- The **Porepunkah** Principles will, (so we hope) set up a framework for reform of the riparian cadaster – the total mess of river-related land governance along rivers like the Ovens and the King, which successive Victorian governments have failed to recognise, let alone address.
- And last but certainly not least, the **Mount Cottrell** Treaty would address the proper recognition of massacre sites – from Melton's Mount Cottrell to the Convincing Ground at Portland and those infamous Angus McMillan cairns in Gippsland. ♦

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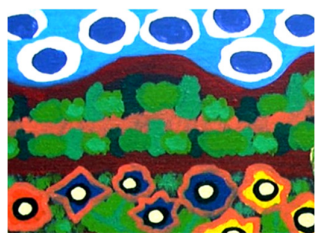
Our Lunchtime Conversations

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By what authority do water mains occupy road reserves?

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Our Calendar of Professional Development courses Feb to March 2024



The Public Land Conversations

For us, one of the highlights of 2023 was our series of lunchtime conversations.

On the second Tuesday of each month, a couple of hundred people tune into an hour-long exploration of some topic related to public land.

It could be anything from a Paddle down the Yarra to the Permeability of Boundaries; from Victoria's State borders to Melbourne's Back Lanes.

Perhaps the most challenging of the 2023 conversations was a look at various Murders and Fatalities on public land, and the way they had reflected or contributed to land law and governance policy.

A recurrent theme of these conversations is the deficiencies of policy and law, and the scope for continuing reform.

And we have some great topics lined up in 2024:

- Land is Three-Dimensional
- A Walk around Ballarat
- Boatsheds and Bathing Boxes
- Problems with Vocabulary ...

To sign up for these conversations, contact Fiona...
fiona@publicland.com.au

Thanks to our many clients in 2023



The Public Land Consultancy acknowledges that our core work relates to the lands of Victoria's Traditional Owners. We promote recognition of Indigenous rights through study, policy and the law.

Readers of *Terra Publica* should not act on the basis of its contents which are not legal advice, are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. If required, we can obtain formal legal advice from one of its legal associates.

Q By what authority do water mains occupy road reserves?

&
A

An amalgamation of two queries – one asked by a water utility, the other by a road authority

There was a time when the *Water Act*, in setting up water authorities, implicitly gave them authority to put their pipes into roads and streets. But these days, privatised utilities need more explicit assurance that their works are legal.

A new water main may require multiple approvals: a planning permit, a works in the road permit under the *Road Management Act 2004*, and maybe a CHMP under the *Aboriginal Heritage Act 2006*. But what about the fundamental right to occupy land you don't actually own?

For new subdivisional roads we turn to the *Subdivision Act 1988*, which at section 12(3B) causes road reserves to be implied easements in favour of utilities. With Government roads we find section 138A of the *Land Act 1958*, under which a blanket Order in Council has been gazetted, authorising their use by various utilities.

The problem comes with old roads laid out on freehold land prior to the Subdivision Act as we now know it. Relevant plans may be annotated 'easement of way and drainage' or simply 'road.' Can our water authority (or indeed any other utility) use it for their pipes and cables? Perhaps not.

The remedy being adopted by some municipalities is found in s.59 of the *Transfer of Land Act 1958*, and s.35 of the *Subdivision Act 1988*, which authorises 'acquisition by acquiring authorities.' It's not the water authority using this provision, but the council itself. In most cases the council already owns the road reserve – but the process clarifies the title, and causes the old (pre-1988) road to become a road under the 1988 Act, and thereby an implied easement under section 12(3B).

There are other benefits too, such as thwarting adverse possession – but that's another story. ♦

The Flight of the Red Necked Stint

Continuing our observations on how Victorian public land can be impacted by external matters...

The federal Environment Minister, Tanya Plibersek, has blocked a proposal to build a wind turbine assembly plant at the Port of Hastings in Victoria due to the environmental impacts on Western Port, which is a site listed under the Ramsar Convention.



Red-necked stints migrate from Western Port to the Arctic to breed during winter.

The Minister said in her rejection that the plant would cause 'irreversible damage to the habitat of waterbirds and migratory birds and marine invertebrates and fish'.

Well, we all approve of the proposed offshore windfarms (don't we?), and they have to be assembled somewhere – but not at the Port of Hastings, it seems.

This case could be regarded as illustrating another external impact onto Victorian land law. In this case the external entity is the Commonwealth of Australia.

The *Environment Protection and Biodiversity Act 1999* (the EPBC Act) is one of the few pieces of federal legislation that impacts on public land governance here in Victoria – one other being the *Native Title Act 1993*.

The waters where the offshore windfarms will actually be built are Commonwealth waters, not Victorian, but Westernport Bay is certainly within Victoria. Here the EPBC Act takes effect through Australia's signature to the Ramsar Convention.

That's why Western Port's red-necked stints take an interest in Siberia, Alaska, and a little township on the shores of the Caspian Sea.

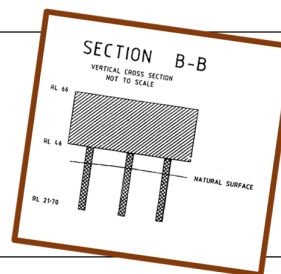
To browse the *Terra Publica* archive, [click here](#)

Lunchtime Conversation

Tuesday 23 January 2024 12 noon to 12:45 pm

Land is 3-Dimensional

To enrol for this Conversation [click here](#)



Professional Development, Feb-March 2024

NOTE: some presentations are 3 sessions, each of 2 hours duration;
others are 2 sessions, each of 3 hours duration

	<p>Roads Governance</p> <p>Presenter: David Gabriel-Jones</p>	<p>Tues 6 Feb, 10am – 12pm Wed 7 Feb, 10am – 12pm Thurs 8 Feb, 10am – 12pm</p>	
	<p>Referral Authorities and the Victorian Planning System</p> <p>Presenter: Mark Bartley</p>	<p>Tues 13 Feb, 10am – 1pm Wed 14 Feb, 10am – 1pm</p>	
	<p>Leases and Licences of Public Land</p> <p>Presenter: Richard O'Byrne</p>	<p>Tues 20 Feb, 10am – 12pm Wed 21 Feb, 10am – 12pm Thurs 22 Feb, 10am – 12pm</p>	
	<p>Crown Land Governance</p> <p>Presenter: David Gabriel-Jones</p>	<p>Tues 20 Feb, 10am – 12pm Wed 21 Feb, 10am – 12pm Thurs 22 Feb, 10am – 12pm</p>	
	<p>Land Law and Subdivisions</p> <p>Presenter: Mark Bartley</p>	<p>Tues 27 Feb, 10am – 1pm Wed 28 Feb, 10am – 1pm</p>	
	<p>Native Title and Aboriginal Heritage</p> <p>Presenter: Bridgid Cowling</p>	<p>Tues 27 Feb, 10am – 1pm Wed 28 Feb, 10am – 1pm</p>	
	<p>Coastal Land Management</p> <p>Presenter: Richard O'Byrne</p>	<p>Tues 5 Mar, 10am – 12pm Wed 6 Mar, 10am – 12pm Thurs 7 Mar, 10am – 12pm</p>	
<p>Coming soon...</p> <p>Working with Owners Corporations</p>		<p>Rivers and Riparian Land</p> 	<p>Land Law for Service Utilities</p> 

Cost:
\$495 including GST,
course notes and certificate
of attendance

Accreditation: These courses
are eligible for CPD points for
lawyers, planners, valuers, and
FPET for surveyors.

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