

Planning the Plan

There's not just one election looming. In fact there are 80.

But right now the federal election on 2 July 2016 is overshadowing the 79 municipal elections to be held on 22 October.

Nevertheless, council staff around the State will already be planning for the post October election workloads which various Acts of Parliament impose on them. And public land will figure in this planning.

The *Local Government Act* requires every Victorian council to rewrite its Council Plan within six months of an election; the *Road Management (General) Regulations* require a review of any Road Management Plan in the same period, and the *Planning and Environment Act* requires a review of the Planning Scheme within the 12 months after that.

From our work with councils, we guess that three themes will run through these reviews:

- value for money
- risk minimisation
- community satisfaction.

And of course there's a fourth (although possibly unvoiced) theme here:-

- net reduction in staff workload and overall gain in productivity.

They are all themes very relevant to public land – reserves, playgrounds, waterways, foreshores, public halls, community facilities, roads and lanes.

What might it mean for your Council Plan? Here are some suggestions for council plan-writers:-

- **Council will review its public land portfolio**

Most of your public land will continue to serve valuable purposes into the foreseeable future – but what about those redundant and little-used relics of past ages? So-called assets which would be better described as liabilities?

- **Council will review governance arrangements for all its committees of management**

Again, most of your section 86 committees will be functioning effectively and legally – but are you sure? And how should you relate to the DELWP Committees that also serve your community?

- **Council will develop a strategy for the occupation and management of unused roads**

Oh, those road reserves enclosed into abutting back yards! Oh, those back lanes and paper roads! Let's develop a plan to sort them out...

- **Over the 4-year period Council will audit all its public land leases and licences**

Are your tenants complying with their lease conditions? At worst, failures of council oversight could result in serious and costly risk exposures.

- **In reviewing its local laws Council will also update its Crown Land Regulations**

If your local laws sunset in the term of this Council Plan, it would be timely to undertake a parallel review of those archaic Crown land regulations.

Council plan-writers: if you're planning to plan in these directions, why not give us a call... ■



Reconfiguring Coastal Governance

9:00 am-12:30 pm, Friday 29 July 2016; Law Institute of Victoria

The government is contemplating a new [Marine and Coastal Act](#), to replace the *Coastal Management Act 2004*. The Public Land Consultancy expects to be making inputs, based on our experience of working with coastal municipalities and authorities.

Here's your chance to learn more about coastal governance, and the issues we can expect to see tossed around over coming months.

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Page 2

- Setting 'Community' Rentals
- The Kindergarten Model

Page 3

- Q&A – Can you please explain '*not detrimental*'?

Page 4

- Our schedule of forthcoming training courses

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Kindergarten Stuff

Public land committees could learn a thing or two from kindergartens.

For the last 15 years, kindergarten committees have been forming themselves into '[clusters](#)'. Regional groupings, often auspiced by local government, and enjoying the benefits of shared, consolidated management and support systems.

The same model is available for public land managers – both Crown land committees of management and council 'section 86' committees – but it has seldom been taken up. Perhaps the best known examples are the Great Ocean Road Coastal Committee (GORCC) and The Mint Inc. The former is a consolidation of geographically related reserves; the latter a consolidation of dispersed but thematically related reserves.

One participant in our April seminar 'Getting Best Value from Community Use Land' floated the idea of applying the cluster model to council section 86 committees.

Consider a cluster of hall committees: each committee would identify a representative for the single 'cluster' Special Committee. Existing committees would continue as sub-committees, but actual decision-making power and responsibility would be centralised in the cluster committee.

It would be convened by a Council officer, with a publicised schedule of meetings. Correct meeting procedure would be followed, minutes kept, and books of account maintained.

The model provides leadership and support for volunteer participants and their individual local committees. Structured communication and scheduled meetings will assist with clarification of expectations, appreciation of council policies, and compliance with legal requirements.

We see a few more advantages. Consolidated hall booking calendars, shared professional managers, amalgamated reporting and bookkeeping systems, and cross subsidisation between (for example) the well-patronised urban community centres and the lesser-used remote rural halls.

It took a decade for this idea to bed down amongst kindergarten managements; perhaps it's time to start floating it around public land committees.

Thanks to Mandy Kirsopp at Horsham Rural City Council for her help on this one... ■

WANTED – PRESENTER

Are you a Lawyer who knows about roadworks? - or a Road Engineer who knows about the law? We are looking for someone to present this new course about half-a-dozen times a year, in Melbourne and at Victorian country locations.

Contact David – david@publicland.com.au

Community Rentals and the price of cigarettes

We haven't consulted the Bureau of Statistics on movements in the FPI (that's the Fag Price Index) but we guess it's about 1000% of where it stood in 1990. That's when Minister Steve Crabb announced '*Any club can afford the price of a packet of fags per week.*'

So \$104 became the annual rental for 'community use' leases and licences of Crown land over which Minister Crabb's department had direct control.

If \$2.00 a packet has become \$20.00 a packet, then \$104 per year should have become \$1040.



What exactly is 'Community Use'? The spectrum of tenant groups runs from clubs and associations that survive on chook-raffles and working bees to those with cash cows like licensed restaurants and pokies. Where do you draw the line? Is it a question about the actual use made of the land, or the nature of the tenant corporate entity? If a kids' sailing school is an off-shoot of a rich private yacht club, should it still qualify for the minimum rental?

Then there are questions about the impacts of handing out implied subsidies in this way. Let there be no doubt: a nominal rental means a very real subsidy is passing from the landlord to the tenant. As an economist would quickly point out, this can lead to distorted decision-making: tenants will be tempted to choose a sub-optimal site for their club-house, and conversely the public land may end up not being put to its best use.

Of course it's perfectly proper for governments and councils to hand out subsidies to groups and causes they consider worthy. We would argue there's a good case for such subsidies to be quantified, and identified in the accounts of both the landlord and the tenant. That's transparency, which is the first step to accountability. To do otherwise would be to hide behind (dare we say it) a smokescreen. ■

New Course:

The Law Relating to Road Works

- *Who is responsible for which roads*
- *The powers and obligations of service utilities*
- *The Road Management Act and the OH&S Act*
- *Road Management Plans and Policies*
- *'Works on Roads' and other permits*

Q & A

Please explain ‘not detrimental’

Question asked by a lawyer negotiating her first lease of Crown land

These days, most leases of Crown land are made under section 17D of the *Crown Land (Reserves) Act 1978*.

The section’s heading is its first curiosity: ‘**Leases for up to 21 years for other purposes.**’ Other than what purposes, you may ask? Well, that’s a redundant throw-back to a time when allowable lease purposes were welded on to the official gazetted purpose of the Crown reserve.

Subsection 17D(1) tells us that where the land is managed by a Committee of Management, such leases may be for ‘any purpose approved by the responsible Minister.’ Subsection 17D(1A), which applies where there is no Committee of Management, is silent on the range of acceptable purposes but, we assume, also allows ‘any purpose approved by the responsible Minister.’

Then comes 17D(2)(a) – which gets us into *l, m, n, o, w* and *ze*. Work through the cross-references and you’ll find we’re talking about Crown land reserved for various conservation-related purposes, or for parks and gardens, or for protection of the coastline. In these cases, the Minister’s approval is either (A) subject to the ‘not detrimental’ test, or (B) entirely at his/her discretion, or (C) irrelevant because no lease is legally possible.

To find out which, we turn to the work of the Land Conservation Council (LCC), later known as the Environment Conservation Council (ECC), and these days called Victorian Environmental Assessment Council (VEAC). In order to know whether a 17D lease may issue, we need to establish whether the LCC/ECC/VEAC has made a recommendation in relation to the land – a recommendation which has been approved by the Governor in Council.

Here are our three scenarios: (A) there is no such recommendation; (B) there is a recommendation, and the proposed lease is consistent with it, and (C) there is such a recommendation, but the proposed lease is NOT consistent with it.

In case (A) the Minister must address the ‘not detrimental’ question. It’s a test which also applies in the case of land reserved for purposes other than the conservation bundle (*l, m, n, o, w* and *ze*).

In case (B) the Minister may (at his or her discretion) approve the proposed purpose of the lease.

In case (C) the Minister may not approve the proposed purpose. The Act does not state this explicitly: it is implied by the Act’s failure to authorise the Minister to give such an approval.



A florist’s shop in a hospital built on Crown land reserved for hospital purposes. A florist is not consistent with the reservation purpose – but could hardly be described as detrimental to it. This lease or licence will pass the test.

But for case (A), that’s not the end of the story. (Remember, case (1) is where we have *l, m, n, o, w* or *ze* and no LCC/ECC/VEAC recommendation.) Section 17DA tells us that in case (A) the Minister’s decision must lie before both houses of parliament, where it may face a disallowance motion.

Parliament’s failure to make any such disallowance in 20 years could be seen as evidence that the provision is pointless – but the better explanation is that DELWP and its predecessors have never allowed any proposal to be put forward which is in any way controversial.

A couple more points: the approval regime we’ve discussed here applies not only to leases under 17D, but also to licences under 17B. And remember, it applies not only to the first term of the lease or licence, but to each and every renewal. ■

***** legalwise SEMINARS

FRIDAY 10 JUNE 2016
INTERCONTINENTAL HOTEL,
THE RIALTO, MELBOURNE

Commercial and Retail Leases of Crown Land

We are seeing increasing commercialisation of Victoria’s foreshores, recreational facilities, parks and gardens – most of which are Crown land. Here, statutory law imposes layers of complexity over and above normal property and contract law.

In addition to the *Retail Leases Act 2003*, prospective tenants and their public sector landlords must negotiate the *Land Act 1958*, the *Crown Land (Reserves) Act 1978*, the *Coastal Management Act 1994*, and even the C’wealth *Native Title Act 1993*.

This presentation will outline:

- Statutory provisions governing Crown tenures
- Issues faced by Crown landlords and tenants – at commencement, during term, and at reversion
- The major policy directions for Crown tenures
- Policy deficiencies still needing to be addressed

**Presented by David Gabriel-Jones,
Principal of The Public Land Consultancy**

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.

TERRA PUBLICA

April–May 2016

Melbourne Courses Venue: Law Institute of Victoria, 470 Bourke Street

Half day (a.m.)	Thurs 26 May	Land Information and its Interpretation
Half day (a.m.)	Fri 3 June	Crown Land Governance
Half day (a.m.)	Thurs 9 June	Rivers and Lakes Governance
FULL DAY	Fri 17 June <i>(Special Venue: Graduate</i>	Leases and Licences of Public Land <i>House (University of Melb), 220 Leicester St, Carlton)</i>
Half day (a.m.)	Tues 21 June	Restrictions on Title
Half day (a.m.)	Wed 22 June	Unused and Little Used Roads
Half day (a.m.)	Fri 24 June	Managing Volunteers
Half day (a.m.)	Tues 12 July	Coastal Governance
FULL DAY	Thurs 4 August	Referral Authorities and the Victorian Planning System
FULL DAY	Tues 9 August	Property Law for Statutory and Strategic Planners
FULL DAY	Wed 24 August	Land Law for Managers of Roads, Streets and Lanes
Half day (a.m.)	Tues 11 October	Road Discontinuations Closures and Deviations
Half day (a.m.)	Wed 12 October	Subdivisions – a Property Law Perspective
Half day (a.m.)	Friday 14 October	Roads Governance

Regional Courses *NEW FORMAT:* two half-day courses, back to back

Sign up for one, or the other, or for both

Benalla	Thurs 23 June (a.m.) Thurs 23 June (p.m.) Tues 26 July (a.m.) Tues 26 July (p.m.) Tues 30 August (a.m.) Tues 30 August (p.m.) Wed 7 September (full day)	Road Discontinuations Closures and Deviations Unused and Little-Used Roads Encroachments and Utilities in Roads Protection of Roads under the RM Act Crown Land Governance Roads Governance Leases and Licences of Public Land
Ballarat	Fri 24 June (a.m.) Tues 19 July (full day) Tues 4 October (a.m.) Tues 4 October (p.m.)	Aboriginal Heritage Leases and Licences of Public Land Crown Land Governance Roads Governance
Bendigo	Thurs 21 July (a.m.) Thurs 21 July (p.m.)	Subdivisions – a Property Law Perspective Referral Authorities
Horsham	Thurs 14 July (p.m.) Tues 13 Sept (a.m.) Tues 13 Sept (p.m.)	Aboriginal Heritage Discontinuation Closure and Deviations Unused and Little-Used Roads
Mildura	Tues 16 August (p.m.) Wed 17 August (a.m.) Wed 19 Oct (p.m.) Thurs 20 Oct (a.m.)	Road Discontinuations Closures and Deviations Unused and Little-Used Roads Crown Land Governance Roads Governance
Warrnambool	Wed 29 June (p.m.) Wed 20 July (a.m.) Wed 20 July (p.m.) Tues 16 August (a.m.) Tues 16 August (p.m.)	Aboriginal Heritage (Port Fairy) Crown Land Governance Roads Governance Encroachments and Utilities in Roads Protection of Roads under the RM Act
Warragul	Tues 5 July (p.m.) Wed 13 July (a.m.) Wed 13 July (p.m.) Wed 3 August (a.m.) Wed 3 August (p.m.) Tues 6 Sept (a.m.) Tues 6 Sept (p.m.)	Aboriginal Heritage Crown Land Governance Roads Governance Road Discontinuations Closures and Deviations Unused and Little-Used Roads Encroachments and Utilities in Roads Protection of Roads under the RM Act

Cost: Half-day courses \$330; Back-to-back half day courses \$550; Full day courses \$550
inclusive of GST, course notes and refreshments

Enrolments and Enquiries – Jacqui Talbot – jacqui@publicland.com.au