

The Nature of Ownership

Who owns this parcel of land?



The Squatter

*Monarch of all he
Surveys*

S.T.Gill, 1863

Tune in to our free Lunchtime Conversations

*Second Tuesday of the
month, 12 noon to 1pm*

Tues 12 Sept 2023

Mary Scalzo will lead a
conversation on the topic of
'ownership' of public land.

*Register with Fiona Sellars
fiona@publicland.com.au*

Simple question, but maybe not with a simple answer. Let's spell out some of the complexities we would need to work through. And let's hope we don't need to go to the Supreme Court to get a judgement.

If it's 'Crown land' then its owner is 'the Crown' – by which we mean the State of Victoria, not the Commonwealth of Australia. Here ownership might be unrelated to control and management: for instance, local Councils may imagine they own all sorts of land assets. Perhaps they should, but they don't.

But with Crown land there may also be a simultaneous owner – the Native Title holder. That could be a party whose identity we may know, or may not yet know. We suspect that in Victoria it will be a generation into the future before we have the full picture.

If it's freehold land, then we start off by looking at the title document. Can we believe what we see here? Maybe the 'registered proprietor' is the true owner, maybe not. Perhaps the land has been sold, but the sale has not been reflected on title.

And there are other circumstances where we cannot necessarily believe a title to freehold land. Perhaps it's a pre-1988 road reserve; perhaps it's been acquired through the weird and wonderful workings of *adverse possession*.

Then we come to encumbrances. A slice of the ownership rights might have passed from the primary landowner to somebody else. Here we are thinking about covenants, mortgages, easements, and leases to tenants. In legal-speak they 'convey an interest.'

Then there are the buildings on the land. And the vegetation, and the wildlife. Who owns them? That brings us to the difference between fixtures (landlord's property) and chattels (tenant's property). And in a road reserve, the land and the infrastructure on it may well be owned by different parties.

Last but not least, what about planning restrictions on the land? They may have the effect of transferring rights normally held by the nominal landowner to some planning or acquiring authority. That's what the new windfall gains tax is all about.

Yes, at the end of the day, this is largely about money. Ownership means the ability to pick up the dollars when the land is sold. And does that always support good policy outcomes? Not necessarily! ♦

Q & A

What is the best way for a Council to allow a sporting club to occupy a club house? A lease, or a licence or as a Committee of Management?

Question from a Councillor in a rural municipality

Excellent question. The sort of basic knowledge that an incoming Councillor needs to grasp!

Sporting clubs are a major point of intersection between a community and its elected Council. And the land they occupy is a major part of that relationship.

In addressing the question, one primary matter we need to understand is the ownership of the land. If it's Crown land managed by Council, then we must comply with the *Crown Land (Reserves) Act 1978*. If it's freehold owned by Council, then there may be greater flexibility.

In either case, we need to understand the difference between a lease and a licence. They are both forms of agreement between a landlord and a tenant, but a lease is more formal than a licence.

A lease provides security of tenure, and exclusive occupation. In legal-speak it 'conveys an interest.' A lease would be appropriate where some tenant intends to make a major investment, and intends to make use of the site more-or-less exclusively.

A licence is non-exclusive, and can be amended or even terminated at relatively short notice. A licence would be appropriate where there are multiple users sharing a facility, and where the major expenditures are being made by the Council, rather than by the tenants themselves.

In setting up a lease or a licence one important issue will be the rent. Other things being equal, we would expect a lessee to pay a higher rent than a licensee.

As for being appointed as a Committee of Management, that raises serious questions about accountability. We would no longer have a landlord-tenant relationship, but a principal-agent relationship. It must be remembered that a sporting club (or any incorporated association) is primarily answerable to its own members, not to the ratepayers or the community at large.

This is reflected in the CL(R) Act. At section 14(4)(e) it specifies that a CoM may be any body established 'for a public purpose.' Our sporting club does not pass this test. No matter how public-spirited it may be, it is a corporation established for the benefit of its own members.

Then there's another option. The *Local Government Act 2020* allows a Council to set up Community Asset Committees (CACs). This would be worth considering if we had (a) a recreation facility or public hall with multiple users and (b) a community group capable and willing to take on the decision-making, on Council's behalf. ♦

The Land in Your Municipality.

A Concise Overview for Municipal Councillors and Policy-Makers

- The Land in Your Municipality
Private, public, Crown land, roads and reserves...
- Council's various roles in relation to this land
- Council's Powers over land
- Other Agencies' Roles
Native Title holders, State Govt agencies, Road authorities.
- Council's Dealings with Land
- Your Council's Asset and Roads Registers, and Asset Plan

To arrange a presentation of this course for your municipality, contact
David Gabriel-Jones
dgj@publicland.com.au

Managing Precinct Structure Plans



Presenter

Mark Bartley, Partner, HWL
Ebsworth lawyers

- **The Starting Point:**
The pre-existing mosaic of private land, public land, and roads
- **The Apparatus of Change:** The Acts of Parliament which enable land reconfiguration
- **Precinct Structure Plans:** Introduction to PSP development and implementation.
- **Dealing with Infrastructure:** existing and proposed roads, drainage, utilities; open space, and community services.
- **Implementation Issues:** Section 173 agreements; Windfall gains; Development Contributions.

This course is designed for in-house presentation at your Council offices, and will be tailored to your municipality's specific circumstances.

To arrange a presentation of this course, contact David Gabriel-Jones
dgj@publicland.com.au

0412 134 243

Such is the demand for our one-day training course on
Native Title and Aboriginal Heritage
that we now engage two specialist presenters...

Bridgid Cowling

BSc (Hons), LLB (Hons)

Bridgid is Special Counsel at the law-firm Arnold Bloch Lieber.

She has many years of experience working with remote an urban Indigenous communities across Australia.



Mary Scalzo

BA (Aboriginal Linguistics)
LLB (Hons)

Mary has been Managing Principal Solicitor in the Victorian Govt Solicitor's Office.

She has over 20 years of experience advising on native title claims resolution and agreement making.



Thanks to the Councils and Authorities which have engaged us to present this course...

Warrnambool, Mitchell, Northern Grampians, Macedon Ranges, Indigo, Buloke, DEECA, GHD Engineering, Corangamite CMA...

To arrange a presentation of this course, contact Fiona Sellars
fiona@publicland.com.au

(03) 9534 5128

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. And we support The Voice

Professional Development, Sept-Oct 2023

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

	Roads Governance <i>Presenter: David Gabriel-Jones</i>	Tues 5 Sept, 10am – 12pm Wed 6 Sept, 10am – 12pm Thurs 7 Sept, 10am – 12pm
	Native Title and Aboriginal Heritage <i>Presenter: Bridgid Cowling</i>	September presentation 6 Sept 9:30am 12:30pm 7 Sept 9:30am 12:30pm
	Crown Land Governance <i>Presenter: David Gabriel-Jones/Mary Scalzo</i>	Tues 12 Sept, 10am – 12pm Wed 13 Sept, 10am – 12pm Thurs 14 Sept, 10am – 12pm
	Referral Authorities and the Victorian Planning System <i>Presenter: Mark Bartley</i>	Wed 13 Sept, 10am – 1pm Thurs 14 Sept, 10am – 1pm
	Coastal Land Management <i>Presenter: Richard O'Byrne</i>	Tues 3 Oct, 10am – 12pm Wed 4 Oct, 10am – 12pm Thurs 5 Oct, 10am – 12pm
	Land Law for Managers of Rivers and Riparian Land <i>Presenter: Jo Slijkerman</i>	Mon 16 Oct, 10.30am – 12.30pm Tues 17 Oct, 10.30am – 12.30pm Fri 20 Oct, 10.30am – 12.30pm
	Land Information and its Interpretation <i>Presenter: Robert Steel</i>	Tues 24 Oct, 10am – 1pm Wed 25 Oct, 10am – 1pm

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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