

No, not the Coroner!

The so-called Chinaman's Bridge across the Goulburn River is about to be demolished. Some 135 years old, it has deteriorated in recent decades into a state which can only be described as lethally dangerous. It is by mere good luck that no one has been killed.

Fatalities do happen on public land – and land managers may find themselves copping some share of the blame.



One person fell from a lookout in the Grampians, another was killed by a falling tree in a Templestowe park, a third fell down an embankment on the Lorne foreshore. The subsequent legal proceedings found that warning signs could have been more prominent, senescent trees should have been removed, the embankment really should have been fenced.

In each case the land manager did not cause the accident, but there was some deficiency in that manager's duty of care.

But back to Chinaman's Bridge at Nagambie. This deathtrap has not come to the Coroner's attention – a tribute to sheer good luck rather than good management.

Not our problem

The fundamental issue has been the 'not our problem' syndrome. For most of its life the bridge had been the responsibility of VicRoads. In 1995 they proclaimed it to no longer be a Main Road (Arterial Road in current terminology) and abandoned it, inflicting responsibility onto the Shire of Strathbogie.

In 2017 that council discontinued the road altogether, causing the land to become ordinary Crown land, and thereby inflicting responsibility onto DEECA. Needless to say, DEECA did not spring forward with funds for repairs. The bridge continued to rot away.

In 2017, in an attempt to better understand the dilemma, VicRoads engaged The Public Land Consultancy to analyse issues of land status. Our advice warned: *'parts of the structure are lethally dangerous... immediate safety measures ... should not await resolution of matters relating to ownership or long-term management.'*

Seven years later, Strathbogie council obtained reports from heritage consultants: *'It is beyond repair. It poses an immediate safety risk due to imminent collapse. The appropriate course of action is immediate demolition.'* And further: *'Based on the severely deteriorated condition of the structure, it is considered that addressing the immediate risk to human life is a key priority.'*

Finally, common sense prevails. The heap of rotten timbers is coming down. One can only imagine the coroner's inquest which could well have happened, but didn't. Negligence and more negligence. Possibly even manslaughter.

The longer-term remedy

How could such a parcel of public land have such deficient governance arrangements? The problem is to be found in the legislation allowing roads to be de-arterialised and/or discontinued. When we look at the *Land Act 1958*, the *Road Management Act 2004*, the *Local Government Act 1989*, we find mechanisms for removing some layer of road status or governance, but nothing useful on what happens subsequently.

The two things should go hand in hand: this road is hereby discontinued, and it is agreed and confirmed that the land will henceforth become something else. Simple.

Next year we plan to put such a suggestion to the Victorian Law Reform Commission. Better to front up to that agency, we think, rather than to the Coroner. ♦

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Chinaman's Bridge over the Goulburn points to one serious deficiency in road-related law, but there's more...

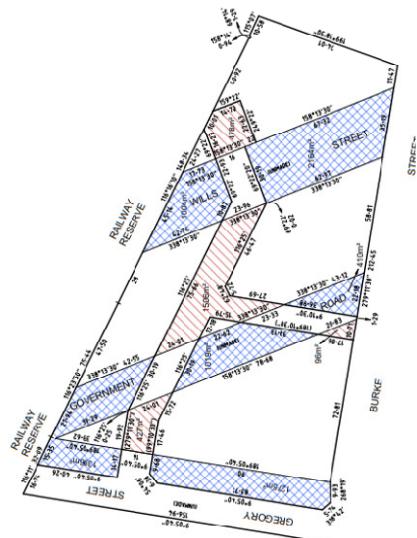
Two more reasons for VLRC to look into road discontinuities

Discontinuations can divert money from your council

If a road reserve ceases to be a road reserve, who gets to own the land?

In many cases the answer is perfectly clear – either the Crown or the local council, depending on whether it's a government road or a subdivisional road.

But in other cases, it's not clear. Take a look at this plan:



If we are looking at a road *deviation*, then the local council becomes the landowner. When the land gets sold, council picks up the dollar value. But if we are looking at a *reconfiguration*, then the Crown becomes the landowner. State Treasury picks up the dollar value.

What's the difference between a deviation and a reconfiguration? Frankly we don't know. It is totally arbitrary.

A question, surely, for the Victorian Law Reform Commission.

Discontinuations can undermine abutting titles

Way back in 2012 we approached the Attorney-General in the Baillieu coalition government.

Landowners' freehold titles can be seriously devalued by road discontinuations, we told him. It's a matter you should refer to the Victorian Law Reform Commission.

The A-G's response was short and sweet:

The Government is not contemplating referring this matter to the Law Reform Commission at this time... Thank you for drawing the matter to my attention...

Section 42 of the *Transfer of Land Act 1958* purports to guarantee indefeasibility of title, and as such is a cornerstone of the Torrens system. In general, purchasers of land can rest assured that they are acquiring land as described on the title documents.

There are of course exceptions. Some are listed in section 42: 'reservations exceptions and conditions' contained in the original Crown grant of the land (and then there's *Calabro*, but that's another matter).

It could reasonably be inferred, we suggest, that titles carry with them not only the 'reservations exceptions and conditions' of the original Crown grant, but also the rights and benefits conferred by that grant. One vitally important right is road access.

We are of the view that if an original Crown grant shows a property to have a road abuttal, that attribute should not be arbitrarily expunged. And yet the law as it stands allows exactly that. Access to a freehold property can be curtailed, and the property thereby severely devalued.

At the core of the issue is the mess of legislation allowing road discontinuations: the *Land Act 1958*, the *Local Government Act 1989*, the *Road Management Act 2004*, and the RXO provisions of planning schemes. The inconsistencies between them reflect vast changes in policy over the decades.

Inconsistencies crying out for review, we believe, by the Victorian Law Reform Commission. ♦

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 our legal associates.



DEECA has commenced reforming the many deficiencies in the *Crown Land (Reserves) Act 1978*.

The first reform: all references to 'him' and 'he' are being replaced with gender neutral alternatives.

But there is a single exception: at half a dozen points we still find '*His Majesty*'.

We have it on reliable authority that serious consideration was given to 'Their Majesty' or 'The Monarch,' but that was deemed uncomfortably close to high treason.

If Charlie himself was consulted, we have no information about his response.

Retainer Agreements

Advice and support for public land managers

At this time of uncertain support from the public service itself, your professional staff may need additional sources of prompt and reliable advice. We have the team; we have the expertise; we have the experience.

Our retainer agreement scheme has now been running for 10 years, and has been taken up by a dozen municipalities.

The scheme builds on 25 years of consultancy advice to public land managers, reinforced by 25 years of professional development delivery. Over that period, we have worked with or for every municipality in the State – so we know our way around local government.

Our territory

- Roads, streets and laneways
- Parks, gardens and reserves
- Rivers, creeks and lakes
- Council land and infrastructure
- Foreshores, coasts and bays
- Crown land

Our expertise

- Ownership and control of public land
- Public land planning and management
- Government policies for public land
- Use and development of public land
- Rights and obligations on public land
- Legislation and regulations governing public land

How it works

We enter into a simple agreement. Your pre-authorised staff ask us for advice – perhaps via phone call or email. We give them the answer, or point them in the direction of the answer. Along the way, we help them to learn about the legal and legislative framework within which they operate. At the end of the quarter we invoice you, providing a full account of activity through the period.

For more information, give us a call on (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

Professional Development January – March 2026

*NOTE: some presentations are 2 sessions, each of 3 hours.
Others are 3 sessions, each of 2 hours duration*



Cost:

\$550 including GST, course notes and certificate of attendance

Accreditation:

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

Registrations:

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ALSO: 'In-house' presentations – we can come to you