

Wearing the Rate Cap

'Shabbier Parks and local roads' warns [The Age](#), quoting a newsletter from Standard and Poor's to Victorian municipalities. 'Faceless bureaucrats in Spring Street' are about to usurp elected Councillors, [declares the Opposition](#) – conveniently forgetting which Government it was that set up rate capping, back in 1995.



The rate cap reality is more down to earth. The Government's [terms of reference](#) for the Essential Services Commission pave the way for a very reasonable policy outcome. The ESC will report by October 2015, and the policy will be introduced for the 2016-17 financial year.

How might this affect public land? Regardless of the effect of any rate cap, there are good reasons for councils looking closely at public land revenue and expenditure. Here are a few starting ideas...

Public Land Rentals

It's well-accepted that commercial tenants should pay full market rentals, and that community tenants should pay discounted rentals. But how to draw the line between commercial and community? Consider the cricket club serving as a cover for a fully commercial pokies venue, or the yacht club sub-letting coastal land for fully commercial restaurants

and ship-repair businesses. A less-than-market rental is an implied subsidy which, we'd argue, should not benefit commercial sub-tenants. At the very least, it should be visible to the auditors and the ratepayers.

Unnecessary Roads

Councils understand only too well the economics of creating and maintaining roads – but what about their abolition? Road reserves can be valuable land, coveted by abutting owners. Even if the road is unnecessary, the land has a value to the ratepayers which should be retained by council. Remember – for virtually all freehold roads the law supports this outcome, regardless of what's on the title documents.

As for government roads, there are ways of capturing that value too. All you need to do is bundle up one road discontinuation with another road opening and call it a deviation. It's a device which can transform a development proposal from unviable to viable. You need feel no regrets about depriving State Treasury of the capital value of the land: as an asset it has returned zero revenue to the Crown for perhaps 150 years.

Unnecessary Reserves

As with roads, there may be merit in selling [unwanted Crown land reserves](#) – but here the revenue goes to the State Treasury. Before a council can approach rationalisation on any reasonable basis, we need fundamental changes to the way we ascribe ownership of local public land.



Insurance Premiums

Someone trips over the tree roots in the nature strip. We have every sympathy for them, but should the ratepayers reward their lack of care? *Cont Page 2*

SOME FORTHCOMING COURSE PRESENTATIONS...

Native Title and Aboriginal Heritage

Melbourne,
16 April
Wangaratta,
28 April

Land Law and Coastal Adaptation

Melbourne,
21 April

Offences and Enforcement on Public Land

Melbourne,
5 May

Referral Authorities
a Strategic Overview

Melbourne,
14 May

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

Rate Cap – continued...

Victorian councils are paying \$28 million per year for insurance – plus undisclosed amounts for claims below the insurance excess.

All but two Victorian councils insure through the Municipal Association of Victoria (MAV), which has been the subject of [blunt criticism](#) by the Auditor General:-

With no market testing for the past 10 years, MAV cannot reliably demonstrate value for money from its insurance business activities or that the arrangements with its service provider are appropriate for the needs of member councils.

These days statutory law offers many protections for a council facing accusations of negligence – but the insurance industry seems reluctant to test those protections in court, instead rolling over and settling. In the decade since passage of the *Road Management Act 2004*, exactly ONE case has invoked the RM Act defences – and that case has [gone to appeal](#) precisely because of the dearth of case law available to the trial judge.

‘Encourage your litigious citizens to sue you,’ we advise councils, somewhat tongue in cheek, ‘We need the case law.’ To be more precise, we need conclusive assurance that the protections offered by the *Road Management Act 2004* actually work.

It’s no joke. By one estimate, the money wasted since 2004 in unnecessary settlements and excessive premiums has been \$100 million.

Finally, the Parks Charge...

Speaking of sums like \$100 million, Melbourne ratepayers pay that amount every year towards some excellent causes – the Zoo, the Royal Botanic Gardens, and Parks Victoria’s Melbourne operations. But wait a minute... shouldn’t they be funded by the State taxpayer?

We’d like to see an objective analysis of the Parks Charge... How much is contributed from each municipality, and how often the citizens of that municipality actually visit the beneficiary venues. It might just transpire that the \$100m would be better spent on local playgrounds, plazas, creeks and beaches... ♦

Q
&
A

Which roads in our municipality are ‘Unused Roads’?

Question asked by an officer from a rural Council attending one of our workshops.

First – by ‘Unused’ we don’t mean ‘not used.’ We mean ‘declared to be Unused pursuant to section 400 of the *Land Act 1958*.’

It’s important that Councils know the answer to this question. ‘Unused’ government roads are roads for which Council is not responsible under the *Road Management Act 2004*, and they’re roads which are occupied, and therefore rateable. And they are roads which, from time to time, may become the subject of vigorous controversy, which Councils are called on to resolve.

The declarations which caused these roads to become ‘Unused’ may have been made generations ago, perhaps by some predecessor council – and have now been lost in the archives. With any luck, DELWP will be able to provide details – as they are obliged to do under section 411 of the *Land Act 1958*.

Meanwhile, an interim answer to the question may be found at [Explore Victoria Online](#). Select ‘Land Status and Boundaries,’ then ‘Crown Land Managed,’ then ‘Tenure.’ Note that these layers are available only when you’ve zoomed in to a relatively small scale. ♦



Coloured yellow: Unused roads near Wallace, Shire of Moorabool

Half Day Workshops

Fridays – 9:00 am to 12:30 pm – Law Institute of Victoria – 470 Bourke Street, Melbourne - \$330 inc GST

<p style="text-align: center;">Walkability</p> <p style="text-align: center;">The Governance Tool Kit</p> <p>Footpaths, Lanes, Easements, and Rights-of-Way... their creation, ownership, control, management, regulation and disposal</p> <p style="text-align: center; font-weight: bold;">Friday 29 May</p>	<p style="text-align: center;">Auditing public land tenures</p> <p>On public land, landlord-tenant relationships can be fraught with complications. Are you and your tenants complying with best practice and the law?</p> <p style="text-align: center; font-weight: bold;">Friday 12 June</p>	<p style="text-align: center;">Capturing the value of discontinued roads</p> <p>Who owns the land in roads? When a road is discontinued, who pockets the sale value? Don’t just give your assets away!</p> <p style="text-align: center; font-weight: bold;">Friday 26 June</p>
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*Public Land
Leases and Licences*
**TENURE AUDIT
SERVICE**

All Victorian municipalities find themselves managing tenants in occupation of public land. These tenants may be:

- Valuable community-based groups which Council chooses to support
- Long-established clubs or sporting bodies with varying degrees of exclusivity
- Commercial profit-making enterprises which provide some level of service to the public
- Private parties who have encroached onto public land either with or without authority.

The land in question may be Council's freehold property, Crown land, or some form of road reserve. The tenures they hold may be leases, licences, some other type of permit, or even non-statutory permissive occupancies.

Councils must establish and manage sound relationships with these tenants – relationships which satisfy the law, established policy principles, and the expectations of external stakeholders.

As pressures on public land intensify, and councils face increasing financial stringencies, these relationships will need to be reviewed.

Some may have been established decades ago when circumstances, standards and policies were quite different. Others may be caught up in specific histories and entrenched cultures which hinder objective review.

Working in close collaboration with your property staff, we may identify deficiencies to be remedied – or we may give all your tenures the tick of approval. Either way, we will be giving you some peace of mind. ♦

Through our Tenure Audit Service we can provide you with an independent and authoritative health check of your public land tenancies.

Specifically, we can advise -

- Whether the governing documents are legally sound and current
- Whether they comply with the policy requirements of your Council and other stakeholders
- Whether the rental has been correctly determined, and the propriety of subsidisation through rental discounts
- Whether a sound risk management and insurance strategy is in place
- Whether the tenant is complying with the terms and conditions of the tenure
- How your Council should approach impending end-of-lease scenarios.

What we can deliver -

- Assurance that your tenure arrangements will withstand scrutiny by formal auditors and a critical community
- Identification of governance deficiencies and proposals for their remediation
- Benchmarking against similar tenure arrangements in comparable municipalities
- A sound basis for negotiations about future tenure arrangements.

**Enquiries
David Gabriel-Jones
(03) 9534 5128**

The Public Land Consultancy
15 years' experience in supporting Victorian municipalities.

One-Day Training Courses – April to July 2015

Cost: \$495* including GST, course notes and working lunch. *until 1 July

Crown Land Law, Policy and Practice <i>David Gabriel-Jones, Principal</i>	Monday 27 April Mon 25 May	Ballarat Melbourne
Land Law for Managers of Roads, Streets and Lanes <i>David Gabriel-Jones, Principal</i>	Thursday 14 May Thursday 28 May	Ballarat Melbourne
Land Law and Coastal Adaptation <i>Richard O'Byrne, Associate</i>	Tuesday 21 April	Melbourne
Offences and Enforcement on Public Land <i>Astrid Di Carlo, Associate</i>	Tuesday 5 May	Melbourne
Referral Authorities – Doing it better <i>Grant Arnold, Associate</i>	Thursday 14 May	Melbourne
Environmental Law for Councils as Land Managers <i>Grant Arnold, Associate</i>	Thursday 23 April Thursday 18 June	Wangaratta Melbourne
Land Information and its Interpretation <i>Scott Jukes, Licensed Surveyor</i>	Wednesday 27 May	Melbourne
Leases and Licences of Public Land <i>Karen Hayes</i>	Tuesday 12 May	Melbourne
The Law and Subdivisions <i>Grant Arnold, Associate</i>	Thursday 30 July	Melbourne
Land Law for Managers of Rivers and Lakes <i>David Gabriel-Jones, Principal</i>	Thursday 16 July	Melbourne
Land Law for Service Utilities <i>Astrid Di Carlo, Associate</i>	Tuesday 14 July	Melbourne
Native Title and Aboriginal Heritage <i>David Yarrow</i>	Thursday 16 April Wednesday 22 April Tuesday 28 April	Melbourne DELWP, Ballarat Wangaratta
Managing Volunteers and Grants Programs <i>Richard O'Byrne, Associate</i>	Thursday 21 May Wednesday 17 June Wednesday 22 July	Traralgon Geelong Melbourne
Land Law for Managers of Parks and Gardens Risk Management Law	<i>Dates to be fixed</i>	Melbourne

Our Program of Half-Day Workshops

Cost: \$330 including GST, course notes and morning coffee.

Walkability – The Governance Tool Kit Footpaths, Lanes, Easements, and Rights-of-Way... their creation, ownership, control, management, regulation and disposal	Friday 29 May 9:00am – 12:30pm	Melbourne <i>Law Institute of Victoria – 470 Bourke St</i>
Auditing Public Land Tenures On public land, landlord-tenant relationships can be fraught with complications. Are you and your tenants complying with best practice and the law?	Friday 12 June 9:00am – 12:30pm	Melbourne <i>Law Institute of Victoria – 470 Bourke St</i>
Capturing the Value of Discontinued Roads Who owns the land in roads? When a road is discontinued, who pockets the sale value? Don't just give your assets away!	Friday 26 June 9:00am – 12:30pm	Melbourne <i>Law Institute of Victoria – 470 Bourke St</i>

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

In addition to our scheduled presentations, you can engage us to present our training courses in-house at your own offices. Discounts for course hosts.