

Public Land Jubilee

Victorian Environmental Assessment Council (VEAC) is 50 years old

As Minister of Lands in the Bolte Liberal Government, Bill Borthwick had a fight on his hands. In the aftermath of the 1970 elections, he was committed to setting up the Land Conservation Council – later rebadged as VEAC. It wasn't the Labor Opposition that stood in his way, it was the Country Party.

As [Hansard](#) records, they were incredulous. Decisions about Crown land being made on the basis of independent advice, rather than political lobbying! Dereliction of Duty! *"The Minister is refusing to administer his department... refusing to exercise the powers provided him in the Land Act..."*

The Country Party had learned nothing from the [Little Desert fiasco](#), which had seen the previous Minister lose not only his portfolio, but his seat.

"If an area of Crown land is not being used for forest production, then surely it is logical to make that land available to the adjoining landholder... There is nothing wrong with giving a dairy farmer an additional 100 acres..."

Borthwick was undeterred, and pressed on to set up a system without precedent in Australia. One contributor to the debate described the legislation as *"epoch-making and which future generations will regard as a masterpiece of statesmanship."*

That was 50 years ago. It could be argued that the LCC (and its successors, the ECC and VEAC) have now done their job. There is little if any Crown land out there waiting to be allocated – either for dairy farms or for National Parks.

What's next for VEAC? We suggest another inquiry – not into some cache of public land, but into wider issues. Why does the State still want to own Crown land of purely local significance? Why can't VEAC comment on freehold land? Why not kill off those ancient common law doctrines which impede management of rivers and coasts? Why has the Government failed to progress the long-promised reforms of Crown land legislation? Let's not take another 50 years, please. ♦

To mark its 50th anniversary, VEAC has been showcasing current environmental and social research on Victoria's public land.

Twenty postgraduate students, public land managers and scientists discussed their current work. [Click here](#) for the recording.

50 Favourite Places

Soon, VEAC will be inviting nominations for Victorians' 50 favourite tracts of Crown land. We are jumping the gun. Our nomination is...



...Bourke Street, and the spirits inhabiting it.

Here are the Wurundjeri people, dispossessed of their lands in the 1830s. Nearby, the ghost of Robert Hoddle, surveyor and planner, who determined the road's width and orientation, and the configuration of all its abutting lands.

Then there's Hoddle's boss, the eponymous Governor Bourke, who as representative of the British Crown imposed the doctrine of *terra nullius* from which Crown lands are only now re-emerging.

And, of course, the 100,000 people who took part in the anti-war 'moratorium' protest of 1970.

Let's not forget Evan Walker, the Planning Minister who negotiated the *Bourke Street Mall Act* 1982, which marked a turning point in Melbourne's view of urban public lands.



Pellegrinis: not really public land, but is nevertheless a public place under the Summary Offences Act 1966

Our final ghost: Sisto Malaspina, proprietor of Pellegrinis Espresso Bar, shot dead in the Bourke Street he loved and epitomised. ♦

*Page 2: The Town Recreation Reserve
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The Town Reserve



The victorious Barham-Koondrook under 17s.

Standing at the boundary of Koondrook cricket oval, you'd never guess that two thirds of the ground is a Crown reserve, and one third is freehold owned by the Shire of Ganawarra.

Does it matter? When the Shire wanted to build new pavilions, it put them in the north-west corner, not the south east corner – thereby retaining ownership and avoiding all that Crown land red tape. Traditional Owner rights are recognised on two thirds of ground, but have been extinguished on the other third. Two thirds of the circumferential road is subject to the *Road Management Act 2004*, and one third is not.

What Nonsense. Two abutting bits of land, virtually identical. One governance regime applies to this bit, another regime to that bit.

If I ask Council for information about the Cricket Club, is it allowed to tell me? That brings us to Part 4 of the *Privacy and Data Protection Act 2014*. This imposes obligations on public agencies – but does that include Councils?

The Information Privacy Commissioner has ruled that: 'While a Council carrying out its functions under the Local Government Act is not subject to Part 4 of the PDP Act, a Council appointed as a Committee of Management is a public entity and is subject to part 4 of the PDP Act in respect of its activities carried out under the Crown Land (Reserves) Act'.

So it is with much legislation. Law appropriate for land of State significance is just pointless bureaucracy when imposed on land of local significance.

Let's fix this stupidity. Solution one: Council surrenders the one-third to DELWP (but DELWP doesn't want it.) Solution two: Treasury and Finance (DTF) sells the two-thirds to Council (But why should Council pay for something it already controls?).

Solution three: the State just backs right out and hands over the entire ground jointly to the Council and the traditional owners. Shouldn't be too difficult! ♦

On-line Training Course



Native Title and Aboriginal Heritage

An introduction to the legislation and policy for staff of local government and statutory authorities in Victoria

Colonisation and Country

- Culture and Countries
- Victorian Aboriginal (Traditional Owner) nations/groups
- Colonisation: developments and patterns
- Victorian developments: treaty and truth.

Native Title and the Law

- *Terra nullius* and the *Mabo* case
- The *Native Title Act 1993* (C'with)
- Key concepts: connection, extinguishment
- Types of claims: claimant, non-claimant, compensation
- Indigenous Land Use Agreements (ILUAs)
- The Federal Court and the National Native Title Tribunal
- The NT Service Provider; Registered NT Bodies Corporate
- Native title outcomes in Victoria to date

The Traditional Owner Settlement Act 2010

- How TOS Agreements align with native title
- Recognition and Settlement Agreements
- Components of RSAs: Land Agreements, Land Use Activity Agreements, Funding Agreements, Resource Agreements
- Aboriginal title
- Across Victoria: TOS Act outcomes to date.

Aboriginal Cultural Heritage in Victoria

- From 'protecting relics' to 'living culture'
- The *Aboriginal Heritage Act 2006*
- Registered Aboriginal Parties (RAPs) and the Victorian Aboriginal Heritage Council
- Types of permit: CHPs, CHMPs, PAHTs
- Offences and penalties
- Let's go beyond the letter of the law...

This course is essential learning for managers of Victoria's public lands.

Next presentation (two on-line sessions)

Wed 19 May and Wed 26 May 2021

10 am to 1 pm each session.

For bookings [click here](#).

Would You Care to Join Our Team?

We are looking for new Associates

- Public land is an essential part of the Victorian landscape, both urban and rural. It is central to the functioning of civil society.
- Its governance is complex – and many agencies out there need to understand it better!
- If you also value public land, there could be a place for you on our team.

About The Public Land Consultancy

- Our territory includes roads and lanes, parks and reserves, rivers and lakes, railways and utility corridors, foreshores and off-shore.
- Our services include training courses and workshops, consultancies big and small, and periodic newsletters.
- Our clients are municipal councils (urban and rural), statutory authorities, government departments, and property professionals.

If this is you:

- You are a qualified professional (the discipline is not so important), competent and literate.
- You have expertise in some area of importance to public land managers.
- You are familiar with the functioning of Councils, utilities, or other land managers.
- You want to share your knowledge and experience with your colleagues.

And you're looking for...

- Additional work on a part-time or sessional basis
- Experience beyond the confines of your current job
- A significant extra item on your CV
- Remuneration at a generous casual rate

Then how about joining our team?

Please get in touch...

We'd love to hear from you !

David Gabriel-Jones

For the team at The Public Land Consultancy

The UK Village Green

Who owns public land? In Australia it might be the Crown, or the local Council, or the Native title holder. In Europe, it might be the Lord of the Manor.

Wherever we are, it appears that public land is not owned by 'the public.' Nevertheless, the public can be recognised legal entity which has entitlements and rights in relation to land. In the UK, these rights and entitlements seem to go further than they do in Australia.

Here, the ownership of a road reserve can alter as a result of usage by the public. In the *Calabro* case, evidence was put to the court that the land had been used by youths on bicycles, and people walking their dogs. The court accepted that they were 'the public' – a fact with dramatic consequences for the road's governance.

In the UK, we find a variation on this theme. Land can become a 'Village Green' as a result of use by the public – or more specifically, use by 'a significant number of the inhabitants' of a locality, for 'lawful sports and pastimes.'

Ownership remains unchanged, but the owner's rights have been severely curtailed. The offence of *trespass* has evaporated.



There's a further twist to this UK arrangement. The Town or Village Green need not be green grass – it can indeed be hard concrete. [Let's take ourselves](#) to the port of Mistley, on the River Stour in the County of Essex.

The local residents had, for 20+ years, used the quayside for walking, with or without dogs, informal games, crabbing and feeding swans. The UK Supreme Court (comprised of five learned Lords and Ladies) [ruled](#) that this made it eligible to be registered as a Town or Village Common, and that the logistics company which owned the land just had to cop it. ♦

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, The Public Land Consultancy can obtain legal advice from one of its associated law firms.

Our scheduled training courses through to mid 2021
Each course is comprised of three sessions, each of 2 hours duration.

	Referral Authorities and the Victorian Planning System	Tues 13 Apr, 10am to 12pm Wed 14 Apr, 10am to 12pm Thurs 15 Apr, 10am to 12pm
	Crown Land Governance	Tues 20 Apr, 10am to 12pm Wed 21 Apr, 10am to 12pm Thurs 22 Apr, 10am to 12pm
	Leases and Licences of Public Land	Tues 27 Apr, 10am to 12pm Wed 28 Apr, 10am to 12pm Thurs 29 Apr, 10am to 12pm
	Roads Governance	Tues 4 May, 10am to 12pm Wed 5 May, 10am to 12pm Thurs 6 May, 10am to 12pm
	Property Law for Planners	Tues 18 May, 1pm to 3pm Wed 19 May, 1pm to 3pm Thurs 20 May, 1pm to 3pm
	Native Title and Aboriginal Heritage	* Note – this presentation is 2 sessions, each of 3 hours Wed 19 May, 10 am to 1 pm Wed 26 May, 10 am to 1 pm
	Statutory Approvals on Public Land	Tues 25 May, 10am to 12pm Wed 26 May, 10am to 12pm Thurs 27 May, 10am to 12pm
	Crown Land Governance	Tues 1 June, 10am to 12pm Wed 2 June, 10am to 12pm Thurs 3 June, 10am to 12pm
	Working with Owners Corporations	Tues 8 June, 1pm to 3pm Wed 9 June, 1pm to 3pm Thurs 10 June, 1pm to 3pm
<div style="border: 1px solid black; padding: 5px;"><p>From a lawyer in a regional city law practice: <i>You presented a terrific session today. It's invaluable going over this stuff, especially with the input of surveyors, council workers etc. I find the Public Land Consultancy CPD's some of the best ones as it's in-depth and complex stuff.</i></p></div>		
	Roadsides and the Law	Tues 22 June, 10am to 12pm Wed 23 June, 10am to 12pm Thurs 24 June, 10am to 12pm

Cost: \$440 per three-session course, including GST, course notes and certificate of attendance

Accreditation:
These courses are eligible for CPD points for lawyers and FPET points for surveyors

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