

## Public Land, Politics, and SUBSIDIARITY

**There's an election in the wind. Actually, two elections. Next year ScoMo will face the polls, probably in March or May; Daniel Andrews definitely faces the polls on 26 November.**



What's in store for public land? Let's hope that the feds don't repeat their sports rorts debacle or their commuter car-parks debacle.

[Sports Rorts](#)? That's when the Feds promised new toilets in specific recreation reserves in marginal electorates. [Commuter carparks](#)? That's when the Feds promised to build specific carparks in (guess where) marginal electorates. Were they needed? Did the relevant council actually want them? Were there more worthwhile projects? The reports of the National Audit Office were scathing.

### Hey, Mr Prime Minister: I can't find a car-space

There's nothing wrong with federal taxpayers' money finding its way to the Aireys Inlet toilet block, or the Balaclava station carpark. Nothing. It's well-accepted that federal taxpayers contribute to new beds being installed in hospitals, and to new laptops being provided for secondary students. But in those cases, there is a process – transparent, objective, and (we hope) professionally administered. The decision about which hospital gets the beds or which students get the laptop is not made in the office of a federal Minister.

**A key factor here is [subsidiarity](#) – the principle that in a hierarchical system, decision-making should be in the hands of the lowest-level competent authority. In Australia, we've known about it since 1901. We call it Federalism.**

Whatever it's called, the principle is not always applied to public land, but perhaps it should be. In our opinion public land of national importance should be under the federal government; public land of state importance should be under state governments; and public land of local importance should be under the control of municipalities. Straightforward?

One trouble is that revenue powers do not correspond to expenditure needs. The feds collect the lion's share of revenue through the taxation system, which is supposedly, to some degree, equitable and progressive. States and municipalities rely heavily on transaction taxes and property rates, which could be regarded as indirect wealth taxes, but with little or no direct connection to expenditure needs.

**Let's look at two attempts to bridge the gap between federal revenue powers and local expenditure needs.**

Tom Uren, Minister for Urban Affairs in the Whitlam Government, granted \$330 million to states and territories for suburban sewerage. He did not specify which houses in which street were to benefit, and he did not engage the plumbers – that was left up to the states and territories. The scheme was a resounding success.

Peter Garrett, Environment Minister in the Rudd Government found \$2.7 billion for the Home Insulation Program ('Pink Batts'). Four guys died.

A subsequent Royal Commission praised the program's policy objective, but condemned its administration. '*States and territories were faced with a program on a large scale, about which they knew little, and which they were not properly resourced to regulate.*' Peter Garrett should have learned from Tom Uren.

### Hey, Mr Premier: We'd like a couple of street trees

At the State level, let's look at Pocket Parks. A totally worthwhile idea: local, accessible green spaces. Bitumen replaced by grass and trees. Yes! But where exactly should we put them?

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And what should be commemorated?

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Our schedule of Training Courses  
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## Roadside Memorial Cairns

### Who is responsible? What should be done with them?

Here is a stone cairn on the roadside of a highway. The plaque reads 'Commemorating Angus McMillan, Discoverer of Gippsland.' The Gunai Kurnai people will tell you that Gippsland wasn't lost, and didn't need to be discovered.

The cairn has been defaced. Who exactly is responsible for cleaning it up?

#### Answer 1 (correct but useless)

Turning to the *Road Management Act 2004* we find that things like cairns are 'non-road infrastructure.' The person responsible for them is 'the person or body that is responsible for the provision, installation, maintenance or operation of the non-road infrastructure.' Which doesn't really help us to answer the question.

The cairn was probably installed by some defunct Council, which would lead us to the conclusion that it is now the responsibility of the current Council. But now let's address the real question – why was the thing defaced?

#### Answers 2 and 3 (the better, but more difficult answers)

Why was the thing defaced? That takes us to the issue of mass murder. If we find ourselves discussing the Christchurch massacre, or the Port Arthur massacre, we do not dignify the

perpetrators by mentioning their names. Yet the name Angus McMillan is displayed all over Gippsland, even besmirching a seat in the federal parliament.

The facts can be reconstructed from letters and diaries written by the perpetrators ([click here](#)). McMillan and his men killed several hundred Aboriginal people at Nuntin (1840), Boney Point (1840), Butchers Creek (1841), Maffra (1841), and Warrigal Creek (1843). And yet the man is celebrated by roadside cairns.

So **Answer 2** is: Just knock the things down.

**Answer 3** is far more difficult: leave them there but re-dedicate them. Replace the plaques. Reword the celebratory messages. Use them to tell the true history of Gippsland, rather than the whitewashed version. In short, make them a part of the journey towards reconciliation.

**The idea of reconciliation is gaining traction across Victoria. But frankly, in the case of Angus McMillan we are not sure that it would ever be possible.**

So what is our answer to the question? Attempt answer number 3. And if that proves impossible, the Council concerned should just accept responsibility, and proceed to answer number 2. That's right: knock them down. ■

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#### SUBSIDIARITY (continued from P1)

Some of the planned 'pocket park' projects are of State or Regional significance, so it is reasonable for State Government agencies to exercise a degree of influence, if not direct control. Here we would include the Shrine to Sea linear reserve in South Melbourne, and the 'Greening the Pipeline' trail in Wyndham.



Photos:  
The Guardian

As for those pocket parks of local significance, funds were initially allocated to sites within specific nominated State electorates. An invitation, surely, for accusations of political skulduggery. The second lot of funds were also allocated to specific projects, but now they were tied to nominated municipalities. A little better.

But the best arrangement would have been to make funding available state-wide, and develop objective criteria for its allocation to local councils. Would the end result have been much

different? Perhaps not – but tests for probity and objectivity would be better satisfied.

**What's called for? We really shouldn't have to answer that question, because to us it's just so obvious. Nevertheless, here we go:**

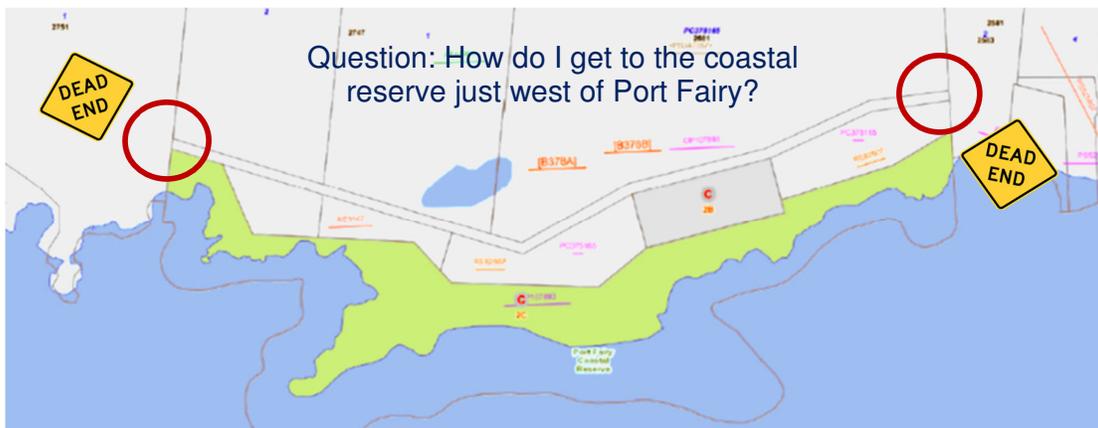
1. On public land of national importance projects should be funded (in whole or in part) by the federal government, but managed by the state government.

2. The feds should make broad-purpose grants to the states to top up funding for public land of state or local importance, but without dictating or attempting to control specific beneficiary projects.

3. Public land of state importance should be controlled by the relevant State government, which should be its primary funding source.

4. In relation to public land of local significance, the state should make broad-purpose grants to municipalities, specifying the criteria by which the funds are to be allocated, but not dictating site-specific outcomes.

**Simple. But will the polities take our advice? We doubt it. Hard to link it to votes.** ■



## Question: How do I get to the coastal reserve just west of Port Fairy?

Question asked by a group of Port Fairy citizens.

Here we have a totally landlocked Crown reserve. There is private freehold land to its North, East and West.

**Answer Number 1:** The citizens of Port Fairy, and their tourist visitors, could get there from the South – by boat or by helicopter.

How did this situation come about?

In the 1830s and 1840s, starting with Edward Henty's appropriation of Gunditjmara land at Portland, coastal land was seen as being available for white settlers – right down to the water's edge.

By 1850 this policy was changing, and new freehold boundaries were set well back from the

coastline – leaving a nice wide coastal strip which included a road reserve.

At Port Fairy the Parish Plan provides evidence of the on-going policy tensions. In 1867 half of this remnant coastal strip was also sold off. It wasn't until the 1880s that what little Crown land remained was deemed to be 'permanently reserved for public purposes.'

Here's a coastal reserve with no road access. Or rather, there is a road reserve, but it leads from nowhere to nowhere. Unsurprisingly, it's a road reserve containing no physical roadway.

What to do about it?

**Answer Number 2:** Build a new road into the site, from the North. Use compulsory acquisition powers if necessary. But hang on a minute – our citizens don't have those powers – so...

**Answer Number 3:** Lobby your Council and your State politicians to exercise their powers, and create a new road in.

How to lobby the politicians? Sorry, folks, that is another question altogether. ■

*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.*



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*of God of the United Kingdom  
King Defender of the Faith  
shall come meeting  
of the Act of the Parliament of Great  
Britain passed from 1701 by the  
the name for the purpose hereafter.*

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