

# Thinking about Durations

## *Up to and including Perpetuity.*

The governance of public land involves agreements and arrangements. Many and varied, but each with a duration. Long or short, clearly defined or wide open – but all agreements and arrangements come to an end, sooner or later.



### A Couple of Hours

Perhaps the shortest duration we deal with is the street event: the procession, road race, or neighbourhood party which lasts for a mere couple of hours. Such events may be authorised under section 99B of the *Road Safety Act 1986*, where they are described as ‘non road activities.’

Their short duration does not mean a straightforward approval process: this is a provision which invokes the need for a Traffic Management Plan and trained traffic management personnel.

A different type of event is commercial filming, which gets its very own legislation – the *Filming Approval Act 2014*. This Act applies to many different types of public land – shortcutting approval processes normally governed by other Acts and Regulations.

Here the specified durations are not for the filming itself, but for the approval process: the land manager must respond to an application within 5 business days. (How we wish some similar provision could be applied to other correspondence!)

### Days, Weeks and Months

These temporal durations don't get much of a mention in land legislation. Some notices must appear in the Government Gazette for 14 days or 30 days. A camping permit in a National Park may not exceed 5 weeks duration.

Months tend to be mentioned only as penalties: construct a levee bank in a State Wildlife Reserve? Twelve months' imprisonment!

### The 10-year Sunset

A well-recognised timeframe is the sunset period for regulations. Under nearly all Acts, regulations qualify as ‘statutory rules’ for the purposes of the *Subordinate Legislation Act 1994*. As such, they go out of existence at the age of 10 years. It's a device for forcing agencies to review the relevance and utility of regulations and local laws – often involving a Regulatory Review Statement (RRS).

But this does not apply to all legislation. Under the *Crown Land (Reserves) Act 1978* regulations just keep on keeping on, until they are specifically revoked. Is there still a regulation for Lincon Square Carlton, prohibiting the singing of obscene ballads? Or a regulation for the Domain parklands prohibiting lying on the grass? Such regulations may or may not have been revoked. We cannot rely on their age alone to answer that question.

### The Defined Event

A form of agreement well known to statutory planners is the ‘173 Agreement’ under the *Planning and Environment Act 1986*. Such agreements may expire upon a nominated date, or after some event (‘the demolition of the building’), or by mutual agreement of the parties. Similar provisions could be built into agreements relating to roads (section 15 or 121, *Road Management Act 2004*).

*Continued, Page 2*

#### Page 2

**Q and A** *The empty Public Hall in the Ghost Town*

#### Page 3

- **Rivers and Riparian Land**
- **Land Information**

#### Page 4

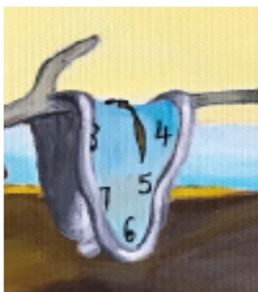
*Our Calendar of Professional Development courses for September to November 2023*

Continued from  
Page 1

## Thinking about Durations

### The 99-Year tenure

Leases and licences of public land are notoriously inconsistent in their durations. We find maximum durations of 3 years, 10, 21, 35, 50, 65, and 99 years. In some cases it's a pretty meaningless figure, because it



can be revoked at a few months' notice. Many a farmer imagines they have reliable tenure over their grazing land for 99 years, but sorry, they don't.

### In Perpetuity

But 99 years is not the longest duration we find in legislation. The *Cemeteries and Crematoria Act 2003* requires cemetery managers to offer interments 'in perpetuity.'

And how about 'perpetual leases'? Surely a contradiction – how can a lease not have a reversion date? Then, of course, we get 'permanent' reserves. Territory ripe, we say, for a rethink! ♦

## Q and A

*Council owns some freehold land, but our title says that it can be used only for a public hall.*

### **How do we get clear title?**

*Question asked by the Property Manager of a rural municipality.*

Here we have a ghost town. At the end of the 1914-18 war, a few hundred diggers and their families were settled here, on parcels of land far too small to succeed as farms. Over the decades they left, and their blocks reverted to mallee scrub. Only the Public Hall still stands, serving a population of zero.

The descendants of some of those veterans now want to buy the hall from the Council, which on title, appears to be its owner. But a closer look at the title reveals that the land 'must be used for a Public Hall and offices and conveniences associated therewith and for no other purpose whatsoever...' So how to get an unencumbered title?

### The Process

First, a surveyor must prepare a plan for certification by the Surveyor General.

Then the Valuer General must estimate the uplift in land value to be caused by the removal of the restriction. In our opinion, it could be all of \$1, but who knows what a valuer might say?

Then the title must be surrendered to the Crown, via the Dept of Treasury and Finance.

DTF will then recommend to the Assistant Treasurer that he approve the transaction, and recommend to the Governor-in-Council that a new unencumbered Crown grant be issued. Then the Governor (Prof Margaret Gardner) will give her approval, and the Clerk of the Executive Council will so confirm.

Back to DTF which will draw up the new title document for lodging with Land Registry Services, otherwise known as the Titles Office.

And along the way, Council must commit to covering the government's costs – being Surveyor General's costs, the Valuer General's costs, and DTF's legal costs.

It could be worse. Sometimes the title for such parcels of land sits over an underlying Crown land reservation – which means we need a new, site-specific, Act of Parliament. Six months? Twelve months?

### Alternative One

Get a low-loader to pick up the weatherboard building (which the Council certainly owns), and cart it a few metres onto the block next door – a freehold block unencumbered by archaic restrictions.

### Alternative Two

The Government should acknowledge that public land of local significance ought to be owned by the local council. Not merely managed, but actually owned. This policy should apply whether the land is Crown land or freehold burdened by some century-old restriction. ♦

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.

## Referral Authorities and the Victorian Planning System



**Mark Bartley,**  
Partner, HWL  
Ebsworth Lawyers

Mark is an Accredited Specialist in Environment, Planning and Local Government with over 30 years' experience.

### Course Content

#### The planning system and law

- Planning Schemes
- Roles and responsibilities
- Role of referral authorities
- Statutory obligations of referral authorities
- Sec 55 referrals and Sec 52 Notices
- Permit conditions –effectiveness and enforceability

#### Planning processes

- VCAT – process and techniques to get the best outcomes
- Enforcement
- Planning Scheme Amendments
- Panel hearings
- Reducing unnecessary or low-value referrals

#### Next Presentation

Wed 13 and  
Thurs 14 Sept.  
10 am–1pm each day

Interested? [Click here](#)

## Land Law for Managers of Rivers and Riparian Land

*This 6-hour introduction to riparian governance in Victoria provides a sound background on existing law and policy and explores the potential for reform.*

### Course Content

- The Land Alongside Rivers
- Native Title and Aboriginal Heritage
- Protecting Riparian Values
- Riparian Agriculture
- Community Engagement
- Agency Roles and Responsibilities
- Ongoing Reform



**Johanna Slijkerman**

BSC, BA(hons)(Melb)

**Principal Scientist,  
Waterways and  
Ecology Group,  
Water Technology  
P/L**

#### Next Presentation:

Mon 16, Tues 17, and Fri 20  
October, 10:30-12:30 each day  
Interested? [Click Here](#)

## Land Information and its Interpretation

*Accessing land-related information, interpreting the information, investigating its history, assessing its reliability. A 6-hour course for professional staff of public and private sector organisations who need to access, assemble, interpret and use land information...*



**Robert Steel**

OAM  
Licensed Surveyor  
Association of  
Consulting  
Surveyors, Victoria  
Past President,  
Institution of  
Surveyors Victoria

### Course Content


- Land Status in Victoria
- Freehold land – interests, encumbrances, titles
- Crown land – its status, control and management
- Roads, reserves, easements
- Native Title – determinations and settlements
- Planning scheme zones and overlays
- Aboriginal Heritage
- Geographic Place Names

#### Next Presentation:

Tues 24 and Wed 25 Oct, 10am – 1pm  
Interested? [Click Here](#)

## Professional Development, Sept –Nov 2023

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

	<b>Crown Land Governance</b> <i>Presenter: David Gabriel-Jones</i>	Tues 12 Sept, 10am – 12pm Wed 13 Sept, 10am – 12pm Thurs 14 Sept, 10am – 12pm
	<b>Referral Authorities and the Victorian Planning System</b> <i>Presenter: Mark Bartley</i>	Wed 13 Sept, 10am – 1pm Thurs 14 Sept, 10am – 1pm
	<b>Coastal Land Management</b> <i>Presenter: Richard O'Byrne</i>	Tues 3 Oct, 10am – 12pm Wed 4 Oct, 10am – 12pm Thurs 5 Oct, 10am – 12pm
	<b>Roads Governance</b> <i>Presenter: David Gabriel-Jones</i>	Tues 3 Oct, 10am – 12pm Wed 4 Oct, 10am – 12pm Thurs 5 Oct, 10am – 12pm
	<b>Land Law for Managers of Rivers And Riparian Land</b> <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
	<b>Land Information and its Interpretation</b> <i>Presenter: Robert Steel</i>	Tues 24 Oct, 10am – 1pm Wed 25 Oct, 10am – 1pm
	<b>Statutory Approvals on Public Land</b> <i>Presenter: Nick Sissons</i>	Tues 31 Oct, 10am – 1pm Wed 1 Nov, 10am – 1pm.
	<b>Land Law and Subdivisions</b> <i>Presenter: Mark Bartley</i>	Tues 21 Nov, 10am – 1pm Wed 22 Nov, 10am – 1pm
	<b>Leases and Licences of Public Land</b> <i>Presenter: Richard O'Byrne</i>	Tues 28 Nov, 10am – 12pm Wed 29 Nov, 10am – 12pm Thurs 30 Nov, 10am – 12pm

**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.

**Enquiries and Registrations:**  
Fiona Sellars  
(03) 9534 5128  
[fiona@publicland.com.au](mailto:fiona@publicland.com.au)

*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.*