

Crocodile Rock! (40 to 1)

With the Spring Carnival almost upon us, all eyes will turn to Flemington and Caulfield racecourses. Perhaps they deserve more attention at other times, too. We think a look at Caulfield in particular would provide some insights into what's wrong with public land systems in Victoria.



Our money's on Crocodile Rock for the Caulfield Cup. We just like the name.

What happens with private land is, for better or for worse, determined by market forces. Whole university courses are devoted to the economics of supply and demand, and the hidden hand which manipulates them. Accountants examine return on investment, and company directors reconfigure their property portfolios accordingly.

But on public land, what forces are at work? What non-monetary measures inform its owners that they are or are not getting good value? It's in the nature of a national park that it just be left alone – but for urban or operational public land we often need to recognise that the time has come for change. Let's take a look at Caulfield racecourse.

Here, some 60 hectares were set aside in the 1870s for the purpose of 'racecourse, public recreation and public park'. Ever since, one of those three uses (horseracing) has overwhelmed the other two. Or perhaps we should say that the tenant (Melbourne Racing Club) has overwhelmed its own landlord (the Racecourse Trust).

An on-going series of reviews has sought to rebalance the three. In five years we've seen a scathing [report by the Auditor General](#), a cross-party [Ministerial investigation](#) and, most recently, State parliament has before it a proposal for a new [Caulfield Racecourse Act](#). Here's the problem. All these reviews stem from six words published in a government gazette a century-and-a-half back: 'racecourse, public recreation and public park.'

The essence of the reviews has been – are those uses being facilitated or not? None of them has asked whether those six words remain valid; or whether the time has come for them to be rewritten.

Government decisions should not be guided by the hidden hand of market forces. They should be directed by democratic processes, and informed by open, transparent, policy-driven investigations and analyses.

At Caulfield, such an analysis might observe that the City of Glen Eira has less public open space than any other municipality in the State; that the racecourse is used for actual horseracing on only 20 days per year; and that the MRC has use of two other metropolitan racecourses.

Be that as it may, we can't realistically see any review overturning those six words – but that's not the point. At least we'd have reassurance that land worth \$145 million had been assigned a sound set of purposes.

Nevertheless, it won't hurt to at least imagine some alternative futures for this 60 hectare site.

Planning Minister Dick Wynne has [directed the Victorian Planning Authority](#) (VPA) to prepare a structure plan for the broader Caulfield station precinct. It should, amongst other things, 'unlock shared recreational use of the racecourse land.'

Here's our suggestion: VPA should set a project for Monash University architecture students. Look out of your studio window, and imagine how that inaccessible, underutilised Caulfield Racecourse could be re-engineered. What a fabulous urban enclave could emerge here: full of life, commerce, art and beauty – enclosing multi-use open spaces which are enjoyable, usable, and of a human-scale.

Meanwhile, our money's on Crocodile Rock for the Caulfield Cup. We just like the name. ■

Congratulations!

We award some Certificates in Public Land Governance

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- We do our bit for Solar Power
- Is the MCG Crown land or freehold land?

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URBAN RECONFIGURATION

A 4-part Professional Development series in collaboration with

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Congratulations...

...to Zac Elliman from Wellington Shire Council, and Christine Glassford from Goulburn Broken CMA.

They have each completed our Certificate in Public Land Governance.



The Certificate requires completion of three of our one-day professional development courses, and submission of a 3000-word essay on some agreed topic related to public land.

Zac's essay was on the subject of council roads which encroach onto adjoining private land, and options for dealing with them.

Christine's essay was on the Victorian Regional Riparian Action Plan and riparian management licensing arrangements.

If you have undertaken some of our courses in the last two years, you will already be on track for a Certificate.

For more information, contact our Certificate Course Supervisor,
Dr Dorothy Jenkins
dorothy@publicland.com.au

The Law Relating to Works on Roads

So far as is Reasonably Practicable

We've been following with interest an ongoing case relating to worksite safety, brought by the Director of Public Prosecutions against VicRoads and Downer EDI.

The worksite in question was a road, and the breach of safety resulted in the fatality of a road worker. It's a case which must be discussed when we run our one-day course on 'The Law relating to Works on Roads.'

The case is being heard in the County Court, but has twice moved up the judicial ladder to the Supreme Court of Victoria Court of Appeal. On the first occasion, the appeal court ruled that the road was indeed a worksite, and that therefore the employers in question were bound by the *Occupational Health and Safety Act 2004*.

On its second excursion to the Court of Appeal (by which time VicRoads had withdrawn), the issue centred on the words 'as far as is reasonably practicable.' These words appear no fewer than five times in section 21 of the OH&S Act, where they qualify various duties of care owed by employers to employees. For instance, an employer must provide, *so far as is reasonably practicable*, adequate facilities for the welfare of employees.

The same qualification does not apply, however, to one particular duty. Section 21(1)(e) requires an employer to –

provide such information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health.

No mention of 'reasonably practicable.' There may be argument about exactly what information, instruction, training or supervision may be *necessary* – but it would seem to us that an actual fatality was fairly persuasive proof that whatever was necessary had not in fact been provided.

Anyway, we await further developments from whichever court ultimately determines the case. ■

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The next presentations of our one-day course 'The Law Relating to Works on Roads'

- **Warragul** 10 October 2017
- **Melbourne** 21 November 2017

What's the connection between Melbourne's trams and public land?

Well, trams run along public roads don't they? Sure, but, that's not the connection we are thinking about.



Trams are powered by electricity, which comes to them through overhead wires. At the other end of those wires is some power source.

Somehow, the electricity which powers Melbourne's trams is deemed to come, at least in part, from solar power. And one of the big solar power plants about to come on line is just outside Kerang, in the Shire of Ganawarra.

It's on freehold land, previously used as a wheat farm. It was chosen because a major transmission line already traverses it, and because Kerang gets plenty of sun.

And as for public land? Making the site suitable for a massive array of solar panels required the reconfiguration of various nearby roads. The Public Land Consultancy was pleased to be engaged by Shire of Ganawarra to advise how this could best be done. So there's the connection!

We are told that the end result will be a reduction of more than 80,000 tonnes of greenhouse gas emissions every year, the equivalent of taking 17,000 cars off the road. ■

Where there's a restricted Crown grant, is it freehold land or Crown land?

Question arising at one of our 'Crown Land' courses

A Crown grant is the instrument under which some parcel of land passes from the Crown to someone else. The land is thereby 'alienated' from the Crown for an indefinite duration – unlike a Crown lease, which causes alienation 'for a term.'

All Crown grants are, to some extent, conditional – but nevertheless we regard most alienated land as being freehold, held in 'fee simple' by some landowner.

But some Crown grants are more conditional than others. Way back, this was a planning device: 'the land must be used for a villa residence built of brick or stone.'

Restricted Crown grants might still be used today, as a device to reduce the sale price of Crown land. The purchaser may use the land only for some limited set of uses, so its value drops. If at a later date the owner wants the restriction removed, they will have to pay Treasury the difference. As far as we're concerned, this is freehold land, but subject to a form of Crown covenant.

Other Crown grants, however, we regard as not being alienations at all. The Melbourne Cricket Ground has been granted to trustees. The better way of describing the 'G' is as Crown land under a form of delegated management.

The key difference is the presence or absence of an underlying Crown reservation. If the Trustees of the G surrendered their grant, the permanent Crown reserve would remain. So there's no way the trustees could gain fee simple ownership.

The bottom line – if there's no permanent reservation, we regard it as freehold; if there is a permanent reservation, we regard it as Crown land. ■

Questions?

Our retainer-based advisory service may be the answer.

We can provide:

- a ten minute phone discussion
- a brief exchange of emails,
- a more formal written opinion,

or even a 'QandA' article in *Terra Publica*...

How our retainers work...

Your authorised staff call our experts whenever they need our advice; we keep a dropbox log of time committed; we send you a quarterly invoice against your purchase order.

It's a service being taken up by metropolitan and provincial councils. If it interests you, please call David on (03)9534 5128

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Our One-day Training Courses
October to December 2017



Roads Governance

Tues 3 October – Bendigo
Fri 6 October – Geelong *FULL*
Fri 10 November – Melbourne



The Law relating to Works on Roads

Tues 10 October – Warragul
date to be fixed – Melbourne



Referral Authorities and the Victorian Planning System

Thurs 12 October – Melbourne
Thurs 9 November – Horsham
Tues 5 December – Warragul



Offences and Enforcement on Roads

Tues 17 October - Melbourne
date to be fixed – Beechworth



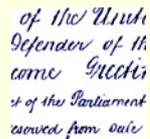
Leases and Licences of Public Land

Fri 20 October - Geelong



Crown Land Law, Policy and Practice

Mon 23 October – Ballarat
Mon 30 October – Wangaratta
Mon 13 Novr - Warrnambool



Restrictions on Title

Tues 24 October - Melbourne



Land Law for Managers of Rivers and Lakes

Thurs 16 Nov – Warragul
Wed 22 Nov – Wangaratta

Cost \$550 per person
including GST, Course notes and working lunch.
Discounts for host organisations

Enrolments and Enquiries – Jacqui Talbot –
jacqui@publicland.com.au

Our Melbourne courses are presented at
Law Institute of Victoria,
470 Bourke Street Melbourne

All courses are of one-day duration;
starting time 9:00 am, finish 4:30 pm

In collaboration with SGS Economics and Planning
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April 2018
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May 2018
**The Land Reconfiguration
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Details to be finalised soon... To register interest, contact jacqui@publicland.com.au