



Questions, Questions

We seem to be building up a collection of unanswered readers' questions.
Can't complain: that's the nature of a consultancy!
In this edition we try to reduce the backlog...

Q 1. Does this riverside Crown land come under the Land Act or the Crown Land (Reserves) Act?

Question asked by a service utility planning to place some infrastructure across a major waterway.

Answer: Could be a bit of both.

Turn the clock back to the nineteenth century, when all Crown land came under what is now the Land Act 1958.

Back then, riparian land could have been sold off as freehold, or reserved as watering places for travelling stock, or just left as unreserved Crown land.

In 1881 most riversides not already alienated (*i.e.* sold off) were reserved under what is now the *Crown Land (Reserves) Act 1978* – but only out to some specified width from the waterway. Any Crown land beyond that width remained under the *Land Act 1958*.

So to answer the question we must carefully examine ancient Parish Plans and Government Gazettes. We may need to engage a Licensed Surveyor.

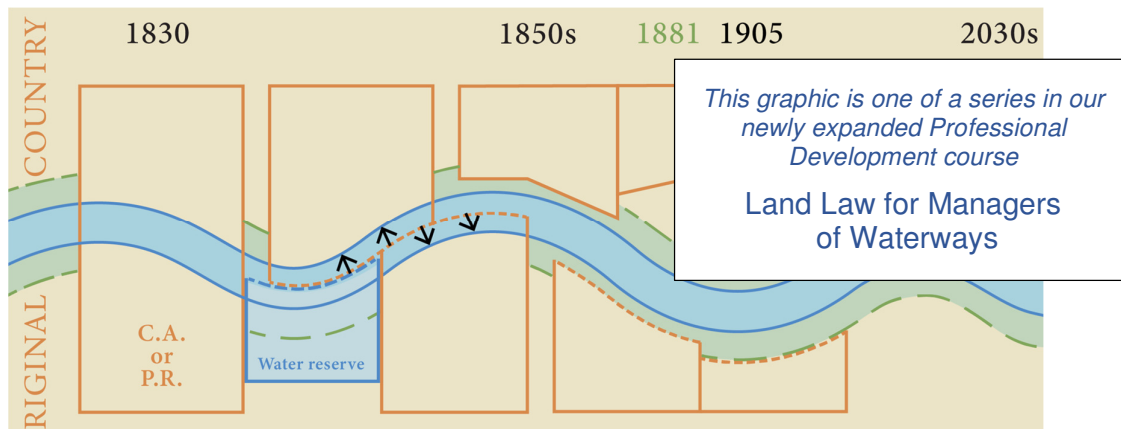
Bear in mind: there may be little or no relationship between physical features and cadastral boundaries; the river may have changed course since 1881; and the abutting farmers may erroneously imagine that they actually own down to the water's edge.

Why is it important? Well, our service utility wants legal authority to use the land, and needs to know which Act to comply with.

That's in addition to complying with the law relating to Native title, and Traditional Owner heritage, and the requirements of the local CMA under the Water Act 1989, and the municipal council's planning scheme.

Actually, two planning schemes, because the river happens to form the municipal boundary.

Good luck. ♦



Thanks to Jen Clark Design for assisting with new graphics for our Waterways training course.

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Q2. Is Common Property Public Land?

Question asked by a lot owner wanting to exclude the public from her driveway.

Common property is land set out on a Plan of Subdivision, and owned by an Owners Corporation (OC). It is private freehold land, to which the OC itself may choose to allow or prevent public access.

So if our questioner is concerned about people wandering around her unit, she should approach the OC about putting in a better gate – a measure which could not be portrayed as a road closure or a road discontinuation.

In some situations, common property is intended to serve as a driveway, and operate very much like a road. Other common property (associated with a row of shops, for instance) might serve as a parking area not only for lot owners, but also for the public at large.

Is it public land? It's certainly not owned or controlled by any public sector agency – although an OC might enter into an agreement with the local Council to manage it.

Regardless of the governance arrangements, it may be regarded as a 'road' for the purposes of the Road Safety Act 1986, and a 'public place' for the purposes of the Summary Offences Act 1966.

The definition of 'road' in the former Act ropes in anything that functions like a road – regardless of its cadastral status. The definition of 'public place' in the latter Act encompasses 'any footway footpath court alley passage or thoroughfare notwithstanding that it may be formed on private property.'

Anyone using such common property therefore must obey the Road Rules, and must not behave in 'riotous or disorderly manner.' That's anyone, including members of the public, trespassers, or even the lot owners themselves. ♦

Q3. Can a tenant of Crown land obtain full freehold ownership?

Question from a tax lawyer who had been reading the Land Tax Act 2005

There it is, at section 79(2)(c). Crown land is exempt from Land Tax if it is held under a licence which entitles the tenant to acquire freehold title.

Strange. To the best of our knowledge there are no such licences, and never have been.

Once upon a time there were time-payment leases which included a right of acquiring the fee simple, but we doubt that any still exist. The *Land Tax Act 2005* recognised them up until 2009, when the relevant provision was repealed, but somehow the corresponding reference to licences remains.

The same curious reference appears in the *Fire Services Property Levy Act 2012*, which applies not only to Crown land leases (which certainly do exist) but also to Crown land licences with a right to fee simple (which don't).

When they existed, these time-payment leases were used for 'selection purchase allotments.' Rentals were set by (yes *by*, not *under*) the *Land Act 1958* at exorbitant figures such as one shilling per acre per annum – which could be discounted down to 'twopence and two-fifths of a penny' in the case of poorer quality land.



We were thinking of applying for one – but unfortunately this whole slab of the Land Act was repealed in 1994.

So the answer to the question is yes – but not as an entitlement of their tenancy. They would have to negotiate a heap of other obstacles, including the payment of something more than twopence and two fifths of a penny. ♦

Working with Owners Corporations

10 and 11 Nov. Online, 3 hours each day

Anthony Wilkinson (Pelham Strata)

Climate Change for Public Land Managers

6, 7, 8 Oct. Online, 2 hours each day

Rod Anderson. Until recently Rod was a Regional Manager for DEECA.

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.

Q4. If a Crown reserve is 'vested' in Council, what does that mean?

Question asked by a municipality which manages most of its Crown reserves as a normal Committee of Management.

Crown land was traditionally overseen by the Department of Crown Lands and Survey (The Lands Department), now subsumed into DEECA and DTP).

The Lands Department was amenable to the appointment of delegated managers, but was most reluctant to empower them. This reluctance has only gradually been relaxed.

The *Crown Land (Reserves) Act* was enacted in 1978, and has been amended 132 times since. Typical of the process of revision of the Act are the provisions relaxing this control over councils acting as delegated managers.

In 1978 (as now), committees of management were appointed under section 14, and their powers were specified in section 15. A council acting as a section 14 committee of management had no general power to issue leases, and power to issue licences only in very limited circumstances.

The original 1978 Act included one concession towards empowering councils. Section 16 allowed reserves to be 'vested' in a council – but only if the reserve served purely local purposes.

The council could then issue leases – but only for the specific purpose for which the reserve had been gazetted.

Over subsequent years, a continuing series of revisions to the Act has seen the powers of normal 'section 14' committees of management extended and the controls over them relaxed. Sub-section 15(8A), inserted in 1981, exempts them from the need to submit financial reports – thus negating one of the benefits of section 16 vesting.

Notable in this process of revision was the passage of sections 17A, 17B, 17C and 17D in 1983. These new sections enabled the legalisation of the many unauthorised occupations which had built up under the previous regime, permitted all committees of management to issue leases and licences (although they still needed the Minister's approval on a case-by-case basis), and widened the permissible purpose of leases and licences to anything 'not detrimental' to the gazetted purpose of the reserve.

These relaxed provisions became available to section 14 committees, but not to section 16 committees. Perhaps there was a reason for this omission; perhaps it was an oversight.

So the benefits of vesting have now evaporated. In fact normal section 14 committees can issue tenures for a wider range of purposes than those with section 16 vestings. We wonder why section 16 survives at all.

Maybe it's time for amendment 133. ♦

Q5. If Crown land is subject to a lease, can that land be sold off as freehold?

Question asked by a prospective tenant fearful that his club's lease could be prematurely terminated.

The answer is yes, but that possibility need not deter our anxious questioner.

Any lease is a binding contract between a landlord and a tenant, which cannot be unilaterally terminated by either party. However, both parties are entitled to transfer (or 'assign') their interest to someone else.

Tenant number one might sell out to tenant number two. Such deals normally require the landlord's consent, which in the terms of many leases 'must not unreasonably be withheld.'

Likewise it is possible for landlord number one to sell out to landlord number two – a deal which would not require the tenant's consent. Landlord two is obliged to honour the lease-contract, so the tenant should see no change whatsoever in their legal rights or obligations.

It's the same with Crown leases. In fact the *Land Act 1958* (at section 100) provides for exactly that contingency, in relation to certain types of lease over unreserved Crown land. The sale of reserved Crown land is unlikely, but theoretically possible – and we would expect any such sale to be subject to the continuing lease.

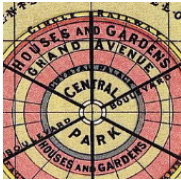
Warning – the same assurance can't be given in relation to licences, as against leases. A licence does not convey an interest, and is more readily terminated.

Meanwhile – here's [an interesting case](#). The tenant actually wanted to see his lease extinguished when the land ownership changed so he could claim compensation. He didn't succeed – the Supreme Court of Victoria Court of Appeal ruled that the lease continued, whether the tenant liked it or not. ♦

Professional Development September to December 2026

NOTE: some presentations are 2 sessions, each of 3 hours. Others are 3 sessions, each of 2 hours duration



 Climate Change for Public Land Managers 6, 7, 8 October 10 am to 12 pm each day Rod Anderson (ex-Regional Manager, DEECA)	 Risk Management for Public Land Managers 13 and 14 October 10 am to 1 pm each day Michael Beasley (Beasley & Associates)
 Roads Governance 20, 21, 22 October 10 am to 12 pm each day David Gabriel-Jones (Principal, The Public Land Consultancy)	 Crown Land Governance 27, 28 and 29 October 10am to 12 pm each day David Gabriel-Jones
 Land Law and Subdivisions 20 and 21 October 10 am to 1 pm each day Mark Bartley (Russell Kennedy Lawyers)	 Native Title and Aboriginal Heritage 10 and 11 Nov 10 am to 1 pm each day Henry Dow (Marawah Law)
 Working with Owners Corporations 10 and 11 Nov 10 am to 1 pm each day Anthony Wilkinson (Pelham Strata)	 Land Law for Managers of Waterways 24, 26 and 17 November 10:30-12:30 each day Presenter: Johanna Slijkerman (Watertech)
 Property Law & Planning Dates to be fixed Lydia Eastwood (Redmond Lynch Lawyers)	 Coastal Land Management Dates to be fixed Liz Patterson (Alluvium) and Richard O'Byrne

Cost:

\$550 including GST, course notes and certificate of attendance

Accreditation:

These courses are eligible for CPD points for lawyers, planners, valuers, and surveyors.

Registrations:

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