



Escape from the Silo

Samuel Beckett, *Endgame*

Bureaucracies operating as silos – we're all too familiar with that particular metaphor. But how does it affect public land?

Multi-focussed bodies such as municipal councils need to structure themselves somehow – and traditionally their organisation charts align with professional disciplines: planning, engineering finance, and property law.

It's a system often reinforced by land status: this parcel of land is a park, to be managed by people qualified in horticulture, environmental science and recreation; this parcel is a road, to be managed by engineers; and this is privately owned, so our inputs will be made via planners, building inspectors and rate collectors.

Project for Public Spaces (PPS) is a New York based non-profit organisation which, in its own words, is dedicated to helping people create and sustain public spaces that build stronger communities.

In a recent bulletin, PPS proposes that governance should be restructured around places. Instead of inhabiting silos labelled transportation, housing, recreation and economic development, we should all inhabit somewhere called Placemaking.

Here, according to PPS, we'll find a Place-led governance culture facilitating networked community resources formed up into Place-based institutions which create Place-Capital. All too good to be true?

In Victoria, place-based administration has both succeeded and failed. The Royal Botanic Gardens and Federation Square each has its own governance regime, and they've surely worked well. The Housing Commission may have excelled at delivering basic shelter, but failed miserably at creating places. As for the Docklands Authority, some commentators see architectural and economic vibrancy where we see an uninhabitable wind-swept wasteland¹.

Our own proposition is a little different from the PPS model. As we see it, the success or failure of any

public place depends on three characteristics: firstly its physical features, secondly its activity-commerce, and thirdly its governance regime. These three are closely interlinked, with the first two shaping and being shaped by the third.

Most of the time public places just roll along, the task of their specialist managers being, essentially, to keep them functioning. But there are specific times in the life-cycle of a public place when it needs to be reincarnated. That's when we require some cross-disciplinary silo-busting.

One key challenge for municipalities is to recognise when the time has come to re-jig a place's basic governance regime in order to advance (or preserve, or restore, or for that matter erase) its physical and activity-commercial character.

Just take a look at the St Kilda Triangle. A disaster by any criteria. What it so desperately needs is not architects or accountants or event managers – but a new governance regime capable of rebalancing local and state government interests.

So it's time to knock some holes in the silo walls, to start mixing up their contents. Let's turn to the kitchen canister metaphor.

Our recent series of 'encroachments' workshops has highlighted the benefits of municipal cake-mixing. Around the table we see road engineers, compliance officers, statutory planners, building surveyors, property managers and in-house corporate lawyers.

It's fascinating to watch the interactions: "Is that really what you've got in your canister? Here's what we've got in ours..." Yes, it makes teaching worthwhile. ■

¹ Public Spaces Gone Wrong, *Terra Publica* July Aug 2009

ENCROACHMENT WORKSHOPS

A dozen metropolitan and provincial councils have now engaged us to present our half-day 'Off-Title' workshop. For more information contact Jacqui Talbot at Jacqui@publicland.com.au

Page 4 – Our Calendar of Professional Development courses for Jan–April 2014

The Public Land Consultancy
 ABN 69 067 045 520
 Principal: David Gabriel-Jones
 Email: terrapublica@publicland.com.au

57/151 Fitzroy Street
 St Kilda, VIC 3182
 phone: (03) 9534 5128

postal: PO Box 225
 St Kilda West, VIC 3181
 mobile: 0412 134 24
www.publicland.com.au

Improving Our Waterways

Victorian Waterway Management Strategy



Implementing the Government's new Waterway Management Strategy will also demand some serious silo-busting.

One theme that comes through strongly in the Strategy is the need to link the management of riparian public land to the management of abutting freehold land. This is nothing new: it has been long recognised by land managers on both sides of the Crown-freehold boundary.

The problem is threefold. Incoming purchasers don't know that they've become Crown tenants, departing vendors don't know that they are still tenants of land they no longer occupy, and DEPI as landlord doesn't know what's happening to the land supposedly in its custody.¹

But the governance systems have simply failed to respond: the silo-structured public service has had some difficulty joining up the dots.

Last year's public service restructure² may have exacerbated this problem. All the public land functions of DSE went into DEPI, but Land Victoria including the Titles Office went into DTPLI.

Improving Riparian Information

The Strategy points in the direction of all this being remedied. Action 9.9 will result in DEPI and the CMAs knowing when 'parent' properties are about to be sold; action 9.8 will see vendors and purchasers informed that the land down by the river is Crown land, and not part of the freehold; and action 9.7 will see estate agents and conveyancing lawyers better informed about the transfer of Crown licences.

The end result – a practical strategy for influencing riparian management practices. When a property changes hands – that's the time for a CMA (or Melbourne Water) to move in and start talking about fencing, revegetation and off-stream stock watering.

We understand that step one has already been taken. DEPI and Land Victoria between them have put together a database identifying the parent freehold title associated with each of the state's 10,000 water frontage licences. Next step – fix section 32 of the *Sale of Land Act 1962* – but that takes us through another silo wall because that Act is administered by Consumer Affairs Victoria...

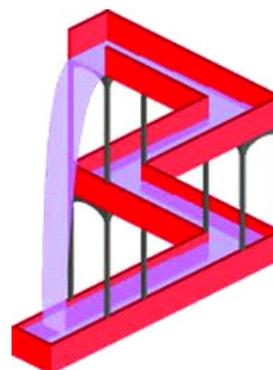
Improving Riparian Governance

The success or failure of any public place depends on three characteristics: (i) its physical features, (ii) its

activity-commerce, and (iii) its governance regime. And here's the important bit: the first two can often be shaped by the third.

Nowhere is this more apparent than alongside Victoria's rivers. Nature gave us topography, hydrology, and ecology. Settlement brought agriculture, water supply and recreation. But to make it all work in the 21st century, we need management tools, administrative systems, and law.

DEPI's new Waterway Management Strategy aims to improve all three – but gets their sequence seriously wrong. It seems we're going to build the house first, and then assemble the tool kit with which to build the house.



The key piece of legislation governing riparian frontages is the *Land Act 1958* – a nightmare of an Act which does not date from 1958, but from the murky depths of the Nineteenth Century³.

The Strategy recognises that this Act is "outdated and inflexible...and does not support the current approach to land management."

But reform the *Land Act 1958* has been relegated to 2018 – which makes it the very last action to be addressed in the entire Strategy.

This is a body of law which prevents (or fails to allow) the cadastre responding when rivers change course⁴. It entitles some (not all) freehold owners to take trespass action against people using the abutting Crown land. It's what has led to front page articles in the Age about Kananook Creek, Frankston⁵.

The Land Act can't be reviewed in isolation: we also need complementary revisions of the *Water Act 1989*, the *Crown Land (Reserves) Act 1978* and, as we contend in the preceding article, the *Sale of Land Act 1962*. Difficult.

In the earlier draft of the Strategy this legislative reform was proposed for 2016. By pushing it out by two years, it goes into the term of the government after next... Wonder why? ■

1 'Why weren't we told' - *Terra Publica*, November 2012

2 'What's happened to our favourite Departments' - *Terra Publica*, April-May 2013

3 'Curse of the Swamp creature' - *Terra Publica*, Easter 2012

4 'A Blockage in the Bowel' - *Terra Publica*, February 2013

5 'Up the Creek' - *Terra Publica*, March-April 2011

Q
&
A

What exactly is a 'Private Road'?

Question asked by the
Business Coordinator of a
provincial Council

As we know, the *Road Management Act 2004* calls certain roads 'public roads.' The opposite of public is private – so it would be tempting to say that a road which isn't a public road must be a private road. Good thinking, but not quite good enough.

Since the late 1980s Victorian legislation has contained very few references to private roads (or streets). It's just not been considered necessary. The old *Local Government Act* (the 1958 version, that is) defined the term to mean "a carriage-way either accessible to the public from a public street or forming a common access to lands and premises separately occupied, but not being a public highway." The term wasn't carried forward into the current (1989) *Local Government Act*.



So what is it? The repealed definition provides a starting point: a private road is a road which is not a public highway. We can't say 'which is not a public road' because public highways and public roads are not the same: there are many of the former which are not the latter.

So what sort of roads might be described as private? A driveway may have the physical characteristics of a road (indeed it might be a road for the purposes of the *Road Safety Act 1986*, but it's certainly not a public highway – the public at large has no legally enforceable right to come and go along it. Likewise common property roads, owned and controlled by an owners corporation.

Then there are certain old roads in pre-1988 subdivisions. Never constructed, they've not become public highways through either usage or proclamation. Finally, there are roadways in public housing estates and around water authorities' reservoirs: their managers may well allow public access, but not as-of-right – so they're not public highways, either. ■

Q
&
A

Must we spend money raised from a Crown reserve in the same reserve?

Question raised on behalf of a
country Council acting as a
Committee of Management
for a Crown reserve

The *Crown Land (Reserves) Act 1978* specifies that a Committee of Management (CoM) must spend its dosh inside its reserve, unless otherwise authorised by the Minister (in effect, by DEPI).

For most Council-controlled Crown reserves, this would not be an issue. Far more ratepayers' money is expended on managing the reserve than is raised from it by way of rents, fees and charges. The Council could never be accused of siphoning money out of the reserve. Anyway, a Council acting as CoM need not keep separate books for each reserve and need not submit financial reports.

For 'local' CoMs it's different. They must report to DEPI, and for good probity reasons DEPI should keep tabs on how they apply their (admittedly small) revenue streams. But does this thwart or promote good outcomes? At worst, it may force CoMs to squeeze revenue-generating uses into inappropriate landscapes. Consider, for instance, the number of caravan parks and camping grounds carved out of otherwise intact foreshore ecosystems.

The Act (at section 15(1)(f)) deals with the prospect of the Minister *directing* a CoM on how to expend its revenue – but this should be read as *permitting* some desired expenditure.

We've seen situations crying out for cross-subsidisation between Crown reserves – or between a Crown reserve and an unused road reserve. We're sure DEPI will be sympathetic to such requests. ■

Half-Day Workshops

At the Law Institute of Victoria
470 Bourke St Melbourne

9:00 a.m. – 12:30 p.m.

- Friday 28 February 'Off Title' – A look at encroachments onto Council-controlled land
- Friday 7 March 'Off-Shore' – A Look at your coastal boundary and what's just outside it, in light of the new Victorian Coastal Strategy

Cost - \$330 inc GST

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

(03) 9534 5128

Our Program of One-Day Training Courses January to April 2014

<p>Leases and Licences of Public Land <i>Presenter – Karen Hayes, Property Coordinator, City of Yarra</i> Tuesday 18 March 2014 Melbourne*</p>	<p>Land Law and Coastal Adaptation <i>Presenter – Richard O'Byrne</i> Wednesday 12 March 2014 Melbourne* Wednesday 2 April 2014 Phillip Island</p>
<p>Native Title and Aboriginal Heritage <i>Presenter – David Yarrow, Victorian Bar</i> Tuesday 25 March 2014 Melbourne*</p>	<p>Land Law for Managers of Rivers and Lakes <i>Presenter – David Gabriel-Jones</i> Thursday 27 February 2014 Melbourne*</p>
<p>Land Law for Managers of Roads, Streets and Lanes <i>Presenter – Andrew Walker, Victorian Bar</i> Tuesday 18 February 2014 Shepparton Wednesday 5 March 2014 Melbourne*</p>	<p>Environmental Law for Councils as Land Managers <i>Presenter – Grant Arnold</i> Thursday 20 February 2014 Melbourne* Tuesday 25 March 2014 Shepparton</p>
<p>Crown Land Law <i>Presenter – David Gabriel-Jones</i> Tuesday 25 February 2014 Melbourne* Wednesday 19 March 2014 Horsham</p>	<p>Managing Volunteers and Grants <i>Presenter – Richard O'Byrne</i> Wednesday 12 February 2014 Melbourne*</p>
<p>Land Law for Service Utilities <i>Presenter – Astrid Di Carlo, Russell Kennedy</i> Wednesday 26 March 2014 Melbourne*</p>	<p>Easements and Covenants <i>Presenter – Astrid Di Carlo, Russell Kennedy</i> Thursday 13 February 2014 Melbourne*</p>
<p>Planning Law - a Strategic Overview <i>Presenter – Grant Arnold</i> Thursday 20 March 2014 Melbourne*</p>	<p>The Law and Risk Management <i>Presenter – Michael Beasley</i> Tuesday 11 February Melbourne*</p>
<p>Building Law – a Strategic Overview <i>Presenter – Tom Vasilopoulos, Victorian Bar</i> Tuesday 4 February Melbourne*</p>	<p>The Law and Subdivisions <i>Presenter, Dr David Mitchell, RMIT</i> Friday 28 March 2014 Melbourne*</p>

* Our Melbourne courses are conducted either at the Law Institute of Victoria (470 Bourke Street) or at Graduate House at the University of Melbourne (220 Leicester St, Carlton).

Enquiries and Registrations: Jacqui Talbot – jacqui@publicland.com.au – phone 9534 5128

Cost: \$495 including GST, course notes and working lunch. Discounts for course hosts.

All Courses are one-day duration; 9:00 a.m. to 4:30 p.m.

For details of all these courses:

http://www.publicland.com.au/professional_development.html

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