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Market Forces

The big three: that's Coles, Woolworths, and the Queen Victoria Market.

How do the first two feel about the third? Not to mention South Melbourne Market, and Preston Market, and all the farmers' markets springing up around the place. Would the big two see them as fair competition, or unfair?

Coles and Woolies have to pay rent for the land they occupy. If they actually own the land, they have to pay finance charges, or (to put it another way) forgo the interest they would be receiving if they were to invest that capital elsewhere. If the prevailing interest rate is, say, 5%, then a $10 million site costs $500,000 a year to rent. Unless – and here's the point – you happen to be a municipal council, and the land in question is 'free' public land.

Now – before we at *Terra Publica* find ourselves accused of being pro-big business, let us assure you that we thoroughly approve of this state of affairs. Use of Crown land for retail markets has been a feature of public policy in Victoria ever since 1837 when Surveyor-General Robert Hoddle set aside land for the Eastern and Western Markets. In fact, the committees which ran those markets pre-dated even the City of Melbourne itself. To this day the *Crown Land (Reserves) Act* recognises 'markets abattoirs and saleyards' as being public purposes for which Crown land may be set aside – without charge.

The finance reports of South Melbourne Market make interesting reading. So, no doubt, would the Queen Vic Market reports – but they're not published. At South Melbourne the reports show an annual income of $4.89 million, expenses of $3.55 million, and an end-of-year profit of $1.34 million. Pretty good result – but, as Coles and Woolies would quickly point out, where's the costs of holding $40 million worth of Crown land?

Free land may contribute to socially desirable results when we're talking about markets – or parks and gardens and foreshores and rivers. The values by which we measure their worth can't readily be expressed in dollars, so the notion of 'free' is pretty meaningless. Nor can we complain about school grounds and works depots and police stations and railway lines – provided that they are actually being put to good use. But that's the question – are they?

Our private sector portfolio manager is constantly evaluating the performance of individual assets. If one property is not performing, then it will be put to another use, or refurbished, or sold. One way or another, for better or for worse, market economics will force our manager's hand. But how about portfolios of Crown land assets?

Government agencies have no parallel incentive to optimise their portfolios of Crown land. Consider an agency which holds a mixed Crown/freehold portfolio, and needs to rationalise. Sell this freehold site, we pocket the full land value; sell that Crown land site, and we pocket nothing: the full value is credited to the consolidated fund. End result: distorted asset management, and sub-optimal land use.

The Kennett Government recognised this problem back in 1998, when it introduced an 8% Capital Assets Charge on government agencies' portfolios. Hey Presto! Government portfolio managers would now feel the pain of under-performing assets, exactly as if they'd had to borrow the capital at 8%. Trouble is, the scheme is nothing but creative accounting.

As Treasury collects the 8% with one hand, it hands it back again through annual appropriations with the other. No government agency suffers from holding under-performing assets. Sure, they may incur rates and maintenance costs and so forth, but that's small change when compared to 8% of capital value.

The conjuring trick was exposed back in 2003, when the Education Department miscalculated its liability to Treasury's left hand, and ran straight off to Treasury's right hand for a top-up. As the Auditor General observed: *'this brings into question whether the intended objectives of the charge (from both financial and asset management perspectives) are being achieved.'* Indeed.

We're not at all convinced that 'best value' principles can be imposed on the South Melbourne Market (or a public hall or a council depot or a railway siding) through some transposition of Coles-Woolworths economic theory. We need a different framework for identifying the commercial and non-commercial values of public land, and ensuring their optimization.

Perhaps VEAC should be re-constituted – but that's another story. Perhaps the Government Land Monitor should actually monitor government land *holdings* – as against government land *transactions*. But, again, that's another story. ■

In this edition we acknowledge and thank the many clients who engaged our consultancy services through 2013…

Places Victoria

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Local Government Jargon

Sec 86 and sec 193

The Local Government Inspectorate has been taking an interest in section 86. That's the Local Government Act provision that allows a council to set up a special committee and delegate to it many (not all) of the functions, duties or powers it holds under that Act or, indeed, under any other Act.

Sec 86: South Melbourne Market

They're often used to manage public land – halls, recreation reserves and other community facilities. The South Melbourne market is managed by a Sec 86 Committee set up by City of Port Phillip.

It seems that a couple of councils may have been injudicious in the use of section 86 – and attracted the attention of the Local Government Inspector. The nub of the problem is that a sec 86 committee is not a separate independent entity, but a part of council itself – hence requiring a high standard of control over delegations, reporting and record-keeping. The Act requires periodic reviews – a provision which, it seems, has gone unobserved.

Two councils we know of have gone through the exercise of restructuring their section 86 committees as entities set up under the *Associations Incorporations Reform Act* 2012. Although they're still funded by Council, they're no longer covered by council's insurance – and so this has to be renegotiated separately.

Sec 193: Queen Victoria Market

Unlike its South Melbourne counterpart, the QVM is governed under section 193 of the Local Government Act. Section 193 gives councils the power to engage in various types of enterprise, such as becoming a member of a corporation or partnership, or participating in a joint venture with another body. As opposed to section 86 committees, section 193 enterprises are totally at arms length from the council.

We're surprised these enterprises aren't more widely used. A council's planning powers alone are very poor instruments with which to shape urban form – yet very few councils have moved into private sector-style entrepreneurship.

As Lord Mayor Robert Doyle (why do we think of him as *Sir* Robert?) works through the mooted upgrades of the QVM we look forward to seeing what leads he offers to other municipalities looking for better ways of re-shaping Melbourne. ■

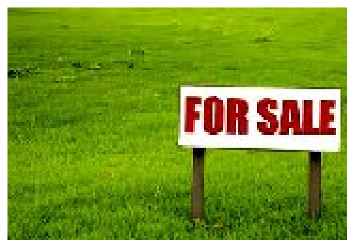
Crown Land Jargon

'PL,' 'GL' and 'PA'

Recycled from Terra Publica, July 2003

According to our reckoning, any given parcel of Crown land can have anything up to eight different 'layers' of status, each with its own corresponding jargon. One layer that you won't find defined by any Act of Parliament is the 'GL/PL' designation conferred when the land is assessed in the course of the government's "Asset Rationalisation" (*i.e.* land sales) program.

'PL' means 'Public Land,' and is the designation applied to land which has intrinsic values warranting its retention in the Crown estate. These may be conservation, social or strategic values. If it's not already proclaimed as a park or reserve, you would expect PL land to be reserved and placed under active management of an appropriate agency. 'PL' land will not be put into the land sales program.

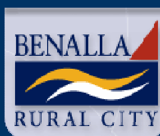


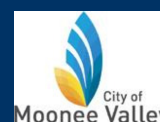
'GL' means 'Government Land,' and is the designation applied to land which can properly be regarded as a financial asset of government, currently in the form of real property. Whatever values it possesses can be adequately protected under the relevant Planning Scheme, and do not need the additional protection provided by retention as Crown land.

Assessment as 'GL' will not of itself make a parcel of Crown land saleable. There may well be other layers of protection to be removed first: roads to be closed, reserves to be revoked, and LCC recommendations to be varied. Often a Planning Scheme Amendment will be undertaken, although Crown land may be sold subject to its pre-existing zoning. The PL/GL assessment is a non-statutory decision against which there is no legal avenue of appeal, but removal of these other layers generally involves some public process.

'PA' means 'Public Authority Land,' and is the term applied to land which would be designated 'GL' but for the fact that it is currently in use. Included here you would expect to find Police stations, hospitals, council depots and so on. This land will be put into the sale program only when it is vacated, or if the occupying authority itself wishes to purchase. ■

And… thanks to few of the municipalities which engaged our consultancy services in 2013…





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Q & A — Is a Crown land Committee an Incorporated Association?

Question arising at a recent workshop.

Whether we're talking about clubs, or companies, or public sector agencies, the benefits of incorporation should be well known – but misunderstandings seem to persist. One such misunderstanding manifests as the question being addressed here.

Incorporation may occur by various means. Some public land user groups are corporate entities before they become public land tenants or managers. These might include companies (incorporated under the Commonwealth corporations code) or municipal councils (incorporated under the Local Government Act). So it is with clubs and societies created under the *Associations Incorporation Reform Act* 2012.

Some of these corporate entities may become committees of management of Crown land. Their own charter must allow them to do so, and they must meet the criteria set out in section 14(4) of the *Crown Land (Reserves) Act* 1978.

A clear feature of these criteria is that the entity must be established for 'public purpose' – rather than for the narrow purposes of benefiting its own membership. Thus, in our opinion, the local footy club, the Scouts, and the YMCA can't become committees of management of Crown land: worthy causes though they may be, they must occupy and use the local reserve as tenants.

Then we come to 'local' committees of management – bodies consisting of three or more persons, and initially unincorporated. They may incorporate under the CL(R)Act itself – as provided for in section 14A.

This Act allows the appointment of (amongst others) "any board, committee, commission, trust or other body corporate or unincorporate established by or under any Act for any public purpose." Curiously, the list includes bodies 'unincorporate' – but this is surely just a hangover from earlier times.

So – to get back to the question – an incorporated Crown Land Committee of Management is not an Incorporated Association – but an Incorporated Association may become a Committee of Management. ■

Q & A — What is a Conditional Crown Grant ?

Question asked by a developer hoping to acquire Crown land on the cheap

A Crown grant is the instrument which converts Crown land to freehold. It is not a contract – there is only one signature at the bottom, and that's the signature of the Governor in Council.

On the face of it, the dealing is a unilateral grant, but in reality it's a sale between two parties – the Crown as vendor and some purchaser. Grants are issued under the *Land Act* 1958, although subsequent dealings will occur under the *Transfer of Land Act* 1958.

All Crown grants contain conditions – but some are more conditional than others. A typical handwritten 19th Century grant includes phrases such as…

> *Reserving and excepting nevertheless unto us our heirs and successors all gold and silver and auriferous and argentiferous earth or stone …*

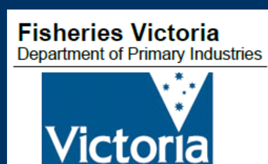
Conditions in grants were also an early attempt to shape the uses to which land would be put – in other words, an early attempt at land use planning. The South Melbourne market site was granted to the Borough of Emerald Hill on condition that:-

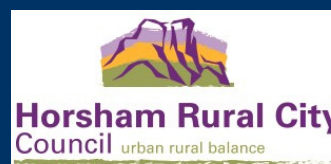
> *…the said land hereby granted and the buildings for the time being thereon shall be at all times hereafter maintained and used as and for a General Market, and public buildings and offices and conveniences connected therewith… and for no other purpose whatsoever.*

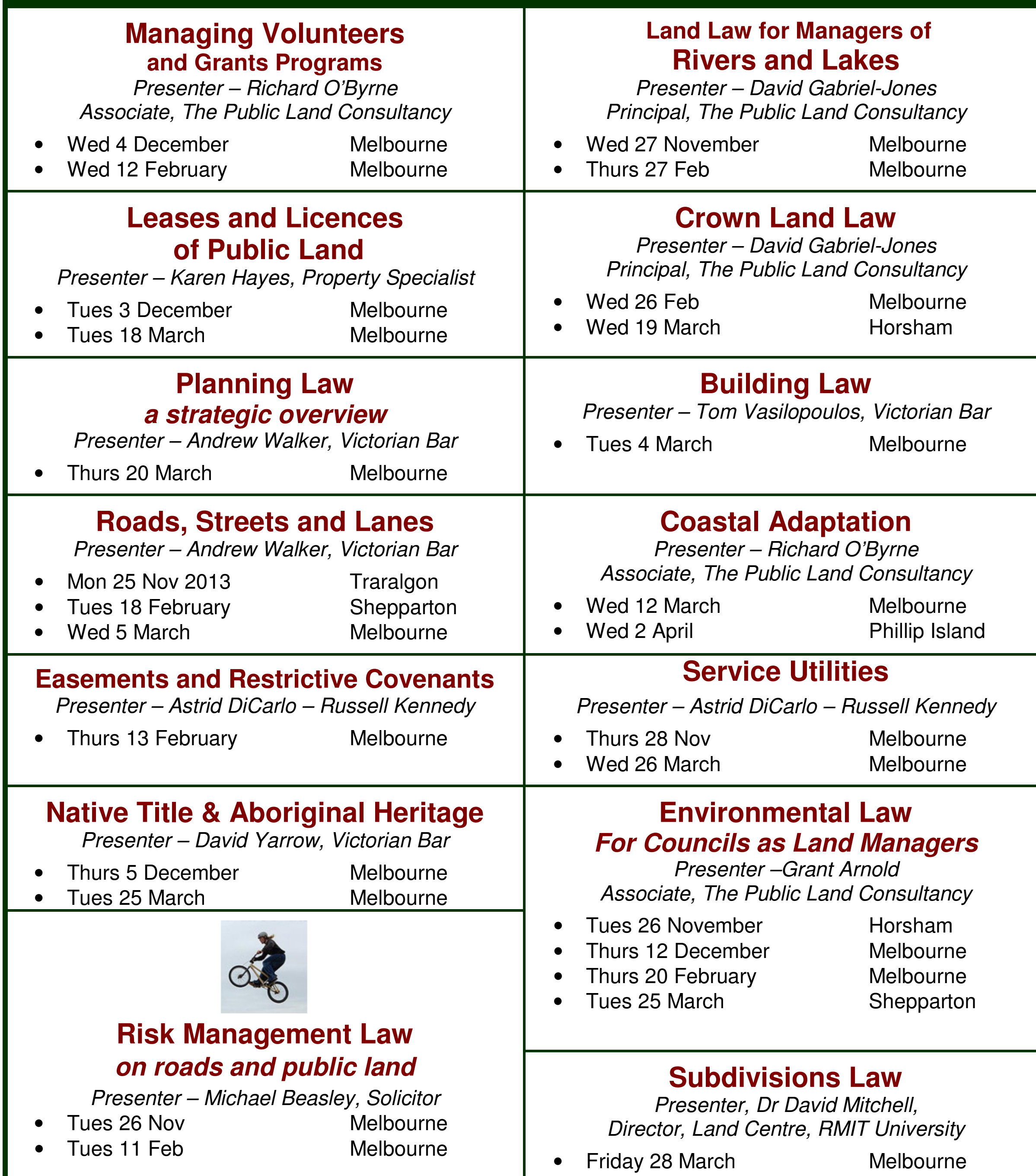
So – why is a 21st Century developer interested in this very old-fashioned form of instrument? Because the more restrictive the condition, the lower the valuation. It's a device for buying Crown land on the cheap – but there's a catch.

Unlike a covenant on title, or a planning scheme zoning, the condition can't be lifted by a court or a council. Treasury and Finance will remove the condition only on payment of the remainder of the full purchase valuation. ■

And - our thanks to a few more clients who engaged our consultancy services in 2013







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Associate, The Public Land Consultancy
- Wed 4 December — Melbourne
- Wed 12 February — Melbourne

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Presenter – David Gabriel-Jones
Principal, The Public Land Consultancy
- Wed 27 November — Melbourne
- Thurs 27 Feb — Melbourne

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- Tues 18 March — Melbourne

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- Thurs 20 February — Melbourne
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