

It's All Happening in 2016 *Just as well it's a Leap Year*

It seems that 2016 will be a busy year for public landers. We are glad it will have an extra day.

With the next State election not due until November 2018, we can expect the Andrews Government to knuckle down to some important reforms, unfettered by the impending rattle of the ballot box.

One development of major importance for public land will be the introduction of rate capping. Councils' 2016-2017 budgets will be tighter, causing them to critically review their land-holdings and their associated revenue streams (see [TP, April 2015](#)).

In March 2016 the Auditor General will table his [report into Local Government Recreational Services](#). We anticipate some interesting tensions between his findings and rate capping.

Road managers will have to come to terms with the repercussions of *Kennedy v Campaspe Shire Council* – whatever they may transpire to be (see *The 12mm Stumble*, [TP August 2015](#)).

Rivers and riparian land will certainly be impacted by [amendments to the Aboriginal Heritage Act](#), and (we can only hope) by new policy on the [role of the EPA](#).

The VEAC Investigation

Then there's the longer-term restructuring of the whole public land legislative regime, which may be shaped by the latest Victorian Environmental Assessment Council (VEAC) investigation.

Although VEAC isn't due to report until 2017, most of its work will be done in 2016 – including publication of a discussion paper in March, after which further submissions will be invited.

Four possible directions which VEAC might take have already been flagged in its [interim report](#) – but that's not to say VEAC's thinking will be limited to these four options. We would encourage Councils and other public land managers to make their inputs!

Here at The Public Land Consultancy we'll certainly be refining the [submissions we made](#) back in June.

Legacy of the Lands Department

In its interim report, VEAC flags the possibility of remedying a serious deficiency in Victorian land governance – the mismatch between their past recommendations and the actual legal status of the land under the relevant legislation.

If VEAC recommends that land be a National Park then, subject to government acceptance it will in due course become a National Park under the National Parks Act. Simple, you would think.

But if the recommendation is for 'community use area' or 'services and utility area' then its legal status is likely to remain as whatever we inherited from the old Lands Department.



The legal status of St Kilda's Shakespeare Grove car park alongside Luna Park is "Crown land reserved for gardens, the recreation of elderly people, and underground drainage."

VEAC's research has identified over 1200 different wordings of gazetted purposes for Crown land reserves, accumulated over more than 150 years. Not surprisingly, they associate this complexity with 'administrative difficulties.'

It's a legacy which undermines sensible decisions about leases, licences and permits. It can render approval processes, uniform regulations and enforcement difficult or impossible.

Here at The Public Land Consultancy we'll be thinking about a process for translating those 1200+ reserve purposes into the half-dozen (?) which VEAC might recommend.

Yes, we will need that extra day in February. ♦



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It's 50 years since we started to go metric – but we still can't escape old imperial units!

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2016 – Professional Certificates in Land Administration and Governance

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Our 2016 Seminars

April: *Auditing Public Land Tenures*

June: *Encroachments onto Public Land*

Q & A

What are these weird units?

A question which comes up every time we show students an old plan or an old set of regulations

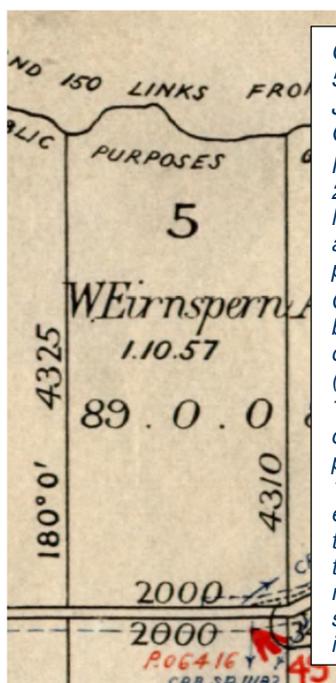
Acres, Roods and Perches

It's now fifty years since Australia commenced metrication. Decimal currency was introduced in February 1966, with other metric measures following through the 1970s.

Title documents have since been metricated – chains and links converted to metres; acres roods and perches converted to hectares and square metres.

But we still have to use and interpret old plans. What's a three-chain road? Answer – a road reserve 60 metres wide (more or less). And acres? 2.5 acres to the hectare, near enough.

Why are pre-emptive rights (PRs) all 640 acres? Answer – because that is (was) one square mile.



Crown Allotment 5, Parish of Jan Juc, County of Grant.

Measurements: 2000 links by 4325 links. Area: 89 acres, 0 roods, 0 perches.

One W. Eirnspern became its lucky owner on 1 October (18)57.

To the north: a creek with a public purposes reserve 150 links wide on each bank – or is there? To interpret this annotation, we need to examine the sequence of events in the 19th Century...

What is the '150 links' reserve along a watercourse? Part of the answer: 150 links is 30 metres (more or less); but measured from where? Along the whole creek or just parts of it? And how do we find out?

For answers to questions such as these, sign up for our half-day course on Land Information and its Interpretation. ♦

Pounds, Shillings and Pence

Let's open up the Government Gazette Number 618 of June, 1951. It makes great bedtime reading, as indeed do all Government Gazettes.

Here we find that entrance fees to the Vaughan Springs reserve are increased from one shilling to two shillings. On the Tahara recreation reserve, fees to train horses are set at one pound per horse per year. On the Gormandale Recreation Reserve vehicles (horse-drawn or motor) may be admitted for a fee not to exceed two shillings and sixpence.

So what? (That's a question we often ask when confronted with such curiosities: does it really matter?)

Well it might, but then again it might not. The *Decimal Currency Board Act 1963* (C'with) ensured that the fees quoted above variously became ten cents, twenty cents, two dollars, and twenty-five cents. So that sorts out the small change.

But we also need to know whether the regulations concerned were ever rescinded. Let's hope we don't have to leaf through every gazette from 1951 until 1997 (after which they became searchable on-line).

This would not be an issue if Crown land regulations were to sunset on their tenth birthday, as do Local Laws and all modern regulations. It's a very sound strategy for ensuring that regulations don't get out of date, and that regulation-setting agencies are forced to rethink and revalidate their policies.

And, remember, ancient Crown regulations override modern Local Laws – so says section 111(3) of the Local Government Act.

So, what if some devoted gazette reader demands entry to Gormandale Recreation Reserve for the sum of twenty-five cents? Curious, but hardly a disaster.

What's more relevant, we think, is the long-standing policy vacuum blighting Victoria's Crown land governance – of which this is just one symptom.

To understand the regulatory regime governing Crown land sign up to our half-day course on Crown Land Governance. ♦

2016: The Public Land Consultancy moves to St Kilda Road

In January 2016 The Public Land Consultancy will be relocating to new premises.

Our new address will be 27 / 539 St Kilda Road, Melbourne

Our phone numbers, email addresses and PO box number should remain the same

Our 2016 Seminars

Auditing Tenures

Wednesday 20 April 2016

All Victorian municipalities find themselves managing tenants in occupation of public land. These tenants may be:

- Valuable community-based groups which Council chooses to support
- Long-established clubs or sporting bodies with varying degrees of exclusivity
- Commercial profit-making enterprises which provide some level of service to the public
- Private parties who have encroached onto public land either with or without authority.

This workshop will explore the management of public land tenants

Encroachments

Wednesday 15 June 2016

Private developments may spill across title boundaries onto roads and lanes, parks and reserves, river frontages and foreshores.

These spill-overs may be...

- Desirable enhancements to the public domain
- Acceptable, benign adjuncts to private or commercial properties
- Unacceptable intrusions requiring removal and/or prosecution
- Existing or proposed; temporary or permanent

This workshop will deal with authorising the desirable and removing the undesirable

2016 *introducing...* Professional Certificates in Land Administration and Governance

Three multi-unit courses which we will be offering in 2016

After 15 years of providing training to Victoria's municipalities and statutory authorities, we are re-bundling individual courses into formal certificate qualifications.

- **Professional Certificate in Road Administration and Governance**
- **Professional Certificate in Land Law for Statutory and Strategic Planners**
- **Professional Certificate in Land Law for Environmental Managers**

The emphasis throughout these courses will be on the acquisition of a practical cross-disciplinary understanding of land law, directly relevant to real-world situations such as those encountered by Victorian municipalities and statutory authorities.

We expect these Certificates will be recognised by the relevant professional associations.

for more detail of these certificate courses: jacqui@publicland.com.au

2015 Seminar papers

For copies of these presentations, please contact us at dgj@publicland.com.au

Recycling Surface Carparks



Presentations to a Public Land Consultancy Workshop, 11 November 2015

Municipal Roads Some Potholes in the Law



Our presentation to a *Legalwise* Seminar, 25 November 2015

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.

Deep Fine Leg, Koondrook

Readers who hear from our colleague Lex Loci will know all about the Koondrook Cricket Ground.

It is symptomatic of a State-wide problem which besets many public land facilities.



The victorious Barham-Koondrook under 17 cricketers.

In his communiqué of 1 December 2015, Lex noted the Ground's dual status (two-thirds Crown reserve; one third freehold land), and pondered on the repercussions.

“When the Shire wanted to build new pavilions, it put them in the north-west corner, not the south east – thereby retaining ownership and avoiding all the Crown land red tape.

“At a match, two thirds of the spectators are subject to Crown land regulations; the other third are subject to Council's local laws.

“Two thirds of the circumferential road is subject to the Road Management Act, and one third isn't.”

This last point about the circumferential road drew a few responses from readers looking for an explanation.

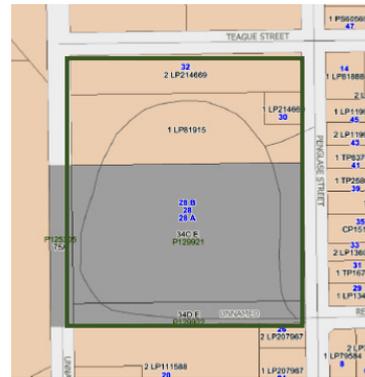
This takes us to the definition of 'road' in various statutes. The definition in the *Road Safety Act 1986* includes most physical roadways, regardless of their cadastral status – and so applies to the whole of the circumferential road.

The *Road Management Act 2004* offers an inclusive rather than comprehensive definition, covering all roads which are 'public highways' – which the road at Koondrook Cricket Ground isn't. How do we know that? Because on both the freehold and Crown portions the Council has every right to refuse entry to the public or to charge an entry fee.

The Public Land Consultancy has been providing professional development services across Victoria for 15 years. Our clients include every municipality in the State, and most of the major statutory authorities and government departments.

Here's the tricky bit: if this definition is *inclusive*, what else gets roped in? Answer – physical roads in Crown Reserves, National Parks, Reserved Forest and Alpine Resorts. How do we know that? Because their respective Acts tell us so.

Two thirds of the road lies in the Crown reserve, and therefore is a road within the meaning of the RM Act. Council has no discretion in this, but does have discretion in whether it is a 'public road' under that Act, to be placed on Council's road register. Council has no such discretion in relation to the freehold one-third: it is not a road for the purposes of the RM Act and therefore cannot be placed on the road register.



Koondrook Cricket Ground: the grey part is Crown Reserve; the buff part is freehold land.

So what? These curiosities are probably of no concern to anybody (except Lex Loci) until there's an accident. Which could be something as simple as tripping over a rough patch in the gravel – just ask Mrs. Irene Kennedy and the Shire of Campaspe.

On the two-thirds, Council can turn to the defences offered by the Road Management Act; on the one-third it can't – and must rely on common law defences, as impacted by Part XII of the *Wrongs Act 1958*.

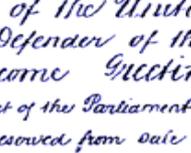
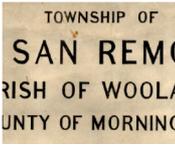
As *Terra Publica* goes to press, we don't know exactly how good the RM defences are, because we're waiting for a definitive ruling in *Kennedy v Campaspe*.

But there's one point on which we feel confident: all across the State we get public land facilities of mixed Crown/freehold status – and all across the State we need a better regime for their rationalisation. ♦

To understand more about the Road Management Act 2004, sign up to our one-day course on Roads Governance.

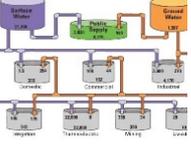
Half-day Training Courses

Cost: \$330 including GST, course notes and morning coffee

	<p>Aboriginal Heritage and Native Title David Yarrow Thursday 5 May, 2016</p>		<p>Managing Volunteers and Grants Richard O'Byrne Friday 24 June, 2016</p>
	<p>Discontinuation, Closure and Deviation of Roads David Gabriel-Jones Friday 11 March, 2016</p>		<p>Rivers and Lakes Governance David Gabriel-Jones Thursday 9 June, 2016</p>
	<p>Coastal Governance Richard O'Byrne Tuesday 12 July, 2016</p>		<p>Offences and Enforcement Astrid Di Carlo Thursday 14 April, 2016</p>
	<p>Easements and Covenants Astrid Di Carlo Tues 21 June, 2016</p>		<p>Unused and Little-Used Roads David Gabriel-Jones Wednesday 22 June, 2016</p>
	<p>Processing Subdivisions Grant Arnold Thursday 17 March, 2016</p>		<p>Land Information and its Interpretation Scott Jukes, LS Thursday 26 May, 2016</p>
	<p>Crown Land Governance David Gabriel-Jones Tuesday 1 March, 2016</p>		<p>Encroachments and Utilities in Road Reserves Astrid Di Carlo Wednesday 11 May, 2016</p>

Full-day Training Courses

Cost: \$550 including GST, course notes and working lunch.

	<p>Property Law for Statutory and Strategic Planners Astrid Di Carlo Thursday 18 Feb, 2016</p>		<p>Environmental Law for Public Sector Land Managers Grant Arnold Tuesday 3 May, 2016</p>
	<p>Land Law for Service Utilities Astrid Di Carlo Thursday 10 March, 2016</p>		<p>The Governance of Roads, Streets and Lanes David Gabriel-Jones Tuesday 9 February Wed 1 June – Geelong</p>
	<p>Leases and Licences of Public Land Karen Hayes Tuesday 8 March, 2016</p>		<p>Referral Authorities and the Victorian Planning System Grant Arnold Wednesday 18 May, 2016</p>

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

Unless otherwise noted, all courses are at **Law Institute of Victoria**, 470 Bourke Street Melbourne