

Five Years' Hard Work

The Government has committed itself to five years' hard work. When we say *itself* we really mean DELWP, Parks Victoria, municipalities across urban and rural Victoria, user groups, and the many, many other public land stakeholders.

Victorian Government Response

to the Victorian Environmental Assessment Council's Statewide Assessment of Public Land Final Report

The work in question is the implementation of the recommendations in VEAC's 2017 'Statewide Assessment of Public Land.'

Basic Reclassification of Crown Land

The matter which has preoccupied the Victorian Environmental Assessment Council (VEAC) for 40 years, ever since the days when it was the Land Conservation Council (LCC), has been the classification of public land. This area of land should be National Park; this parcel should be a Utility Reserve, and this parcel has no special values and should be sold off... Trouble is, the classifications used by LCC/VEAC have not aligned with the State's legislative apparatus. Government has now agreed that the two should align – an objective achievable only through legislative reform, supported by a massive amount of hard work.

The 19 VEAC categories will be recognised in new legislation; the plethora of Crown land reserve purposes (some 1300!) will be transposed onto them; and various types of forest-land will be rationalised and merged with uncategorised Crown land.

Total Re-write of Crown Land Legislation

This overhaul of Victoria's Crown land legislation is necessary, not merely to satisfy VEAC's objective of categorical neatness, but to recognise that we have moved out of the nineteenth century.

Victoria is no longer *Terra Nullius*, to be carved into rectangles, granted to worthy settlers, and brought under the axe and the plough.

The crude, quasi-zoning of the Crown Land Reserves system has long been overtaken by planning schemes, catchment management strategies, and multiple environmental and heritage protections. The primacy of parliament itself has been offset by the well-honed delegated systems of our civic and judicial apparatus.

So the National Parks Act will be expanded to include conservation parks and nature reserves, giving us a single protected areas Act. Within five years a new, simplified, public land Act will be replace the Land Act, Crown Land (Reserves) Act and Forests Act.

Reform of Crown Land Governance

It's not enough to just re-categorise land status of and reorganise the governing legislation. The Government is flagging massive reforms in how Crown land will be regulated, managed and tenanted.

We will see a new regulatory regime for Crown land reserves, abolition of the temporary-permanent system which has long impeded status-change processes; rationalisation of the unwieldy mess of leasing and licencing provisions, and gradual reform of the archaic arrangements whereby semi-private trusts hold conditional Crown grants over public land.

There may even be some breakdown in the artificial distinction which blights portfolios of 'local significance' public land held by municipal councils. At present, rational decision making is thwarted because some parcels in these portfolios are freehold land whose beneficial owner is the council, but others are Crown land whose beneficial owner is State Treasury. VEAC and the Government between them have not seen their way clear to simply donate Crown land of local significance to councils, but have at least flagged the possibility of donating the Crown land portions of split Crown-freehold reserves.

But what of the 2018 State election? The genesis of the VEAC report spanned the 2014 election and was thus, in party political terms, bipartisan. So even if government changes, the 5 years hard work will surely continue. ■

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Professional Development for Urban Planners, Water Authorities and Land Surveyors

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Can a Council discontinue a road which is still on its register of public roads?

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ABN 69 067 045 520

Principal: David Gabriel-Jones

Email: tterrapublica@publicland.com.au

27/539 St Kilda Road

Melbourne, VIC 3004

phone: (03) 9534 5128

postal: PO Box 2251

St Kilda West, VIC 3182

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Enquiries and Registrations

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Just a few of our clients in 2017. A pleasure to work with you!

Trestle Bridges

Picturesque, sure. Of heritage significance, sure.
Dangerous, probably. And potentially litigious...

One collapsed in Newcastle NSW, and gave us
the High Court case *Brodie v Singleton*, which in turn
led to the *Road Management Act 2004*

One collapsed in Fridays Lane, Bonnie Doon, and gave us the
Supreme Court case *Pulitano v Mansfield*, discussed below...



Goulburn River Bridge, Nagambie

Q and A

Question: Can a council discontinue a road which is on its road register?

*Question arising in the Supreme Court, July 2017**

Answer: Apparently not.

The Supreme Court was addressing itself to a road known as Fridays Lane, in Bonnie Doon. The Mansfield Shire Council had decided to remove the road from its road register and, at the same time, had decided to proceed to discontinue it altogether.

The first decision was purportedly made in accordance with section 17 of the *Road Management Act 2004* (the RM Act). This requires a road authority to decide that a road is 'no longer reasonably required for general public use' before it can make a decision to remove it from the register of public roads. However, the resolution passed by Council had failed to specifically address this criterion, and had not even mentioned Fridays Lane. Rather, it had simply ratified a new road register from which Fridays Lane had been omitted.

The Supreme Court was of the view that the only way a council can make such a decision, other than under delegation (which was not suggested here), is by resolution. It is not permissible to infer a council's purpose from an officer's report. Therefore the road had not been removed from the register, and was still a 'public road.'

Next, the court addressed the discontinuation – an action Council is empowered to undertake by section 207 of the *Local Government Act 1989* (the LG Act) – but only after exhibition under section 223 of that Act. Here the Court found Council had made various errors.

The decision to commence the exhibition had been made in terms which prejudged the outcome of the exhibition process: 'Council is of the opinion that the road is not reasonably required...' As the Supreme

Court found 'it is plainly beyond power for the Council to express a final view on the discontinuation... without having completed the process directed by section 223.'

Somewhat surprisingly, the Court then found that '**the discontinuation decision (under the LG Act) is predicated on the lawful and effective delisting of Fridays Lane from the road register (under the RM Act). This had not lawfully occurred.**'

To the best of our knowledge here at *Terra Publica*, there has until now been no suggestion that the discontinuation provision of the LG Act is unavailable for public roads under the RM Act. It had been assumed that discontinuation would put the ex-road beyond the scope of the RM Act, ineligible to qualify as a public road, and thus automatically removed from the road register. It seems this line of thinking was in error.

The Court asked whether this chain of decision-making had been *reasonable* – and came up with a resounding 'NO!' A decision to discontinue a road which was still listed on the road register '*would lack any rational foundation. There would be no evident or intelligible justification. It would be outside the framework of rationality that constrains the exercise of a statutory discretion...*'

The language of the judgement was perhaps a little florid, but the message is clear. So much depends on the words chosen for officers' reports, recommendations, and council resolutions. They should (again, using the words of the judgement) '*set out the actual path of reasoning leading to the ultimate conclusion*' by which such a discontinuation decision is made.

And, it now seems, such decisions must be very carefully sequenced. The removal from the road register must come first; the discontinuation must come second. ■

** Pulitano Pastoral v Mansfield Shire Council [2017] VSC 421 (27 July 2017)*

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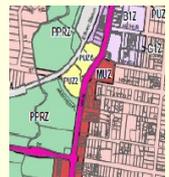
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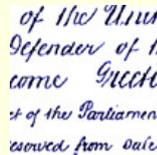
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