

Things change; things stay the same

It sounds better in French: *plus ça change, plus c'est la même chose*.

The year 2012 will see plenty of change, and plenty of non-change. Here at The Public Land Consultancy, we'll be trying to keep up with what's changing in land law, what hasn't changed, and what ought to change.

The new year will definitely bring Council elections. And, it seems, the chop for 3600 state public servants (we could nominate some candidates). But what will happen to land law?

There'll be a review of the Aboriginal Heritage Act, and a review of the planning system. We'll see the biennial property revaluation, and commence the five-yearly review of the Victorian Coastal Strategy.

But will we finally see cattle-free National Parks? Potholes filled in the Road Management Act? Rationalisation of easements and covenants? A reliable system of building permits? A usable toolkit to reform riverside land?

Our challenge at The Public Land Consultancy: keeping our existing courses up to date, developing new courses, and introducing refresher courses. This edition of *Terra Publica* focuses on our expanding training program for 2012.

CLIENT FEEDBACK...

"The outstanding thing I enjoy about your courses – in one solid day you go from the cradle to the grave on a subject. It's comprehensive, it's systematic, it's easy to understand. Honestly addressing such subjects is rare. And it's consistent with all the people who present your courses. They are absolutely excellent."

Councillor from a rural municipality after attending his fourth course.

LAND OWNERSHIP

...ain't what it used to be

There was a time when, if you owned the land, you owned everything on it – the water, the wildlife, the trees – and you held unrestricted usage and development rights. Not any more.

Question: if you own only a limited package of rights to 'your' land, who owns the rest? Well, that depends on the nature of the restrictions, and by whom they were imposed.

Water in waterways on your land is now owned by the Crown (sec 8, *Water Act* 1989); the trees might be owned by say, Hancocks (Part 4, *Climate Change Act* 2010); and if there's an easement, usage rights may be held by some service utility.

But what about restrictions imposed by planning schemes? You have rights to build to a height of say, three stories; who owns the rights to build higher? Answer: the public at large. Everybody. In other words, nobody. You can acquire those rights (and pick up a windfall gain) by getting a planning scheme amendment. The public has lost its equity in your land, and in return has been paid nothing.

Not so with other forms of covenant. Trust for Nature Covenants and Sec 173 Agreements under the Planning and Environment Act are well-known examples of rights being held by clearly defined entities which, one hopes, would relinquish them only for good public policy reasons.



One form of limitation on title is the 'restricted Crown grant.' Here the public equity in land is zealously guarded by the Department of Treasury and Finance, which is most unlikely to abandon it in return for some provision in a Planning Scheme.

Then there may be a private covenant over your land. Some previous landowner has retained a set of rights, presumably for private commercial reasons rather than public policy reasons. You can acquire those rights by various means, including purchasing them from the covenantor.

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NEW COURSES FOR 2012

- **Easements, Restrictions and Covenants**
presenter: Astrid Di Carlo – see page 2
- **Building Law and Regulation**
presenter: Tom Vasilopoulos – see page 3
- **Valuations, Rates and Charges**
details in next edition of Terra Publica
- **Local Laws and their Enforcement**
details in next edition of Terra Publica

Land Ownership

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Over the years, the law relating to easements and covenants has become increasingly complex. Property law has become entangled with planning law, private rights have been confused with public rights, and common law has been overlaid by statutory law. This brings us to a set of reforms proposed (Dec 2010) by the Law Reform Commission.

The recommendations aim to disentangle property and planning law, while modernising the relationship between them. Easements and restrictive covenants required for private purposes would be regulated under property law; easements and restrictions required for public planning purposes would be regulated under planning law.

Whether the Baillieu Government has the ticker to proceed with these reforms remains to be seen.

Meanwhile, the best we can do is to put together a training course to explain and explore the law as it stands...

* * * **NEW COURSE** * * *

**Easements,
Restrictions
and Covenants**

*What they are; how they are
imposed; how they can be removed*



Presenter: Astrid Di Carlo,
LLB, M Laws, BA, Dip Policy & Law
Special Counsel, Russell Kennedy, Solicitors

Details:- www.publicland.com.au/professional_development.html

CLIENT FEEDBACK...

- * *"The most relevant training ever completed by myself at (this company)" - Planner with international engineering firm*
- * *"(The Roads course) should be mandatory for all VicRoads staff" – Senior Engineer, VicRoads*
- * *"The best training course I have been to in years" – Field Manager with a Rural Water Authority*
- * *"I put my Public Land training notes in my 'BIBLE' folder." – Property Officer, metropolitan council*

Our top 30 training course clients, 2011

	No of students
Gippsland Water	69
Dept Sustainability & Environment	64
Melbourne Water	61
VicRoads	41
Dept of Transport	36
City West Water	34
Parks Victoria	34
City of Glen Eira	30
City of Bayside	27
Dept Planning & Community D'ment	25
Yarra Valley Water	25
City of Boroondara	23
City of Greater Geelong	22
City of Ballarat	20
City of Wangaratta	20
Coliban Water	17
City of Moonee Valley	17
Central Highlands Water	15
City of Greater Bendigo	14
City of Greater Dandenong	14
City of Hume	14
Shire of Moorabool	14
City of Brimbank	13
North Central CMA	13
Westernport Water	13
City of Wyndham	13
Shire of Macedon Ranges	12
City of Manningham	12
Shire of Mitchell	12
City of Melbourne	11
City of Monash	11
Barwon Water	10
VicUrban	10

Thank you for your support !

Q & A

Q: How permanent is a permanent Crown reserve?

Question arising from a consultancy relating to coastal Crown land

A: The short answer is: it's so permanent that you would need a new, site-specific Act of Parliament to undo it.

Here's how we arrive at this answer: the *Crown Land (Reserves) Act* provides (at section 10) that the Governor in Council (GinC) may revoke any temporary reserve – but there's no equivalent general provision in relation to permanent reserves. It follows that if a permanent reserve is to be chopped up or sold off or transformed into something else, it needs to be slotted into next year's 'Lands Miscellaneous' Bill.

Now we come to the longer answer. As with so many areas of land law, there are exceptions to the short answer. In this case the CL(R)Act itself provides three:-

- if a river moves from one area of Crown land to another area of Crown land, the GinC may cause the permanent reserve to follow after it (this is a worthless provision, because when rivers change course, they most inconsiderately move onto private freehold);
- if the site of a redundant school is permanently reserved, then the GinC may revoke it (this provision may be used occasionally);
- if a 'land agreement' made under the *Traditional Owner Settlement Act 2010* provides for Crown land to be re-reserved for some other purpose, then the GinC may make the agreed change (this relatively recent provision has yet to be used).

A further exception relates to Crown land reserved for multiple purposes ('recreation and ornamental gardens', perhaps) or for very broad purposes ('public purposes'). In these cases it is held that the GinC has power to narrow (but not broaden) the purpose or purposes.

* * * OLD COURSES CONTINUE * * *

- **Crown Land Law, Policy & Practice**
- **Land Law for Coastal Authorities**
- **Land Law relating to Rivers and Lakes**

Details:- www.publicland.com.au/professional_development.html

Building Standards ...ain't what they should be

Something that surely will happen in 2012 is an overhaul of the operation of the *Building Act 1993* and *Building Regulations 2006*.



According to the Auditor-General, Victoria has "a system marked by confusion and inadequate practice, lack of transparency and accountability for decisions. In consequence, there exists significant scope for collusion and conflicts of interest."

Municipalities "...apply varying interpretations of what the *Building Act* requires of them, resulting in further confusion and ad hoc practices."

So – time for us to offer a new one-day professional development course...

* * * NEW COURSE * * *

Building Law and Regulation



Presenter: Tom Vasilopoulos

*LLB, M App Sc, Grad Dip Building Surveying,
Building Surveyor and Building Inspector.*

We are very pleased to welcome Tom Vasilopoulos of the Victorian bar to our panel of expert presenters.

Tom has over 20 years experience in local government including 5 years as In-house Solicitor for Moonee Valley City Council.

He has regularly appeared in the Building Appeals Board, VCAT, the Coroners Court, Magistrates' Court and the County Court as instructing solicitor or as an informant.

Details:- www.publicland.com.au/professional_development.html

CLIENT FEEDBACK...

- * "Your courses should be part of everyone's professional development plan"
– General Manager, metropolitan council

Some of our most popular courses in 2011 ...

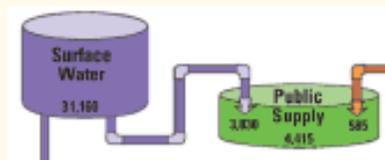


Land Law for Managers of
Roads, Streets and Lanes

Presented by **Andrew Walker**

LIV accredited specialist in Planning & Environmental Law

Attended by 220 students in 2011



Land Law for Service Utilities

Presented by **Astrid Di Carlo**

Special Counsel, Russell Kennedy Solicitors

Attended by 170 students in 2011



Public Land Leases and Licences

Presented by **Karen Hayes**

Property Manager, City of Yarra

Attended by 109 students in 2011



Environmental Law
- a Strategic Overview

Presented by **Brendan Sydes**,

Principal Solicitor, Environment Defenders Office

Attended by 98 students in 2011



Land Law and Subdivisions

Presented by **Dr David Mitchell**

Director, Land Centre, RMIT University

Attended by 73 students in 2011



Land Law for Managers
of Rivers and Lakes

Presented by **David Gabriel-Jones**

Principal, The Public Land Consultancy

Attended by 75 students in 2011



The Land, its Traditional Owners
and the Law

Presented by **David Yarrow** of the Victorian Bar

Attended by 55 students in 2011



Risk Management Law for Managers
of Public Land and Roads

Presented by **Michael Beasley**

Special Counsel, Russell Kennedy Solicitors

Attended by 67 students in 2011

Total course attendance for 2011 – 1190 students

For our full schedule of course presentations for February - June 2012, go to

www.publicland.com.au/pdf/Courses_Feb-Jun_2012.pdf

To set up an In-House presentation, or to book into one of our scheduled presentations,

contact Lesley Simons at lesley@publicland.com.au or on (03) 9534 5128.

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.