

Will do, Won't do, Might do.

As with all incoming administrations, the Baillieu Government is busy doing things, undoing other things and not doing yet more things. By one count, the Government has announced 41 reviews, 22 inquiries and investigations, 24 feasibility studies and 12 audits. Many of the things being done, undone, not done or inquired into touch on public land...



Are there big cats out there? The incoming Government has asked DSE to investigate.

The Flood-plain Buy-Back

One of the government's most significant policy initiatives must be the buy-back of flood-prone land along the lower Loddon River. It's an overdue acknowledgement that our forefathers may not always have made sound land-use decisions, that perhaps we should be reclaiming the public estate, and that the burden of fixing things up need not fall on the current landowner.

Traditional mechanisms for repositioning the public-private boundary have been pretty crude. Compulsory acquisition is fine for new freeways but otherwise politically unacceptable.

In the lower Loddon we see taxpayers' money being put into redressing land-use problems which can't be sheeted home to the current generation of landholders – irrigation farmers who find their properties under attack from climate change. Any farms voluntarily sold will be added into the public land estate, or covenanted and resold. It's a formula which sets a very valuable precedent.

We have a planning system which protects land from future inappropriate use through the Environmental Significance Overlay (ESO), the Land Subject to Inundation Overlay (LSIO), the Wildfire Management Overlay (WMO) and so forth – but doesn't seek to remedy pre-existing problems. The lower Loddon buy-back introduces a new paradigm.

If the community (as voters) want landscape or vegetation protected, then the community (as taxpayers) should be prepared to foot the bill. Using the lower Loddon formula, we can imagine dozens of schemes for buy-backs, covenanting and re-sale.

But how is it to be paid for? – Easy: by doing the reverse in urban areas – rezonings and consolidations which enhance land value, and harvesting the value-added for the public good. Not, perhaps, the sort of policy we'd expect from a Coalition Government.

The Road Management Act

VicRoads is finalising a 'focused review' of the *Road Management Act 2004*. Their paper on Crown land roads deals with so-called 'orphaned roads' – often connecting settled areas of a municipality to some nearby forest or park. The Act is in no doubt about the DNA of these roads, although they are disowned by both putative parents – the relevant council and DSE. The real question is not who controls them under the Act, but who uses them, who benefits from them, and who should pay for their upkeep.

But there's a major gap in the discussion paper: it avoids any mention of the 10,000 unused Crown land roads which criss-cross rural Victoria. They figure large in the workload of municipalities, but are well outside VicRoads' field of vision. The problems relating to these roads are legion – in fact, they warrant a whole further investigation in their own right. Perhaps when DSE's finished the big cat review.

The Aboriginal Heritage Act

Aboriginal Affairs Victoria is about to release a discussion paper on the 'efficacy and efficiency' of the *Aboriginal Heritage Act 2006*. Simultaneously, the Parliamentary Natural Resources Committee is looking into the operations of Registered Aboriginal Parties (RAPs). We predict there will be no radical change – even though, when the Bill was introduced in 2006, the Liberal Party described it as an unacceptable threat to the rights of landowners.

One matter which should be reviewed is the widespread misunderstanding of the word 'exempt.' Developers across the board imagine it means 'exempt from the obligation to protect Aboriginal heritage' when it really means 'exempt from the need for a mandatory Cultural Heritage Management Plan.' This misunderstanding permeates key cases heard by VCAT. It's a misunderstanding that, on paper at least, exposes developers to criminal convictions and massive penalties.

On the matter of penalties, any review of the AH Act should also investigate whether there have been any breaches of the Act – and if so, why no charges have been laid. One has to question any unenforced regulatory regime: if speed limits went unpoliced, we could expect their widespread violation.

The Urban Growth Boundary

One Baillieu initiative we're not altogether happy with is the review of Melbourne's Urban growth boundary. Dr David Mitchell has been appointed onto the Ministerial Panel – so we need to reschedule some 'subdivision' courses he would normally conduct. ♦

Q & A x 10y

It's the 10th anniversary of *Terra Publica* (original name – *The Crown Land Circular*). A feature throughout that period has been the stream of questions from readers and students at our courses. Here's a selection. For the full answers, go to www.publicland.com.au/terra_publica then to [archive](#).

March 2002

Q – Why do Crown land leases need Parliamentary Approval ?

This question is a reference to Section 17DA of the *Crown Land (Reserves) Act 1978* – a section which contains cross-references to other sections of the CL(R) Act (which in turn refer to yet other sections), and to other legislation (which has been superseded by yet other legislation) – so it's pretty cumbersome, to say the least...

July 2002

Q - What's 'Implied Management'?

The most common arrangement for the delegated management of Crown Land involves two quite distinct procedural steps. Firstly the land is reserved for a specific purpose, and secondly it is placed under a Committee of Management. 'Implied Management' is the term used when the first step has been taken, but not the second...

April 2005

Q – Are we really protected from Adverse Possession?

Section 7B of the *Limitations of Actions Act 1958*, which came into operation on 26 November 2004, provides that "council land" cannot be adversely possessed, regardless of the period of possession. Unfortunately, the definition of council land is restricted, and several types of land in a council's portfolio remain unprotected...

August-September 2005

Q – Can we rationalise our under-utilised Public Halls?

Question: - A community needs only 25 of the 40 public halls within its municipal boundaries. If 15 halls are sold for \$200,000 each, how much is available to refurbish the remainder? Answer: – Nil, because all the proceeds have disappeared into State Treasury.

October 2005

Q - Where is our seaward boundary?

If you get a counter inquiry about your municipal boundaries, your best initial answer is – check the yellow lines in the Melway. But even Melway doesn't attempt to define coastal boundaries...

April 2006

Q - Who is responsible for weeds on roadsides?

Back in April 2004 we addressed this question on behalf of a reader. Two years later, it's still unresolved...

June-July 2006

Q - How can a river reserve be removed from a paddock (where there's no actual river)?

Answers 1 and 2: It's difficult, but not impossible. Answer 3: There's a better way – equally difficult, but far more effective in the longer-term...

June-July 2007

Q - What is a Pre-emptive Right? Anything to do with Riparian Rights?

This question takes us back to the 19th century, when imported English land law was under challenge from an emerging Australian egalitarianism...

January 2008

Q - How do we stop Stock from Polluting a River ?

There are at least half a dozen heads of power which you might expect to regulate stock access to Crown waterways. Each one, however, has some deficiency which currently renders it ineffective...

October- November 2008

Q - Can a Sports Club be appointed as a Committee of Management?

No it can't – and there are good reasons why not...

May-June 2009

Q - Can a Committee for a Crown reserve also manage an unused road ?

No it can't –but there are good reasons why it should be able to...

September 2010

Q – We are 'deemed to be' a Committee of Management – what does that mean?

Here we are dealing with 'legal fictions' – the creation of a legal finding or consequence which is taken to have been the case when it is not in fact so...

For the full text of these questions and answers go to www.publicland.com.au/terra_publica_archive

Please continue to send your suggestions for Q & A to terrapublica@publicland.com.au

Readers of Terra Publica should not act on the basis of its contents which are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. They do not, nor are they intended to, constitute legal or specific advice.

Risk Management – the Take-Home Messages

Question arising at the end of our one-day “Risk Management” course



Having put in a whole day discussing risk exposure, duty of care, statutory protections and the insurance industry, our students turned around and asked – “So - what are the take-home messages?” Here’s our attempt at an answer...

Know Your Risk Appetite

Your organisation should clarify its degree of risk-aversion. All too often the politicians want to minimize expenditure AND minimize risk. For each class of risk you need to sit down and think whether it is acceptable within your corporate culture, and what price you are prepared to pay to avoid it. This should be a repeated exercise – say every three years.

Know Your Land

You should have a pretty clear idea about what land you own, under what arrangement you manage it, and where its boundaries lie. On a road reserve, you

need to know whether you’re looking at a ‘road’ or a ‘pathway’ or a ‘roadside’ – and whether its on your register, VicRoads’ register, or nobody’s register. If you don’t know this for every road and reserve in your territory, then at least you must have the ability to find out...

Document Your Systems

Given the importance of the ‘policy defence’ you need to have well-documented management plans, maintenance programs and response systems. They don’t have to be unduly onerous (maybe your policy is to leave the potholes unfilled) – but you must be able to establish that you have complied with your own standards.

Learn from Your Mistakes !

No-one wants disasters – but when inevitably they occur you should see them as learning opportunities. In fact, overcome your embarrassment and share your mistakes with your constituency and your neighbors. There’s no shame in making a mistake once – but to make it twice would be reprehensible.

Don’t Forget Ethics

Built into your corporate culture must be a view on whether you really want to hide behind statutory defences; whether you do only what you must and no more. Our own view at Terra Publica is that municipalities and other public-sector land managers should go the extra yards to assist their constituencies – but they need a documented policy explaining the circumstances in which they do so. ♦

Risk Management and the Law

A One-day course for Managers of Roads and Public Land

The risks: injury to the public, road and traffic accidents, loss of assets, workplace injury...

The case law: Shirt, Ballerini, Brodie, Gosling, the Casey landfill, the St Kilda Palace...

The statutes: the *Wrongs Act* 1958; *Road Management Act* 2004; the *OH&S Act* 2004...

Forthcoming presentations: Friday 29 July; Wednesday 31 August 2011



COURSE PRESENTER

MICHAEL BEASLEY

Special Counsel,
Russell Kennedy Lawyers

Michael has 28 years experience as a lawyer specializing in risk-related law. Through Civic Mutual Plus and the insurance brokers Jardine Lloyd Thompson he acted on behalf of many municipalities and water authorities. Earlier, he was Principal Legal Advisor with the Victorian Government Solicitor and Senior Lawyer with the Victorian State Insurance Office.

Presenters needed for three courses...

- Crown Land Law, Policy & Practice
- Land Law for Coastal Authorities
- Land Law for Managers of Rivers and Lakes

You’ll find details of the courses at www.publicland.com.au/professional_development

Do you think you have the qualifications ? Call David on (03) 9534 5128

SOME OF OUR ONE-DAY PROFESSIONAL DEVELOPMENT COURSES

Land Law for Managers of Roads, Streets and Lanes

Presented by Andrew Walker LLB, BSc

How Victoria's roads are owned, controlled and managed; the roles and responsibilities of Councils, VicRoads and DSE; the complex legislation governing roads; how road reserves are created and discontinued; the evolving body of law and policy associated with roads

Forthcoming presentations:

- Tues 19 July – Traralgon
- Tues 30 August – Melbourne

Public Land Leases and Licences

*Presented by Karen Hayes,
BA, BBus, Grad Dip Property*

Relationships between public sector landlords and their tenants; the types of Crown land and freehold land which may be leased or licensed; the legislation governing leases and licences; the special requirements for Crown tenures, and residential and retail tenures.

Forthcoming presentation:

- Fri 22 July – Wangaratta
- Fri 5 August – Traralgon

The Land, its Traditional Owners and the Law

*Presented by David Yarrow
BSc, LLB, LLM, MSc*

A one-day introduction to the law governing Native Title and Aboriginal Heritage in Victoria; the new Traditional Owners Settlement Act; what it means for Koori people, statutory authorities and land developers in your area. Where possible, we run this course in collaboration with the relevant Aboriginal community.

Forthcoming presentations:

- Mon 8 August – Traralgon
- Fri 19 August – Horsham

Crown Land Law, Policy and Practice

*Presented by: David Gabriel-Jones
MPPM (hons), Dip Civ Eng*

A large proportion of any Council's land portfolio is Crown land. This course provides a sound overview of the legislation governing Crown land in Victoria, the administrative arrangements for its governance, and the major policy considerations affecting its planning, use and development

Forthcoming presentations:

- Wed 27 July Traralgon
- Tues 9 Aug Wangaratta

Land Law and Subdivisions

*Presented by Dr David Mitchell
PhD, BAppSc, Licensed Surveyor*

The processes of land subdivision; how the Subdivision Act interacts with the Planning Scheme, the Transfer of Land Act, the Sale of Land Act and the Owners Corporations Act; variations such as subdivisions by acquiring authorities, building subdivisions and staged subdivisions; the legacy of past systems of subdivision in Victoria

Forthcoming presentations:

- Thurs 28 July – Melbourne
- Fri 26 August – Melbourne

Vegetation and the Law

*Presented by Brendan Sydes, Principal
Solicitor, Environment Defenders Office*

A How Planning Schemes govern the clearance of native and other vegetation; the provisions of the Flora and Fauna Guarantee Act 1988 and the Catchment and Land Protection Act 1994; the Environment Protection and Biodiversity Control Act 1999; how roadside vegetation is dealt with under the Road Management Act 2004...

Forthcoming presentations:

- 21 July – Melbourne
- 18 Aug – Ballarat

Land Law for Service Utilities

*Presented by Astrid DiCarlo,
LLB, LLM, BA, Grad Dip Policy&Law*

How service utilities hold, occupy and use land for their infrastructure; how easements and reserves are created and abolished; utilities' rights of entry; how utilities control and use road reserves; the legal status of encroachments and how to deal with them

Forthcoming presentation:

- Tues 16 Aug – Melbourne

Land Information and its Interpretation

*Presented by Jeremy Pearce
Licensed Surveyor*

This one-day course examines the complexities of the Victorian cadastre – its content, sources, and custodians; the law under which it is maintained and governed; it also includes a real-time walk through of on-line information sources at Land Victoria and the Titles Office.

Forthcoming presentations:

- Wed 20 July – Melbourne
- Wed 24 Aug – Melbourne

For full details of all our courses go to - www.publicland.com.au/professional_development

To engage us to deliver a course in-house at your offices contact Lesley Simons at lesley@publicland.com.au or on (03) 9534 5128