

Not another Restructure!



Departmental restructures often seem like a waste of time. The creation of 'Land Use Victoria' may, however, be different.

LUV has been constituted from familiar entities including Land Titles, the Surveyor-General and the Valuer General – but with additional functions, such as providing whole-of-government property advice and coordinating government land use.

The first big test of LUV is upon them right now: drafting the Government's response to VEAC's recommendations for the reform of public land governance.

VEAC (that's the Victorian Environmental Assessment Council) has made a series of far-reaching recommendations for legislative reform and systems redesign – and the Government has six months in which to respond. Judging by responses to previous VEAC investigations, we may see their thirty recommendations accepted, watered down, put on ice or politely rejected. We hope to see responses at the positive end of this spectrum.

For the full set of VEAC recommendations, [click here](#).

From 1300 down to 20

VEAC's recommendation **R3** is that the purposes of Crown land reserves be rationalised. That's not merely rewriting the list of purposes in the Crown Land (Reserves) Act itself, but rationalising the 1300 separate purposes of some 10,000 existing reserves around the State. The over-simple response would involve a very long schedule appended to a new Act, whereby the purpose of each and every reserve would be instantaneously re-ordained. The over-complex response might involve a travelling quasi-judicial panel checking out each reserve one-by-one and submitting its findings for ministerial or even parliamentary ratification.

We would hope for a process which could take a year or two, conducted perhaps on a municipality-by-municipality basis. A set of initial purpose-transitions would be posited, the repercussions discussed, and comment invited via the relevant delegated managers. The same process could consider the appropriate set of regulations for each reserve, thereby giving effect to VEAC's recommendation **R8**.

One area where we hope LUV lays groundwork for building on VEAC's report is the role of parliament. In recommendation **R10**, VEAC proposes abolition of the temporary/permanent categorisation of Crown reserves (we concur – this is a system which sees parliament addressing itself to utter trivia), but retention of a parliamentary role for nature reserves, bushland reserves, regional parks and coastal reserves. We beg to differ – a parliamentary role should be associated not with a reserve's purpose, but with its level of significance.

National, State, Regional, Local...

VEAC points in this direction in **R11**, which recommends that 'a process be established to designate a class of reserve into which individual reserves could be nominated that would retain ... a parliamentary role if warranted by their state or strategic significance.'

Here we think VEAC could have been a little more prescriptive. At numerous points the report suggests that public land may be of national, state, regional or local significance – a categorisation which should surely have been explicitly recommended in **R11**. This would then inform legislative and policy positions relating to a reserve's ownership, management accountability, and change processes. ■

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- Our full suite of professional development training courses for the remainder of 2017

VEAC and the Rural Landscape

VEAC has recommended that all public land be re-classified into 20 categories. Most are clearly intended for a non-urban landscape.

From category 1 (National park) through to category 13 (Alpine resort) they will readily be applied to broad-acre tracts of Crown land in the countryside, the ranges and the coast.

At the same time, VEAC has restated its long-held concern about all those linear reserves (roads, railways and rivers) which define so much of our rural landscape, and which suffer degradation due to their relatively high perimeter-to-area ratios.

R23 *An inventory of road and rail reserves be developed and significant native vegetation values mapped, as outlined in recommendations R4 and R5 of VEAC's Remnant Native Vegetation Investigation of 2011.*

Our comment here is that many of the linear reserves with significant remnant vegetation are government roads which have been declared to be unused, and are held by abutting farmers under a grazing licence. Despite their strategic and conservation importance, they have not been given the same attention as water frontages. We'd like to see a thorough review of law and policy relating to them.

R24 *An inventory be compiled for land along waterway frontages, including ownership, management, values and uses to assist planning and decision making.*

Here we have a surprising (and welcome) hint from VEAC. The mention of 'ownership' suggests that VEAC is looking beyond the public land boundary to the abutting freehold land. If so, we can only applaud: no inventory of riparian values can be confined to the Crown land side of some boundary set by a nineteenth century surveyor.

R26 *Enhanced support for community-based committees of management be provided with additional funding for a system of regional coordinators*

Again, we applaud. Perhaps number one amongst the public land resources Victoria needs to nurture is community participation. Our system of volunteers managing local Crown reserves is under threat, eroding away under the pressures of uncertain funding and administrative workloads.

Of particular interest is VEAC's suggestion that these coordinators be located 'in DELWP or other agreed regional agency.' Look out DELWP, this could be handed over to Regional Development Victoria! ■

VEAC and the Urban Landscape

Two of VEAC's recommended categories have a distinctly urban flavour. Category 14 is 'Community use reserve' and category 15 is 'Utilities and government services reserve'.

But we wonder whether these two will accommodate the plethora of purposes for which urban Crown land has been reserved over 180 years.



But what about "Recreation of Elderly Persons and Underground Drainage??" Believe it or not, that's the official gazetted purpose of the Crown reserve alongside Luna Park, St Kilda.

It could be argued that, broad as they are, these two categories will be sufficient: that all the relevant concerns over works, usage and tenures can be accommodated by zones and overlays in municipal planning schemes. But when we look at the range of types of reserve in question, we wonder.

At one end of the spectrum we find the MCG and the Royal Botanic Gardens – Crown reserves with their own Acts, and in effect beyond the reach of the VEAC reforms. At the other end of the spectrum there's land reserved 'for recreation of elderly persons and underground drainage,' and land reserved for 'the reception control and treatment of inebriates.' No kidding. Long overdue to be subsumed into some broader statutory schema.

Again, we come to the idea that Crown reserves should be categorised according to level of significance. The Exhibition Buildings are of international significance; Lake Wendouree in Ballarat is of regional significance, and the Horsham sale yards are of local or municipal significance. This type of analysis would surely help refine whatever classification system we end up with. ■

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.

Q and A

Why do some councils paint trip hazards yellow?

Question discussed at one of our 'Works on Roads' courses.

There's a good deal of contradictory opinion on the matter of footpath hazards. Interstate courts and the High Court itself (working within the common law) have rejected claims by injured pedestrians, ruling that they should simply watch where they're walking. *Terra Publica* reviewed these cases in [March 2016](#).



We guess that pedestrians would see this hazard, even though it's not painted yellow.

In Victoria it's different. Here we work under the *Road Management Act 2004*, which requires a road authority to inspect, maintain and repair a public road in accordance with its own road management plan, if it has one – and all Victorian councils have chosen to have one.

So around the State we have inspectors checking defects in footpaths against whatever intervention level their council has adopted, within whatever timeframe has been adopted. With any luck, they'll have smartphone technology which allows them to upload the details immediately, eliminating any uncertainty about what they find, and when they found it.

In our opinion, these inspectors should carry a spray can of yellow paint. Find a hazard that requires remediation: give it a good blast. It might be some time before the asphalt crew pays a visit, or the guy with the concrete grinder.

In the meantime, paint it yellow! As well as minimising the risk, you're letting pedestrians know that the hazard has been noted, that its remediation is already on the council's works program, and that their rates money is being wisely spent. ■

Questions ?

Our retainer-based advisory service may be the answer.

We can provide:

- a ten minute phone discussion,
- a brief exchange of emails,
- a more formal written opinion,
- or even a 'Q & A' article in *Terra Publica*...

In 2017 we have reconfigured our one-day roads courses...

Roads Governance

(previously 'Land Law for Managers of Roads Streets and Lanes')

- The ownership, control and management of roads, streets and lanes, urban and rural
- Their creation, closure, deviation and discontinuation.
- A look at half a dozen Acts of Parliament relating to roads.
- A look at the most relevant case law; clarification of legal concepts and terminology

**Tuesday
3 October
Bendigo**

**Friday
6 October
Geelong**

**Friday
10 November
Melbourne**

The Law relating to Works on Roads

- The roles and responsibilities of Road Authorities, utilities and infrastructure managers
- The Acts, Regulations and Codes governing road works
- Issuing and enforcing Works on Roads permits for private builders
- The law governing works safety and traffic control

**Tues 22 August
Melbourne**

**Fri 15 Sept
Wangaratta**

**Tues 26 Sept
Horsham**

**Tues 10 Oct
Warragul**

Offences and Enforcement on Roads

- Road-related law: Acts, Regulations and Local laws
- Authorised Officers and their powers of enforcement
- Infringement Notices, Procedures and Penalties
- Taking a prosecution to the Magistrates' Court

**Tuesday
17 October-
Melbourne**

This course satisfies Section 71 of the Road Management Act 2004, which requires Authorised Officers to hold appropriate qualifications or have appropriate training – subject to the endorsement of their council or agency

To book into these courses, or to organise an in-house presentation, call [Jacqui Talbot](#) on (03) 9534 5128

Our One-day Training Courses

August to December 2017



The Law governing Subdivisions

Wed 16 August – Melbourne



Property Law for Statutory and Strategic Planners

Tues 29 August – Melbourne



Roads Governance

*Thurs 17 August – Melbourne * FULL
Tues 3 October – Bendigo
Fri 6 October – Geelong
Fri 10 November - Melbourne*



Crown Land Law, Policy and Practice

*Wed 6 Sept – Melbourne
Mon 23 October – Ballarat
Mon 30 October – Wangaratta
Mon 13 Nov - Warrnambool*



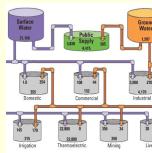
Native Title and Aboriginal Heritage

Fri 1 September – Melbourne



Leases and Licences of Public Land

*Fri 8 September – Melbourne
Fri 20 October - Geelong*



Land Law for Service Utilities

Tues 12 September - Melbourne



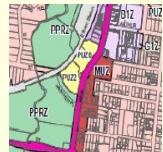
Coastal Land Governance

Wed 20 September - Geelong



The Law Relating to Works on Roads

*Tues 22 August – Melbourne
Fri 15 September – Wangaratta
Tues 26 September – Horsham
Tues 10 October – Warragul*



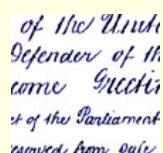
Referral Authorities and the Victorian Planning System

*Thurs 12 October – Melbourne
Thurs 9 November – Horsham
Tues 5 December – Warragul*



Offences and Enforcement on Roads

Tues 17 October- Melbourne



Restrictions on Title including Easements and Covenants

Tues 24 October - Melbourne



Land Law for Managers of Rivers and Lakes

*Thurs 16 November – Warragul
Wed 22 November - Wangaratta*

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

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

All courses are of one-day duration;
starting time 9:00 am, finish 4:30 pm

For details of all these courses go to http://www.publicland.com.au/professional_development.html