



The Crocodile that Ate the Powerboats

Well, it's not exactly a crocodile. It's a fossil which might turn out to be part of the jaw of an extinct species of crocodile.

The powerboats belong to the Beaumaris Motor Yacht Squadron (BMYS), which has plans for a \$20 million expansion of its facility on leased Crown land. A rock breakwater, 120 more wet-berths, a three-story dry-stack, a new club house and a 'function facility.'

Lined up against the development is a growing [consortium](#) of conservation groups. This site is a fossil-bed of extinct whales, seals, penguins, giant toothed seabirds, turtles, sharks, mega-kangaroos, wallabies, and wombats. And just possibly, a Miocene crocodile.

The US-based [Paleontological Society](#) describes it as a site of international significance, to which the powerboat expansion will cause 'irreparable damage.'

In 2008 the Commodore lobbied his own members: *"If we do nothing when our lease comes up for renewal in 2018, BMYS may have a difficult time explaining what we have done as custodians of our leased area. It may make the renewal of our lease difficult at that time."*

A curious argument. We have already buried over 1.2 hectares of the fossil site, so to ensure our future

tenure let's cover over another 3740 square metres. It's an argument which didn't even gain majority support within the Club.

The heat now turns onto the State Government. Minister Richard Wynne has to consider the planning issues – because unlike much of Victoria's foreshore, the relevant planning scheme does extend out to sea. Minister Lisa Neville has to consider granting Coastal Management Act consent, because this is Coastal Crown land. And (this is what the Commodore feared) she has to consider whether to renew the BMYS lease, to vary the lease, or indeed whether to issue a new lease to some entity other than the BMYS. The anti-marina lobby is already imagining a new fossil-world discovery centre, perhaps an adjunct of the Museum of Victoria.

Then there's the Boon Wurrung people, well aware that this is their country, and that these days the Native Title Act and the Traditional Owner Settlement Act will not allow their rights to be trampled on – as happened back in 1958, when the BMYS first occupied the site.

For the Government, it's a political dilemma. Extinct fossils don't get a vote. Recreational boaters do – all quarter of a million of them – and they talk in terms of 'latent demand.' But the boating industry may not be so eager to support the BMYS, which is [on record](#) as intending to keep the expanded facilities entirely for its own 700 members: *'There will be no increase in membership numbers as part of the project.'*

It would be so much simpler if we had a clear and equitable system for buying out Crown tenants at the end of their lease term – for recognising something we call 'tenant's residual interest.'

In NSW, a Crown tenant can make capital improvements safe in the knowledge that, at the end of their term, they may be reimbursed for the unamortised value of their investment. No need to demand ever-longer lease terms; no need for outgoing tenants to so vigorously defend their territory in the face of extinct crocodiles. ♦

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Four Courses for Public Land Managers

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- *Native Title*
- *Environmental Law*

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Our calendar of one-day courses and half-day workshops

March-May 2015

For past editions of Terra Publica go to www.publicland.com.au/terra_publica_archive.html

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Evan Walker
will be remembered...

When no shadow falls on Southbank
When the umpire calls 'quiet please' at the Tennis Centre
When Lorikeets swarm in the Beaconsfield Pde Palms
When buskers sing in the Swanston Street Mall
and
When the lights go on at the MCG.

Next Edition...

The Rate Cap and Public Land

In next Terra Publica we will be looking at ways of economising on public land without simply exploiting and commercialising it.

We'll be revisiting some of the suggestions offered under the heading '[The Money Tree](#)' in our Easter 2012 edition.

We would welcome your suggestions and experiences. Please write to us at dgj@publicland.com.au

The Public Land Consultancy
Is pleased to have been recognised
by inclusion on the

**PLACEMAKING
LEADERSHIP COUNCIL**

<http://www.pps.org/about/leadership-council>

Is Common Property Public Land?

Question asked by a lot owner wanting to exclude the public from her driveway.

Common property is land set out on a Plan of Subdivision, and owned by an Owners Corporation (OC). It is private freehold land, where the OC itself may choose to allow or prevent public access.

So if our questioner is concerned about people wandering around her unit, she should approach the OC about putting in a better gate – a measure which could not be portrayed as a road closure or a road discontinuation.

In some situations common property is intended to serve as a driveway, and operate very much like a road. Other common property (associated with a row of shops, for instance) might serve as a parking area not only for lot owners, but also for the public at large.

Is it public land? It's certainly not owned or controlled by any public sector agency – although an OC might enter into an agreement with the local Council to manage it.

Regardless of the governance arrangements, it may be regarded as a 'road' for the purposes of the *Road Safety Act 1986*, and a 'public place' for the purposes of the *Summary Offences Act 1966*.

The definition of 'road' in the former Act ropes in anything that functions like a road – regardless of its cadastral status. The definition of 'public place' in the latter Act encompasses "any ... footway footpath court alley passage or thoroughfare notwithstanding that it may be formed on private property."

Anyone using such common property therefore has to obey the Road Rules, and must not behave in 'riotous or disorderly manner.' That's anyone, whether they are members of the public, trespassers, or even the lot owners themselves. ◆

New One-Day Course...

Offences and Enforcement on Public Land

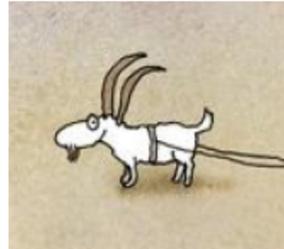
- Refresher: The law in Victoria: what the law regards as 'Public Land'
- Legislation governing Public Land
- Regulations, statutory rules and local laws
- How offences and penalties are set
- Offences relating to roads, parks and reserves, and 'Public Places'
- Enforcement – the role of authorised officers
- Notices, summonses and PINs
- How to find precedents and case-law; when to go to the lawyers...

Presenter – Astrid Di Carlo

Is Michael Leunig's Goat Committing an Offence?

Question we asked ourselves on reading the Summary Offences Act.

We still think the *Land Act 1958* takes the cake for archaic stupidities – but the *Summary Offences Act 1966* runs a close second.



Section 8 of that Act provides that any person who drives a dog or goat harnessed or attached to a vehicle in or through a public place is guilty of an offence, and liable to incur a fine of 5 penalty units (which currently works out at \$737.55).

Note however – it's not the goat himself who's committing the offence, it's his driver – Vasco Pyjama or maybe Mr Curly.

This Act is dated 1966. Did the Bolte Government really think that goat-carts were a problem? It seems that what happened then was that Parliament simply rolled over some earlier legislation. We've traced the section back as far as the *Police Offences Act 1890* – and it probably goes back even further. Perhaps goat-carts were an issue on the goldfields.

Is this bit of legislative stupidity a serious problem, or just a benign anachronism? Same question could be asked about (for instance) section 110(3) of the *Land Act 1958*, which specifies what happens if the lessee of reclaimed swamp-land goes mad.

These days we're familiar with the idea of the ten-year sunset. A Council's local laws self-destruct at the age of 10. So do many (not all) regulations. It's a way of forcing our esteemed law-makers to consider the necessity and efficacy of the statute book.

A question which should at least be considered by the Law Reform Commission is the sunset of Acts themselves. And here at *Terra Publica* we think the Parliamentary Scrutiny of Acts Committee could put its collective mind to the question of goat-carts. ◆

The Public Land Administrator's Tool-Kit

These one-day courses are essential learning for anyone controlling or managing public land.

Coastal Adaptation

For staff of Councils and Statutory Authorities – including Strategic Planners, Infrastructure Managers, Environmental Scientists and other personnel with responsibility for the governance and management of coastal lands and waters.

Consultancy experience which we bring to this course

- HMAS Canberra dive-site
- Geelong Eastern Beach Spa Complex
- HMVS Cerberus, Half Moon Bay
- Martha Cove Marina
- Werribee South boatsheds
- Port Phillip aquaculture leases
- Wyndham Cove Marina
- Bayside Bathing boxes

21 April
LIV
Melbourne

Course Presenter

Richard O'Byrne, Associate with
The Public Land Consultancy.

Native Title and Aboriginal Heritage

- Culture, Colonisation and Country
- Aboriginal Heritage and the Law
- Native Title and the Law
- The Native Title Settlement Framework

Whenever possible, we invite representatives of the local Aboriginal community to participate in presentations of this course

16 April
LIV
Melbourne

Course Presenter

is David Yarrow of the Victorian bar. David has extensive experience in the law relating to Indigenous Australians, both in Victoria and Queensland.

Environmental Law for Councils as Land Managers

This one-day course focuses on the land which Council itself manages, and the law governing its usage and protection.

The Day's Objectives:-

- To clarify which land a Council controls and manages, including reserves, roads, and roadsides
- To explain a Council's legal powers and obligations as land manager
- To provide a clear overview of environmental legislation, regulation and enforcement
- To introduce strategies for risk identification, prioritisation and management

18 March
Melbourne
23 April
Wangaratta

Course Presenter

Grant Arnold, Associate with
The Public Land Consultancy.

Riparian Land Law

Land Law for Managers of Rivers and Lakes

- The Land Alongside Rivers and Lakes
- Riparian Agriculture
- Protecting Riparian Values
- Community Engagement
- Native Title & Aboriginal Heritage
- Agency Roles and Responsibilities
- The Need for Reform

5 March
Echuca
19 March
Melbourne

Course Presenter

David Gabriel-Jones, Principal,
The Public Land Consultancy

Readers of Terra Publica should not act solely 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.

Our Program of One-Day Training Courses – March to June 2015

Cost: \$495 including GST, course notes and working lunch.

The Law and Subdivisions <i>Grant Arnold, Associate</i>	Thursday 5 March	Melbourne
Environmental Law for Councils as Land Managers <i>Grant Arnold, Associate</i>	Wednesday 18 March Thursday 23 April	Melbourne Wangaratta
Land Law for Managers of Rivers and Lakes <i>David Gabriel-Jones, Principal</i>	Thursday 5 March Thursday 19 March	Echuca Melbourne
Referral Authorities – Doing it better <i>Grant Arnold, Associate</i>	Wednesday 11 March	Melbourne
Crown Land Law, Policy and Practice <i>David Gabriel-Jones, Principal</i>	Thursday 12 March Monday 27 April Monday 25 May	Wangaratta Ballarat Melbourne
Re-Imagining Urban Public Land <i>David Gabriel-Jones, Principal</i>	Tuesday 17 March	Melbourne
Land Law for Service Utilities <i>Astrid Di Carlo, Associate</i>	Tuesday 24 March	Melbourne
Planning Law – A strategic overview <i>Grant Arnold, Associate</i>	Wednesday 25 March	Melbourne
Native Title and Aboriginal Heritage <i>David Yarrow, Victorian bar</i>	Thursday 16 April	Melbourne
Land Law and Coastal Adaptation <i>Richard O'Byrne, Associate</i>	Tuesday 21 April	Melbourne
Managing Volunteers and Grants Programs <i>Richard O'Byrne, Associate</i>	Tuesday 28 April Thursday 21 May Wednesday 17 June	Wangaratta Traralgon Geelong
Offences and Enforcement on Public Land <i>Astrid Di Carlo, Associate</i>	Tuesday 5 May	Melbourne
Land Law for Managers of Roads, Streets and Lanes <i>David Gabriel-Jones, Principal</i>	Thursday 14 May Thursday 28 May	Ballarat Melbourne
Leases and Licences of Public Land <i>Karen Hayes, Property Coordinator, City of Yarra</i>	Tuesday 12 May	Melbourne
Easements and Restrictive Covenants <i>Astrid Di Carlo, Associate</i>	Tuesday 16 June	Melbourne
Risk Management Law <i>Michael Beasley</i> Land Information and its Interpretation <i>Scott Jukes, LS</i> Building Law – a Strategic Overview <i>Tom Vasilopoulos</i>	Dates to be fixed	Melbourne

Our Program of Half-Day Workshops

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

Crown Reserves: Assets or Burdens? <i>Grant Arnold, Associate</i>	Friday 13 March	Melbourne
Encroachments onto Council-Controlled Land <i>David Gabriel-Jones, Principal</i>	Friday 20 March	Melbourne
Unused, Little-Used and Discontinued Roads <i>David Gabriel-Jones, Principal</i>	Friday 27 March	Melbourne

Enquiries and Registrations: Jacqui Talbot – jacqui@publicland.com.au – phone 9534 5128

In addition to our scheduled presentations, you can engage us to present our training courses in-house at your own offices. Discounts for course hosts.