

LEX LOCI'S TRAVELS

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An irregular one-pager from The Public Land Consultancy

Lex Goes Underground with Tunnel Boring Machines, and Wombats

Lex has gone underground. He's somewhere beneath Melbourne, checking out the new Metro tunnel.

Perhaps he's under public land, like Swanston Street, or University Square in Carlton. Perhaps he's under private freehold, like Young and Jacksons hotel, or people's houses in North Melbourne.

Down here, it's a bit difficult to tell exactly what land you're under. On the surface, establishing title boundaries is difficult enough, but as for the subterranean cadastre – well, that requires some really fancy surveying. Anyway, why does it matter?



The famous Warrnambool Wombat

And while we're underground... Lex read that during the bushfires, wombats sheltered other animals in their burrows. But then he was disappointed to discover that the story was [fake news](#). Still, it was a good story while it lasted.

As Lex knows, land is three-dimensional. Land is not just the surface of the earth but, unless otherwise defined, extends indefinitely both upwards and downwards... He recollects his Latin lessons: *ad coelum et ad infernos* – from heaven to hell.

An idea such as that could be a serious impediment to major projects like the Metro tunnel. Back in the 1970s, when the underground loop went in, the Hamer Government had to get into compulsory acquisition of subterranean freehold (possibly involving court challenges over compensation), and revocation of reserves over subterranean Crown land (possibly involving special legislation). It was much the same for the Burnley tunnel.

These days such complexities have been largely overcome. The *Major Transport Projects Facilitation Act 2009* sets up administrative systems for acquiring land at strata. Between them the Governor in Council, the Minister for Transport Infrastructure, and the Surveyor General place a notice in the Government Gazette and *hey presto*, the subterranean land becomes Crown land reserved for the purposes of the relevant project.

As Lex finds himself observing recently, the idea of indefeasibility of freehold title isn't what it used to be.

Next thing, we'll have to share our burrows.

See you there! Lex Loci