

TERRA PUBLICA

AD HOCKERY *from* LEX LOCI ... 11 MAY 2015

An occasional one-pager from The Public Land Consultancy

PLACEMAKING seems to be the NBT (Next Big Thing)

We don't remember it as a subject at Uni – but there's a new discipline slotting itself in somewhere between strategic planning, landscape architecture, and property management. It calls itself 'placemaking.'

The international advocate of this discipline seems to be Project for Public Places (PPS), New York. Check them out at www.pps.org

Placemaking is happening in Melbourne, too. We have a facebook page Placemaking Network, Melbourne. For access, just contact Jacqui Talbot – jacqui@publicland.com.au

A couple of recent posts:



Lord Mayor Robert Doyle (why do we think of him as Sir Robert?) wants to replace bitumen with pedestrian-space. On his list is Southbank Boulevard.

Yes! Let's connect the MTC/Recital Centre through to the Arts Centre... Open up the bluestone façade on the north side... put some ARTS there rather than bleak car-park... But please leave the trams, Sir Robert.

Placemaking on the move... Manningham Council wants to turn this unloved corner of Tunstall Square, Donvale into a 'high quality public plaza' ... but how best to achieve it? Our advice to them - take a look at clause 11, Schedule 11, Local Government Act.

Looking forward to a relaxing pastry and espresso there, one day soon



Join the Placemaking Network Facebook Group – jacqui@publicland.com.au

See you there! Lex Loci

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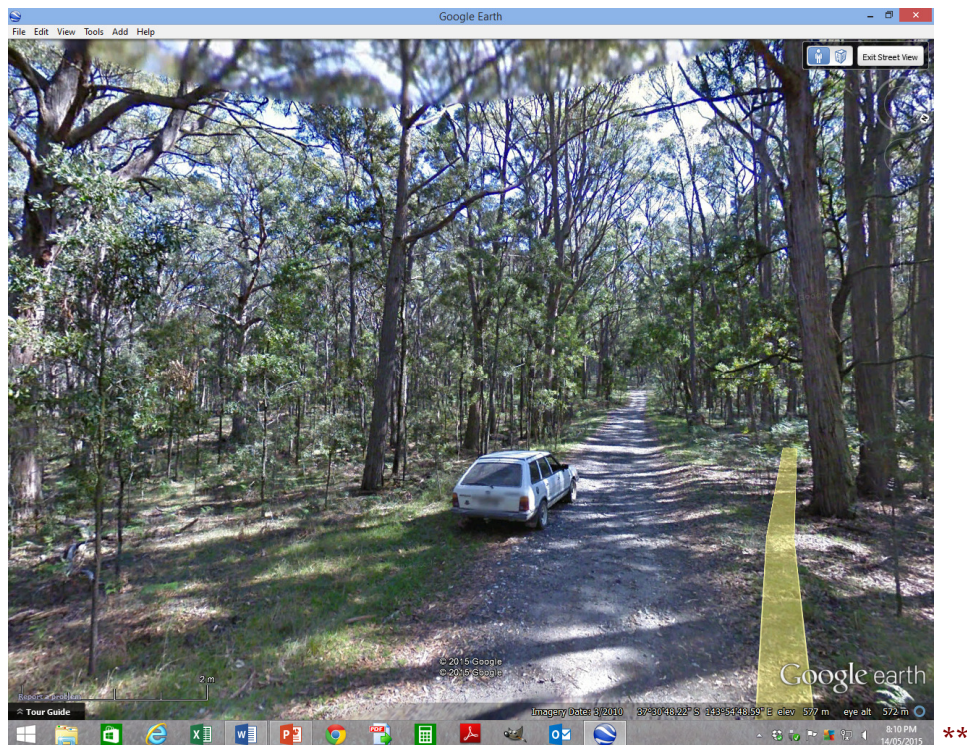
AD HOCKERY *from* LEX LOCI ... 15 MAY 2015

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Is this Forest Road actually in the Forest?*

Certainly looks like it. It's a road in the bush: trees and understory on both sides. And maybe wombats. But when we look at the cadaster (courtesy of the Parish Plan or the Government Gazette) we find that actually it is a road with reserved forest *on either side of it* – which is something quite different.

There are imaginary lines running more-or-less parallel to the roadway. Between them it's a road reserve; beyond them it's reserved forest.



So what? Well – if the road really was in reserved forest the coordinating road authority (CRA) would be the Secretary for DELWP; but as it's actually in a road reserve the CRA is the relevant municipality. So it's a distinction which means \$*plus* for Spring Street and \$*minus* for our questioner's ratepayers.

* Question raised by the Assets Manager for a provincial municipality.

** Thank goodness for Google Streetview. Saves us a heap of tyre rubber.

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AD HOCKERY *from* LEX LOCI ... 9 JUNE 2015

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Our Longest Street Name?



Rowland S Howard was a hard-living rocker whose memory, according to the St Kilda music community should be celebrated as the name of a lane. Their campaign was not straightforward...

The Age almost got the story right:

Supporters were adamant the lane should feature Howard's full name. Usually, the planning rules dictate that streets can feature only one name. Undaunted, music promoter Nick Haines organised a petition signed by 3000 people, which was delivered to the Port Phillip Council. Albert Park MP Martin Foley lobbied for an exemption to the rules governing street signs. Planning Minister Richard Wynne signed off on an exemption.



It's really nothing to do with 'planning rules.' Rather, it comes under the *Geographic Place Names Act 1998* – although in the administration of that Act the Surveyor General falls under the Minister for Planning.

If *Rowland S Howard* marks the upper end of the road-names spectrum, then the lower end is marked by various roads with no name at all. Which is a phenomenon we think undesirable, and possibly downright dangerous. Check it out at [Terra Publica, Jan-Feb 2009](#) – page 3.

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AD HOCKERY *from* LEX LOCI ... 22 JUNE 2015

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Demons beat Cats

Kardinia Park, Geelong, Sunday 21 June 2015



Gavin Jennings is now Special Minister of State, but back in the Bracks-Brumby Government he served as Minister for Environment and Climate Change. We don't know which AFL team he supports, but he can claim the credit for allowing the Geelong-Melbourne game to proceed yesterday.

Back in 1930, regulations were [gazetted](#) for Kardinia Park, Geelong. Here's an extract...

ing of cattle. For the purpose of this clause "cattle" shall mean cattle as interpreted by section 3 of the *Pounds Act 1928*.

13. No person shall play, practise, or engage in any game or sport in the Reserve on Sunday, Anzac Day, or Good Friday.

14. No person shall play any unlawful game, or make any wager for money, or by unseemly conduct interfere with the comfort and enjoyment of others within the Reserve or wil-

That's right, it's illegal to play sport on a Sunday. Or it was illegal until Minister Jennings had the regulation revoked in 2010.

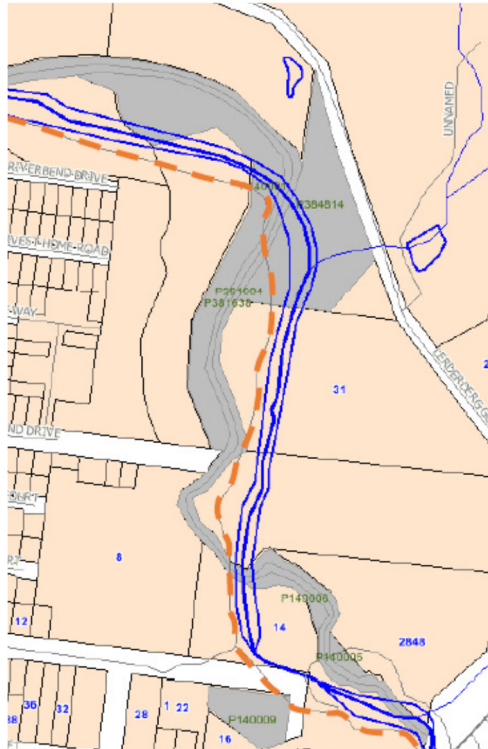
How can regulations survive for 80 years? Because regulations made under the *Crown Land (Reserves) Act 1978* don't sunset. Why not? All other regulations (including Local Laws) sunset at the age of 10 – don't they? Well, yes – but CL(R) Regs (and earlier Land Act regs) are made by a Minister, not by the Governor-in-Council – therefore they're not 'statutory rules' and therefore not subject to the 10-year sunset provision in the *Subordinate Legislation Act 1994*.

We're sure the Cats and Demons will want to know that.

See you there! Lex Loci

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Walkable, Trespassable



The orange dashed line is the walking & cycling path

The blue lines show the actual river

The land coloured grey is the Crown land, where the river's supposed to run

The buff-coloured land is private property, where the river's supposed *not* to run

The Lerderderg River, on the northern outskirts of Bacchus Marsh
Four different courses in 150 years.

You can do some fabulous walks along the Lerderderg River – from Bacchus Marsh through the Gorge to Blackwood. But whose land are you on? Are you trespassing? If you're in the State Park, no worries – but take a look at the map of the alluvial flats to the South... And spare a thought for the landholders who want to figure out what land they actually own... Adverse possession? Doctrine of accretion? And worst of all – a *permanent* Crown reserve. That's right Sir, Madam: running through the middle of 'your' land, nowhere near the actual river, is an anomaly that can be resolved only by a new Act of Parliament ...

Our advice to anyone planning a walk here. Take two mates: one a surveyor, the other a lawyer.

See you there! Lex Loci

AD HOCKERY

from LEX LOCI ... 24 JULY 2015

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The Place with the Flag



Now in residence: the hon. Linda Dessau, AM.
We wonder - does she raise and lower the flag herself?

Of all the land in the State, Government House must have the best claim to being called 'Crown land.' For our purposes, the abstract institution we call 'the Crown' is personified by the Governor, who (as we all know, don't we) is Linda Dessau, AM - the first woman to occupy that esteemed office.

Who appointed Ms Dessau to the job? The top-down view of society tells us it was Her Majesty the Queen. The bottom-up view tells us it was the Premier, acting on the authority of the Government, acting on the authority of the voters. Marvelous how these contradictory versions of our civic apparatus seem to coexist.

Now the Governor is not supposed to intervene in day to day administration - but we know of one poor public servant who picked up his phone to hear "Hello, this is the Governor..." It wasn't Ms Dessau calling, but one of her predecessors, with a query about the status of the road into the back door of Government House, alongside the Herbarium. Guess that's another story.

By the way, it's not a flag, but a *standard*. It's a version of the Victorian flag, on a gold background instead of the usual blue.

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Roads, in Three Dimensions

We think of land as the surface of the earth, fully definable in two dimensions. In fact it's three dimensional, often with no vertical limits. It's the same with roads – the airspace above and rock-space below are all part of the road reserve.



Objectors to this overpass in Yarra Street Geelong called it a 'monstrosity' and a 'major planning disaster.'

Harvesting this space can be controversial. When Myer and Melbourne Central were linked by the pedestrian overpass across Lonsdale Street, the National Trust denounced it as a 'blemish on the Hoddle Grid' and extracted a concession from government: section 138A (13) of the *Land Act 1958*. This provision prevents any further such structures over the main streets of Melbourne's CBD without their own legislation.

In other places (like Yarra Street, Geelong) airspace can still be leased or licensed from DELWP, which exercises control at strata independently of whatever agency controls the roadway at the surface.

On the subject of land being three-dimensional, there have (believe it or not) been court cases on the subject of whether aeroplanes are trespassing. It's now established that they're not trespassing, provided that their flight is 'reasonable' (Sec 30, *Wrongs Act 1958*). Not so sure about drones.

See you there! Lex Loci

** Thanks again to Google Streetview*

AD HOCKERY

from LEX LOCI ... 24 AUGUST 2015

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Use this beach at your peril!



Limeburners Point, Geelong – as it was ten years ago.

Many rifle clubs were set up during the 1914-1918 war, as an adjunct of the defence forces. As times changed, and ‘game’ transformed into ‘wildlife,’ they had to adapt – or even close altogether ([The Age, 21 June 2015](#)). Often, their shooting ranges are sited on public land – so the transition is an issue not just for the club, but also for some public sector landlord.

Limeburners Point, Geelong is a case in point. Shooting is hardly compatible with walking along the Corio Bay foreshore, nor are hydrocarbon-laced [clay targets](#) and [lead shot](#) compatible with a clean environment. In law, Geelong Clay Target Club had no overholding rights, but it took eight years for their landlord-entities (City of Greater Geelong and DELWP) to persuade them to vacate the site.

Meanwhile, Parks Victoria uses [shooting as a management tool](#) to control feral animals and, as we have recently confirmed for the Australian Deer Association, there are large tracts of public land where responsible shooting is permitted.

See you there! Lex Loci

AD HOCKERY

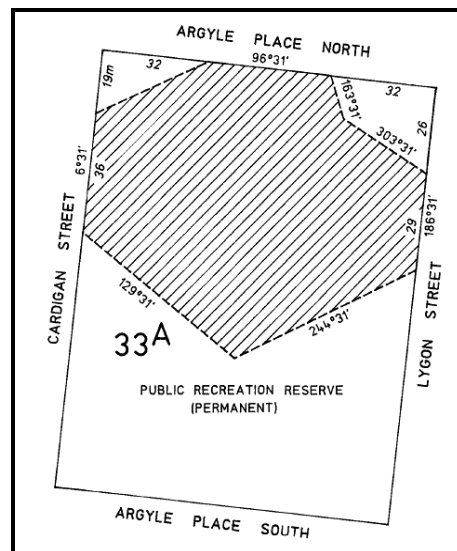
from LEX LOCI ... 15 SEPTEMBER 2015

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The Non-Existent Car Park

Well, it seemed like a good idea at the time.

That was 1997. More parking was needed in Lygon Street, Carlton. Melbourne University and Equiset had just built an underground car park below University Square, so why not put one below Argyle Square?



Left: Argyle Square, Carlton: lawns, heritage English oaks, fancy paving, but no car park.

Right: Schedule 13 from the *Land (Reservation and Other Matters) Act, 1997*.

Council did some thinking, some planning, and some lobbying, and Parliament enacted the *Land (Reservation and Other Matters) Act, 1997*. A diamond-shaped swathe of the permanent reserve was un-reserved at stratum, and made available to be leased out for an underground car park.

So why is there no underground car park below Argyle Square?

When the City of Melbourne put the development proposal out to tender, there were no bids. The weird shape, the leasehold tenure, the uncertainties of council politics: the market looked at the scheme and said 'no thank you.' The Act remains on the statute books – but it's hard to see anything ever being built.

Anyway, the Lygon Street gentry just want to display their fully-optioned V8 super-utes, not hide them underground.

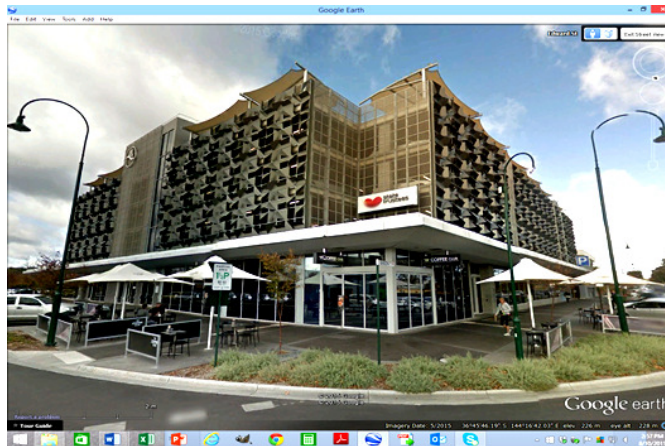
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AD HOCKERY

from LEX LOCI ... 12 OCTOBER 2015

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YES, we do want it; NO, we don't like it



Bendigo's Edward Street multi-story car park

Council's relationship with the local Traders Association was one of several issues to be managed as City of Greater Bendigo transformed bleak bitumen into a planning and commercial success.

The traders said YES, multi-storey parking is our highest priority for the precinct; but NO, we don't like the location, or the design, and we especially don't like the idea of paying 25% of its cost. We figure shopkeepers everywhere are much the same...

Other issues for the Council project team: ensuring active retail frontages at street-level, risk minimisation through securing a seeding tenant, and (of course) economics. The \$16m bottom line was improved because the land was already owned by Council: the project costings treated it as being free*.

Variations considered in the design included underground levels below (rejected as too expensive), future commercial levels above (allowed for in the structural engineering), and projections into the air-space over abutting roads (rejected for architectural reasons).

If the car park at Argyle Square, Carlton** was an idea that went nowhere, this was surely the opposite. Check it out next time you're in Bendigo.

See you there! Lex Loci

* Not sure what a theoretical economist would say about that. ** Ad Hockery, 15 Sept 2015

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from LEX LOCI ... 19 OCTOBER 2015

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Gunditjmara elder Denise Lovett at the Convincing Ground, 2005.
Visible (just off-shore) the remnants of the 1834 whaling station jetty.
Not visible: the spirits of the Kilcarer gundidj clan.

We're on the foreshore just East of Portland – a place called the Convincing Ground. This is the scene of two conflicts: the first (in the 1830s) between whalers and the Aboriginal inhabitants; the second between two opposing camps in the politico-academic 'History Wars' of recent decades.

On whitefellas' land status plans it looks pretty ordinary. Below high water mark it's unreserved Crown land; inland from an unfenced title boundary it's freehold land. The Victorian [Heritage Register](#) recognises its significance in terms of whitefella history, with a mere passing and equivocal mention of the massacre from which its name derives.

We can deduce that the site is listed on the Victorian Aboriginal Heritage Register (which contains culturally sensitive information and is not publicly accessible) because it appears as an 'Area of Cultural Sensitivity' on the DELWP map base – if you know how to drill down into it.

In a way, the Convincing Ground is a victim of the [History Wars](#) which have caused ideologically-driven aspersions to be cast over the collective memory of the Gunditjmara people. In our opinion this misses the point: there is also doubt as to the precise nature and location of the Eureka Stockade, doubt which in no way diminishes the significance of that event, and the political watershed it reflects. Should the miners' uprising go uncelebrated because their flag has since been hijacked, and they didn't have a GPS?

See you there! Lex Loci

AD HOCKERY

from LEX LOCI ... 9 NOVEMBER 2015

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A Very Ordinary Substation



**

*Well folks, here we are in Cullen Street, Epping.
This very ordinary 'kiosk substation' in the corner of a recreation reserve
inspired a four-day hearing at VCAT and a 17-page judgement.*

Are utilities on public land rateable? This has been an issue ever since 1900, when the Melbourne Tramway and Omnibus Company took the City of Fitzroy all the way up the judicial ladder to the Privy Council – and lost.

In this case¹, Whittlesea City Council had initially put a value of \$15,000 on the 34 square metre substation site, and rated it accordingly. AusNet objected.

If a distribution company has poles, wires or cables on land, that in itself does not constitute an 'occupation' of the land, nor make it rateable². But what about substations? In Whittlesea alone there are 392 of them. Across the State, we're talking about a pretty substantial rates bill.

VCAT noted that the land had been acquired for nothing in the course of a subdivision, and concluded that its site value (SV) was zero. The 4-tonne gear was, however, a fixture rather than a chattel and, what's more, an 'improvement' – so the land did indeed have a capital improved value (CIV) and a net annual value (NAV). Accordingly, AusNet is obliged to pay rates.

The Valuer General³ describes the argument made for a site value of \$0 as 'not particularly persuasive.' VCAT itself cautions that this is not a test case. We await the Government's policy response.

** Google Streetview

1. AusNet v Whittlesea Council, VCAT, 16 Dec 2014

2. *Electricity Industry Act 2000*, sec 94 (2)

3. *Revaluation News* 2016, July 2015

See you there! Lex Loci

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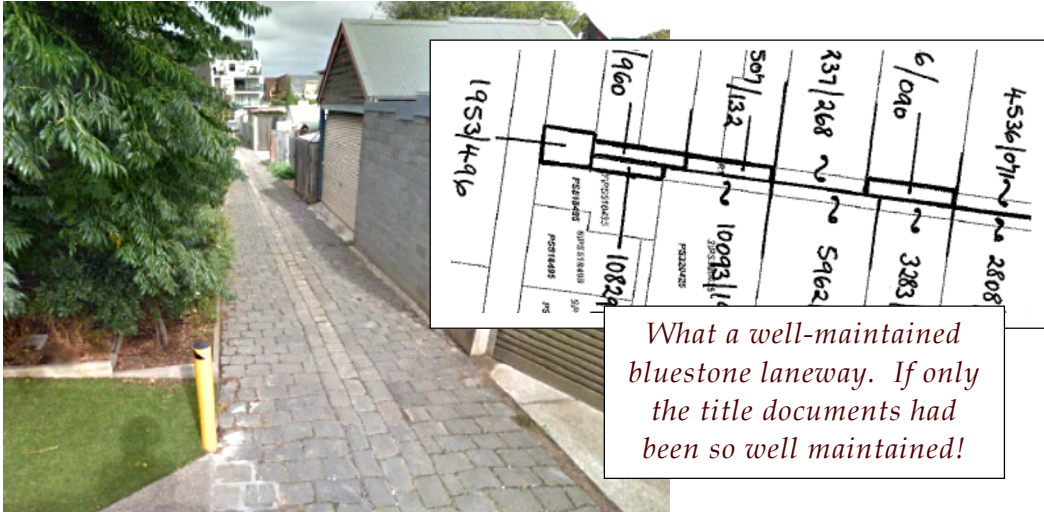
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from LEX LOCI ... 19 NOVEMBER 2015

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A Beautiful Bluestone Laneway



It's almost a lost art – the construction of bluestone laneways. Part of inner Melbourne's history: here and there you can find signs of the iron-wheeled carts that once plied them.

But who owns them? For a hundred years, we have just assumed it's the Council. If it needs cleaning or maintaining, we call the Council. But suddenly, in an era of gentrification and multi-unit development, abutting owners start looking at their title documents. What a mess!

Check out the title diagram above: some bits of this lane appear to belong to abutting properties, and some bits still remain in the name of the (no doubt worthy) gent who owned the whole area back in 1870.

Now is perhaps not the time to get into the maze of common and statutory law that leads to the following conclusion: Council does indeed own the lane; the title documents are worthless.

Does it matter? Most of the time, no. But when an abutting owner wants to build over our lane, or a service utility company refuses to lay down a gas main, then suddenly we have a problem. Actually two problems.

Problem number one: persuading our interlocutor of the lane's true legal status (we can handle that one). Problem number two: relaying the beautiful bluestone which we've just persuaded some utility company that they are in fact allowed to dig up.

See you there! Lex Loci

AD HOCKERY

from LEX LOCI ... 1 DECEMBER 2015

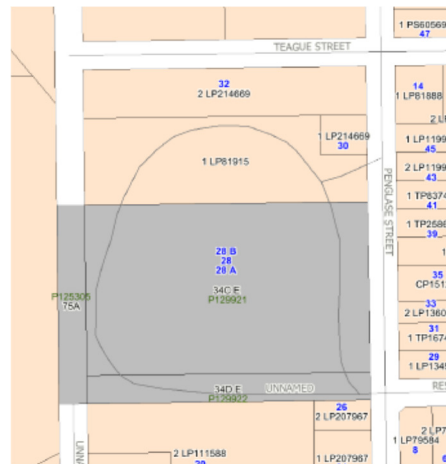
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Deep Fine Leg, Koondrook



The victorious Barham-Koondrook under 17 cricketers.

Looking at the aerial photo of Koondrook cricket ground, you'd never guess that two thirds of it is a Crown reserve (coloured grey on the plan), and one third is freehold owned by the Shire of Ganawarra (coloured buff).



Does it matter? Well, maybe. When the Shire wanted to build new pavilions, it put them in the north-west corner, not the south east – thereby retaining ownership and avoiding all the Crown land red tape. At a match, two thirds of the spectators are subject to Crown land regulations; the other third are subject to Council's local laws. Two thirds of the circumferential road is subject to the Road Management Act, and one third isn't.

Can it be fixed? Solution one: Council surrenders the one-third to DELWP (which doesn't want it); solution two: Government sells the two-thirds to Council (which isn't prepared to pay for something it already has practical control over). Time to call for the third umpire.

See you there! Lex Loci

AD HOCKERY

from LEX LOCI ... 18 DECEMBER 2015

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The North Pole



Lex Loci usually attempts to offer place-related commentary which is interesting and relevant to Victorian readers. Sorry, folks, this time he has wandered off into the barren polar wilderness. Season's Greetings!

Conundrum: Where can we find a point on the surface of the earth, from which we can travel one kilometer south, then one kilometer east, then one kilometer north – and end up at the place from which we started?

It's an old conundrum, and the well-known answer is the North Pole.

Actually, there's another answer: any point on a circle whose radius is $1+(1/2\pi)$ kilometers from the **South** Pole. Think about it: we walk one kilometer south, and then our eastwards walk takes us around a circle whose circumference is one kilometer, then northwards back to our starting point.

But there's more! In fact there are an infinite number of answers. We could make such a journey from any point on *any* circle whose radius is $1+(1/2N\pi)$ kilometres from the South Pole, where N is any positive integer. If N is 5, for instance, then our southward kilometer gets us to a point on a circle whose circumference measures 200m (one fifth of a kilometer); our eastward kilometer has us circumnavigating the South Pole five times, and then our northward kilometer gets us back to the start.

Meanwhile, Lex Loci has some advice for Santa: relocate from the North Pole to the South. The ice is getting much too thin up there, mate!

Season's Greetings! Lex Loci

** Photo from TheExpeditioner.com

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