

An occasional one-pager from The Public Land Consultancy

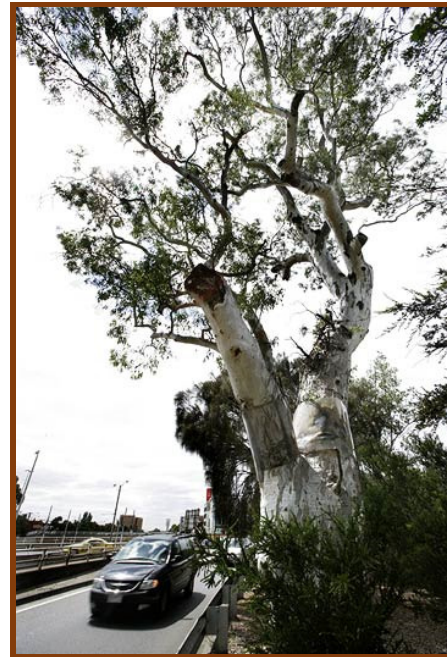
The Corroboree Tree St Kilda Junction

In the course of moving shop from Fitzroy Street to St. Kilda Road, your correspondent Lex Loci and the rest of The Public Land Consultancy team find themselves skirting past this relic of a landscape which Melbourne has virtually forgotten.

The Corroboree Tree sits on land permanently reserved under the *Crown Land (Reserves) Act*, zoned PPRZ with ESO and HO overlays, listed on the Victorian Aboriginal Heritage Register and the National Trust's Register of Significant Trees – but what protection does all this apparatus actually deliver?

Sometimes place-law just isn't enough. Trees become senescent, despite the best endeavours of law-makers, historians and civic administrators. (As for engineers – the decline of the tree was accelerated by those of that profession who sliced off half its root system to reconstruct St Kilda Junction in the 1960s.)

Since then, we've all (including engineers) become more conscious of Aboriginal heritage. 2016 sees the introduction of amendments strengthening the *Aboriginal Heritage Act 2006*. Perhaps we should tell that to the cockatoos, magpies and occasional galah that still flap around, high above all the traffic. They remember.



*It's 180 years since John
Batman's party plied its way
up the Yarra River. Not much
remains of the country they
saw – the country as the
Wurundjeri and Boon
Wurrung peoples knew it.*

*What there is, like this tree, is
slowly disappearing...*

See you there!
Lex Loci

AD HOCKERY

from LEX LOCI ... 8 FEBRUARY 2016

An occasional one-pager from The Public Land Consultancy

Marilyn's Legs Rosalind Park, Bendigo



Shades of Ozymandias? *Forever Marilyn*, by American artist Seward Johnson, being assembled at Rosalind Park, Bendigo. The complete work is 8 metres high.

Having gained your attention, Lex Loci admits that this article is really about some very boring Acts of Parliament.

The gold rush of 1851 saw fortune-hunters displace the Dja Dja Wurrung people along the Bendigo Creek. In parts, the Creek has never recovered – but through Rosalind Park the fossickers' shafts, sluices and mullock heaps have been replaced with neat gardens and European trees. It was a transformation paralleled by motions, speeches and votes in Melbourne's Parliament House. The precinct is now littered with legislation.

The statute book includes the *Bendigo Art Gallery Act* of 1891, the *Bendigo Gaol Land Act* of 1909, the *Bendigo Creek Act* of 1914, and the *Bendigo (Rosalind Park) Land Act* of 1951, amongst others. Does the Park's current management need to familiarize itself with these epistles? Do they have any bearing on Marilyn's legs? Lex (who has read them) says no.

The take-home message: Get a life, Lex. Go and see *The Seven Year Itch*.

See you there!
Lex Loci

An occasional one-pager from The Public Land Consultancy

Underneath Punt Road



The South Yarra to St Kilda water main was originally constructed in the 1890s, making it one of Melbourne's oldest operational water mains.

As every Melbourne driver knows, Punt Road has been a catastrophe for decades. The 60 year-old Public Acquisition Overlay (PAO) down its eastern side seems to be in hibernation (Lex Loci thinks it should be used for a light rail line – but that's another story). Even older was the corroded water main below the road's surface, dating from the 1890s.

Last year Melbourne Water replaced the water main, along an alignment which took in various residential streets and part of Fawcner Park, as well as stretches of Punt Road itself. Amongst the many approvals required, the most basic was tenure: by what right can Melbourne Water occupy this subterranean land?

For the answer, we turn to Government Gazette G29 of 18 July 2002, page 1704. Here we find the authority for water supply and drainage services, amongst other things, to occupy strata over or under Government roads (which Punt Road, of course, is).

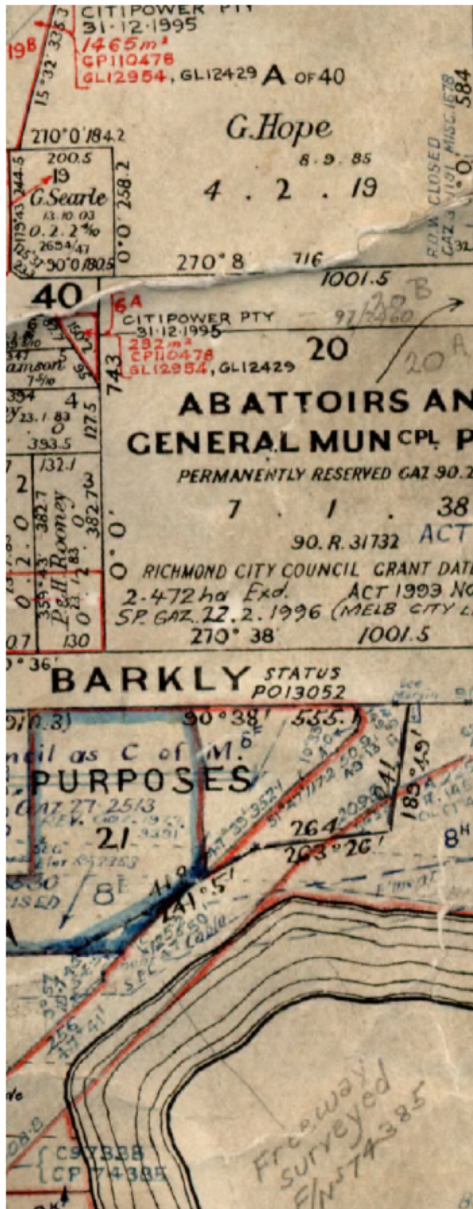
So below the surface, water continues to flow to 97,000 homes and businesses. And up above, roughly the same number of drivers, stuck in traffic jams, don't even think about what's below them...

See you there!
Lex Loci

from LEX LOCI ... 8 MARCH 2016

An occasional one-pager from The Public Land Consultancy

The Abattoir by the Yarra



*Some Parish Plans are works of art,
and should be hung in galleries. Not
so sure about this one...*

See you there!
Lex Loci

An abattoir once graced the riverside landscape, just where the Burnley tunnel now emerges into daylight. Great site for a slaughterhouse: all the muck could be drained straight into the Yarra.

In the 1980s the abattoir was closed down, but its legacy continues on the Victorian statute books.

The late (but unlamented) Richmond Council took the view that the abattoir's Crown land site, when vacated, would be available for it to sell. In April 1992 the Supreme Court agreed with the Council: the Local Government Act of the day did indeed allow a council to sell surplus Crown land, and to pocket the proceeds.

The State Government had a quite different view. The terms on which Crown land could be sold were to be set by the Parliament and no-one else. So along came an amendment to the *Crown Land (Reserves) Act 1978* which decreed that reserved Crown land may be sold, leased or licensed only under some legislative provision which ‘*explicitly and not merely by implication*’ authorised such a dealing. Any purported dealing not so authorised would be ‘*absolutely void.*’

And what's more, the Supreme Court decision was retrospectively annulled.

The revenue from the abattoir's sale would be credited not to the municipal coffers, but to State Treasury.

So there. Parliament Rules, OK!

As for the muck in the River, it now has to come from further upstream. But that's another story.

An occasional one-pager from The Public Land Consultancy

The Castlemaine Historicals



The blackboard behind reads 'SUGGESTIONS.' Well, here's one...

The Castlemaine Historical Society manages a parcel of Crown land, but it used to be freehold. If Lex wanted to know who had once owned it, and why it was surrendered to the Crown in 1988, and why it is now deemed to be an 'Area of Historic Interest,' who would he ask: why, the Castlemaine Historical Society, of course.

But Lex actually has another question: how would the land's management differ if its Committee of Management were answerable to the local Council, rather than to DELWP?

And he could ask the same question of the volunteer Committees of Management for Kyneton Racecourse Reserve, Fryerstown Community Reserve, Romsey Mechanics Institute, Moora Racecourse Recreation Reserve, Rushworth Public Park Reserve and the Echuca museum.

Last May, they all received certificates in recognition of their service. As the Regional Manager of DELWP told the Bendigo Advertiser: "On average, committee members provide an exceptional 13 years of volunteer service... We rely on their generosity and passion."

All these reserves are surely of *local* significance, rather than state or national significance. So shouldn't the relevant Shire come into the picture somewhere? How would the volunteers feel about reporting to the Town Hall, rather than to a Minister in Spring Street? Sorry, folks: Lex doesn't have the answer, only the question.

See you there!
Lex Loci

An occasional one-pager from The Public Land Consultancy

Lex Dines Out ... at ratepayers' expense?



The oysters to start, and then maybe the half suckling pig ...

Nothing wrong with fine dining, says Lex.

It's the land tenure arrangements he finds curious. And the cross-subsidies that don't appear on the municipal financial statements.

Here we have a restaurant (it's real, but we can't identify it right now) which is a sub-tenant of a sporting club, which is a tenant of a council, which is the Committee of Management of a Crown land reserve.

The sub-lease was issued without the council's knowledge, and without the approval of DELWP. These breaches put the head lease in default and in jeopardy of termination. It needed a retrospective Deed of Variation.

The rental for the head lease is well below market valuation, a benefit not expressly authorised by the lease conditions. We have no difficulty with implied subsidies to sporting clubs, as long as they are brought to account, and don't inadvertently flow through to commercial sub-tenants.

In this case we don't know what the sub-tenant is paying the head tenant, and neither does the council as the landlord. We do know that the proportion of the head-rent attributable to the sub-tenancy is less than 5% of the rents being paid by the restaurant's commercial competitors leasing freehold premises just across the street.

Hidden subsidies in the form of less-than-market or peppercorn rentals have concerned the Auditor-General – and perhaps they should also concern the ratepayers...

Anyway, how about that Louise Roederer bubbly with the Iranian fairy floss?

See you there!
Lex Loci

LEX LOCI'S TRAVELS

26 APRIL 2016

An ad-hoc one-pager from The Public Land Consultancy

Herring Island which should really be called something else.

It's not a natural island, and it has no logical connection to Sir Edmund Herring, KCMG, KBE, DSO &c &c, but it's a great little bushland place. Created in the 1930s when canal-diggers cut through a loop of the Yarra, it is now a haven, managed by Parks Victoria, and accessible only by boat.



This part of the river was the common ground between the Wurundjeri people to the north and the Boonwurrung people to the south. It has a very natural feel – although you won't find too much Aboriginal heritage there. The whole island has been thoroughly disturbed by earthworks. But what about *intangible* heritage?

Nearby we have the City of **Yarra**, the Parish of **Jika Jika**, the suburbs of **Toorak** and **Prahran** – all serving on a daily basis to connect us to Aboriginal languages now virtually extinct. Such names take us back through the decades to a time when surveyors and clergymen attempted to render Aboriginal languages into the English alphabet. It is an important but imperfect legacy.

Did the traditional owners of the Geelong-Ballarat country call themselves the Wathaurung or the Watha Wurrung or the Wadawurrung? Were the people of Westernport called the Boon Wurrung or the Bunurong? In Gippsland, the Gunaikurnai have overcome the dilemma by concatenating the two versions of their traditional name.

Aboriginal intangible heritage has now been recognised by parliament. It includes any knowledge of Aboriginal tradition – but excludes anything already widely known to the public. Residents of Toorak and Prahran (and Warragul and Wycheproof) need not contemplate their addresses becoming the intellectual property of the local RAP.



Lex guesses that this is a largely symbolic gesture. But gestures can foster respect, and at the present time, respect is important. So without wishing to show disrespect to Sir Edmund Herring, KCMG, KBE, DSO &c &c Lex is of the opinion that it's time for this island, artificial yet redolent of Melbourne's pre-settlement landscape, to get a new name. An Aboriginal name...

See you there! Lex Loci

Thanks to Uncle Byron Powell of the Wathaurong.

Artwork: Josephine Napurrula - Waterhole at Papunya (details)

The Public Land Consultancy
ABN 69 067 045 520
Principal: David Gabriel-Jones
Email: lex.loci@publicland.com.au

27 / 539 St Kilda Road
Melbourne, VIC 3004
phone: (03) 9534 5128

postal: PO Box 2251
St Kilda West, VIC 3182
mobile: 0412 134 243
www.publicland.com.au

LEX LOCI'S TRAVELS

9 MAY 2016

An ad-hoc one-pager from The Public Land Consultancy

Winton Wetlands (Or is it Lake Mokoan? Or maybe Mokoan Swamp?)

This may not be the Somme, but Winton wetlands have been a battleground of cultures, of hydrological analyses, and of political values.

In the 1830s this was a food bowl capable of supporting perhaps 2000 people gathered for a corroboree. Then came the Europeans: squatters, missionaries, surveyors and legislators. Dispossession of the Aboriginal people continued for 170 years, right up to the 2002 decision of the Federal Court which denied the Yorta Yorta's Native Title rights.

For white settlers, the purpose of a wetland was to be drained and farmed; the purpose of a river was to be dammed. Their aspirations were voiced by Henry Lawson, in verses we now find disconcerting, even with the blatant racism excised:



Returning: sea eagles, koalas, wombats, turquoise parrots; departing: foxes, feral cats, European carp.

*Let others make the songs of love
For our young struggling nation;
But I will sing while e'er I live
The Songs of Irrigation;
For when we've made our long canals,
And lakes in every quarter,
The two most precious things for us
Shall still be wheat and water.*

Then along came the State Rivers and Water Supply Commission with a novel idea: instead of draining this ephemeral wetland, let's turn into a permanent storage. Seems they got their sums wrong: much of the water 'saved' for irrigation was lost through evaporation. The rest of the Winton-Mokoan story is well-known: the decommissioning and the ongoing restoration has been a celebrated environmental success.

It's also a governance success. The Crown land Committee of Management is amongst the most forward-looking and professional in the State – due in no small part to government funding. If only all Committees got a \$20million grant.

But back to the Nineteenth Century bureaucrats and legislators. Believe it or not, six pages of the *Land Act 1958*, still on the statute books, are devoted to the drainage of certain swamps, one of which is (you guessed it) the 'Mokoan swamp.'

While the world has moved on around it, great slabs of our Crown land legislation have stayed stuck in the mud.

See you there! Lex Loci

LEX LOCI'S TRAVELS

31 MAY 2016

An ad-hoc one-pager from The Public Land Consultancy

Parkville Underground Station *... and the lost \$1.5 million.*

One of the new stations on the Melbourne Metro will be below Grattan Street, Parkville. Twenty-five metres below. The north face of the excavation will abut the main campus of the University of Melbourne; the south face will abut some Crown land with an interesting history. Well, Lex Loci thinks so.



Above: University square becomes an underground car park (December 2000).

Question: is a car park 'detrimental to' ornamental gardens? That's the test set by the *Crown Land (Reserves) Act 1978*.

Answer: You bet it is.

Response: the *Land (Reservations and other Matters) Act 1999*.

Photo courtesy of Equiset

In 1873 University Square was permanently reserved for 'ornamental gardens.' About the same time, the Victoria Bowling Club took control of part of the reserve under a 'permissive occupancy.' They should have taken a lease. A century and a quarter later their mistake was going to cost them \$1.5 million.

Fast forward to 1999. Melbourne University needed a car park to service its southern expansion into Carlton. The planners decided that the best place to put it was below the square.

An Act of Parliament was needed – not to evict the bowlers, but to get around the permanent reservation. The bowlers had no legal tenure.

The permissive occupancy (or 'P.O.') looked so impressive. Parchment, copperplate script, wax seals, the signature of some long-departed Lord Mayor... but worthless. According to the valuers, the Club could have expected \$2.5 million compensation – if it had held a lease. As it was, it collected \$1 million.

So the University's new law school now looks out over English elms and a stone-paved plaza.

In the not-so-distant future, when the legal undergrads saunter across the square, between their lecture theatres and their new underground station, we hope they cogitate on the niceties of Crown land law – and the failings of permissive occupancies.

See you there! Lex Loci

LEX LOCI'S TRAVELS

21 JUNE 2016

An ad-hoc one-pager from The Public Land Consultancy

HMVS Cerberus

No, this is one site not to visit

Debate rages amongst classical scholars on his degree of polycephaly. In some versions The Hound of Hades has two heads, in others three. We'll stick with duocephaly, because that corresponds with the number of gun turrets on his namesake – the HMVS Cerberus.

HMVS? That's right – here in Victoria we had our own navy. If New South Wales had attacked, we would have beaten them. The chance has passed: the warship is hardly battle-ready, and what's more it has a new owner – the City of Bayside.

We're pretty sure Bayside doesn't want to own it, but they inherited it from the City of Sandringham, which had purchased it for a breakwater.



*Why is the wreck flying the Australian flag?
Surely it should be the Victorian flag?*

Perhaps Bayside could argue that the wreck has become a fixture, and is therefore owned by whoever owns the land – which in this case is the Crown. It's not even in the City of Bayside – because municipal boundaries are (by and large) at Low Water Mark. Maybe Bayside could disown the thing through some argument based on [maritime law](#) – but that wouldn't get rid of it, and certainly wouldn't restore it. And restoration is what's yearned for by a dedicated (but relatively impecunious) body of [friends](#).

Meanwhile the Cerberus is (a) historically significant, and (b) rusting away, and (c) lethally dangerous. So Lex Loci will not be going scuba-diving there.

Who is responsible for it? Parks Victoria is waterway manager for the local port of Port Phillip and Westernport. But that doesn't make PV responsible for the thing. It's on Crown land, but don't look to DELWP for assistance. Heritage Victoria has declared it to be protected – but protected from what? Certainly not from the elements. So what about the Coastal Management Act? What about the Feds under the EPBC Act? Or the Historic Shipwrecks Act? Wherever we look, we draw blanks.

What's needed is Hercules himself. As the eleventh of his twelve mythical labours Hercules sorted out the original Cerberus – duocephalous or tricephalous as the case may have been.

See you there! Lex Loci

LEX LOCI'S TRAVELS

25 JULY 2016

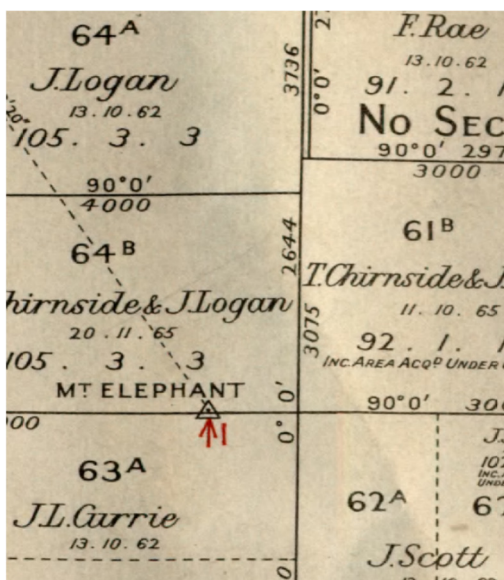
An ad-hoc one-pager from The Public Land Consultancy

The Elephant in the Landscape

As you drive along the Hamilton Highway, it's a bit hard to miss. And yet it was ignored for a Century and a half. Standing 240 metres above the surrounding plain, Mount Elephant has been compellingly visible for 20,000 years. The artist Eugene Von Guerard certainly saw it in 1857.

It's now listed on the register of National Estate as 'one of the highest and one of the major scoria cones in the largest homogenous volcanic plains on earth.'

Here's what Lex wants to know: why was this significance not reflected in place-law for so long?



It seems that somehow the mountain went quite unnoticed by the colony's top-hatted administrators. They just rolled out their rectangles across the Geelengla Parish Plan, unperturbed by topography.

The gentry of the day, including Thomas Chirnside esquire, responded by buying up those rectangles. Then followed grazing, Patersons Curse, thistles and rabbits. And even worse, quarrying for scoria.

Elsewhere, significant landscape features like river frontages and foreshores were retained as Crown reserves. But not mountains, and not escarpments. The Crown land we now call the Alpine or the Grampians National Park was retained principally because it was too inhospitable to attract buyers.

So Mount Elephant was deemed unworthy of public land status. Its listing on the National Estate Register didn't happen until 1980. The Corangamite Planning Scheme showed it as Farming Zone right up until 2012.

But the key date for our Elephant was 1 January 2000, when 50 people from the little town of Derrinallum welcomed in the new millennium from the summit. They went on, in collaboration with the Trust for Nature, to purchase the mountain. Largely with their own money. It's still private freehold land, but now controlled by a public entity – the Derrinallum-Lismore Community Association Inc.

So this little community did what all the apparatus of government found itself incapable of doing. Lex says: Go Derrinallum!

See you there! Lex Loci

LEX LOCI'S TRAVELS

8 AUGUST 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex Rocks at the Bundy

The Bundalaguah-Myrtlebank Hall is a bit off the beaten track – for anyone other than travellers between Sale and Maffra. But wherever we are in rural Victoria, we see halls like 'The Bundy.' There are hundreds of them, including [48 in the Shire of Wellington](#) alone. A plentiful resource.

And that's been their downfall. As modern community centres get built in the next town, who needs the old, isolated rural hall? At the Bundy, usage was reduced to the monthly meetings of the local Country Women's Association.



Too many halls, too few events. Here come the laws of economics: the roof leaks, the floor sags, the plumbing fails, the fences fall down, the insurance lapses... and just to top it off, the electrical wiring is eaten by rats.

What to do? Decrease the number of halls, or increase the number of events? Wellington Council was heading towards the former response, but the local people took off in the direction of the latter. [The hall Committee](#) got to work.

Next came working bees, generous local tradespeople, a Facebook page, and eventually a grant from Regional Development Victoria.

But the mainstay of the revival has been rock-n-roll. A new main tenant called 'Live at the Bundy' has brought in Joe Camilleri, Angry Anderson, the Black Sorrows, and a host of great gigs. On more than one occasion, the carpark has been full to overflowing.

The hall's more traditional users haven't been forgotten. With renovations complete, the hall can now host the Primary School trivia night, kids' birthday parties, and fund-raisers for breast cancer and the local wild-life haven – as well as the CWA.

Meanwhile, Councils like Wellington still have too many halls. Here's their dilemma: half are on the Shire's own freehold, and half on Crown land. Close the freehold halls, and you retain the proceeds for recycling into the community. Close the Crown land halls, and you just enrich State Treasury.

Anyway, Lex is planning to dig out his shades, gold lamé jacket, and blue suede shoes...



See you there! Lex Loci

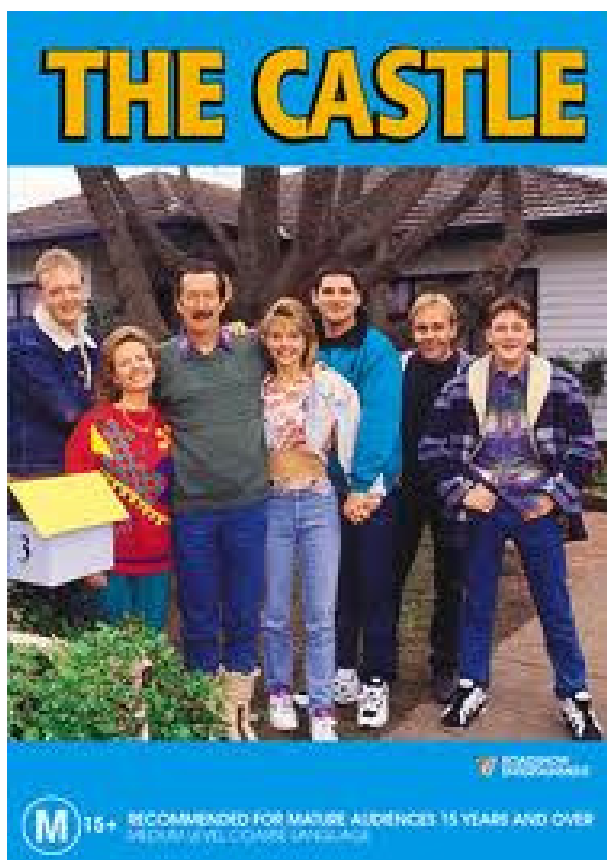
LEX LOCI'S TRAVELS

19 AUGUST 2016

An ad-hoc one-pager from The Public Land Consultancy

Kerrigan's Castle

It's a really low-budget movie that can't afford studio-built sets. For the centerpiece of his 1997 comedy 'The Castle' producer Rob Sitch had to go out and borrow a real house. He found it in Dagonet Street Strathmore, slap alongside Essendon Airport.



No 3 Dagonet Street, Strathmore
Facing demolition?
Perhaps the National Trust will save it
(click [here](#) for the story).

The location was pivotal to the plot. Airports are run by federal agencies, under federal law. Darryl Kerrigan's battles took him (and us, the viewers) into the combat zone of compulsory acquisition. And, for the plotline to get us to Canberra and the High Court, it was essential for the agency seeking to acquire the property to be federal.

If Kerrigan's castle had been threatened by some road widening, or port expansion, or bike-path along the Yarra, his adversary would have been a State and not a Commonwealth entity. And the Constitutional requirement for acquisitions to be 'on just terms' is simply not binding on the States, or municipalities.

There might still have been a movie, but it would have been a different movie. In fact, come to think of it, there are some great place-stories around, just waiting to be converted into movie scripts.

Not sure that they would all be comedies...

See you there! Lex Loci

LEX LOCI'S TRAVELS

6 SEPTEMBER 2016

An ad-hoc one-pager from The Public Land Consultancy



Ambling along Chelsea Beach

Properties abutting the Chelsea foreshore, between Mordialloc Creek and Patterson River, must be worth a few dollars. 'Absolute beach frontage' read the Estate Agents' blurbs. You walk out of your gate onto the beach.

But in the 1970s some property values took a plunge. The owners couldn't get mortgages.

To understand why, we need to distinguish between fixed boundaries and 'ambulatory' boundaries.

In 1865 the seaward boundary of the Crown reserve was defined to be High Water Mark; the landward boundary of the reserve (and hence the boundary of the freehold) was defined as being 100 feet from HWM.

Over the decades, HWM had moved seaward. Surveyors subdividing the freehold had assumed that the

landward boundary was 'ambulatory' and had also moved seaward.

In 1970 it was determined that it wasn't, and it hadn't. The landward boundary of the reserve was still exactly where it had been a hundred years earlier. 'Freehold' properties were therefore encroaching into the permanent Crown reserve. Shonky titles; no mortgages.

State Parliament came to the rescue, with the *Chelsea Lands Act* of 1981. The landward boundary was now deemed to be where the owners thought it should be. But Parliament didn't address the seaward boundary, which may still be where HWM was in 1865, or may have ambled back and forth in accordance with the *doctrine of accretion*.

Lex just doesn't know...

See you there!
Lex Loci

LEX LOCI'S TRAVELS

20 SEPTEMBER 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex Walks from Victoria to Tasmania

It's a journey which involves no scuba gear, no return to the ice-age, and no Biblical miracle. You can indeed walk from one State to the other on dry land.

To clarify – not from the mainland of Victoria to the main body of Tasmania, but from part of Victoria to part of Tasmania nonetheless.

Boundary Islet is about 85 metres wide from west to east and about 160 metres long from north to south. The state border runs right across the middle of it. It's part of the Hogan Group of islands, which extend some 30 or 40 miles south of Wilson's Promontory.

To make the journey, you would first have to land in the islet – where there's no jetty, or mooring, nor even a beach – so Lex isn't actually envisaging a lot of traffic in his footsteps.

The State boundary is the parallel of latitude 39° 12' south. It was prescribed in 1825, at a time when Bass Strait had not been accurately mapped, and Tasmania was still called Van Diemen's Land.

Anyway, if Lex gets to be President, he's going to build a great wall along this border, and make the Tasmanians pay for it.



According to a 2011 publication by the Tasmanian Department of Primary Industries, Parks, Water and Environment (DPIPWE), Boundary Islet's only inhabitants are New Zealand fur seals (*Arctocephalus forsteri*) and Crested terns (*Sterna bergii*).



See you there!
Lex Loci

Sources: DPIPWE – *Hogan Group Biodiversity & Oil Spill Response Survey* - May 2011

Dr Gary Moore – *Address to Institution of Surveyors Victoria* March 2014 - in 'Traverse' – April 2014

The Public Land Consultancy
ABN 69 067 045 520
Principal: David Gabriel-Jones
Email: lex.loci@publicland.com.au

27 / 539 St Kilda Road
Melbourne, VIC 3004
phone: (03) 9534 5128

postal: PO Box 2251
St Kilda West, VIC 3182
mobile: 0412 134 243
www.publicland.com.au

LEX LOCI'S TRAVELS

26 SEPTEMBER 2016

An ad-hoc one-pager from The Public Land Consultancy



Well, there's a Soho in London, and a SoHo in Manhattan – so why shouldn't there be a Soho in Geelong?

It's aptly named. You find this twenty-apartment development up a dead-end lane off a narrow street, reminiscent of the urban fusions that characterise its Northern hemisphere counterparts. Maybe there's a jazz club in the basement but Lex isn't sure about that.

The denizens of Soho (Geelong) may not appreciate the block's difficult gestation. At one stage it found itself in VCAT – not because of a planning matter as such, but because of a 'preliminary legal point.' Was the lane in question actually a lane? And who actually owned it?

On title, McLarty Place was owned by Alesios Fishing Pty Ltd, which had purchased it and other nearby land from the National Australia Bank in 1998.

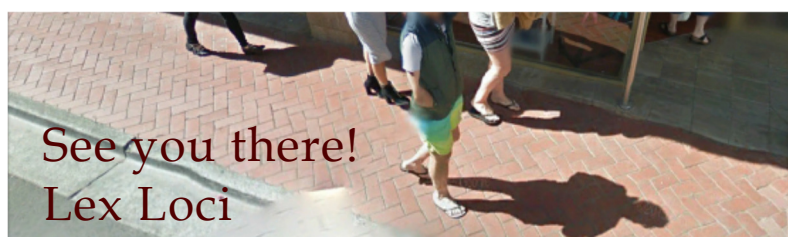
Alesios claimed that the development had no access rights to the lane, and the projecting balconies would be trespass.

City of Greater Geelong saw the situation differently. They argued that the lane had become a 'public highway' under the common law of dedication and acceptance – even though the dedication had been implied rather than express. VCAT agreed*.

Therefore the lane did not belong to Alesios Fishing P/L, but to Council – courtesy of amendments made to the *Local Government Act 1989* in 1993.

So Alesios had been sold a pup. NAB had been dispossessed of the lane by Parliament five years before the purported sale. Nobody had told them.

Lex says – Surely we shouldn't have to go into court to figure out who owns laneways!



* *Greater Geelong v Alesios Fishing, VCAT (30 Sept 2000)*

Photos from Google Streetview

The Public Land Consultancy
ABN 69 067 045 520
Principal: David Gabriel-Jones
Email: lex.loci@publicland.com.au

27 / 539 St Kilda Road
Melbourne, VIC 3004
phone: (03) 9534 5128

postal: PO Box 2251
St Kilda West, VIC 3182
mobile: 0412 134 243
www.publicland.com.au

LEX LOCI'S TRAVELS

20 OCTOBER 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex falls off his Trailbike

Lex often falls off his trail bike. Our lad may be bit of a hoon, but he pays careful attention to where his accidents occur. If he gets it right, he's eligible for TAC compensation; if he gets it wrong, he's not.



Lex's trailbike is unregistered and uninsured. That by itself does not jeopardise his entitlement to compo – unless his accident is on 'private land.'

What is 'private land?' As with so much place-law, words and phrases do not take their meaning from ordinary English usage, but from definitions embedded in Acts of Parliament, or interpretations hidden away in case-law.

Private Land for the purpose of the *Transport Accident Act 1986* is land which is not a 'highway' and which the public can't enter without permission. Which leads to the next question: what is a 'highway?'

This is a word which has three meanings.

The first meaning comes from day-to-day usage: a major arterial road such as the Princes Highway, or the Nepean Highway... But that's not the meaning that Lex needs to know.

The second meaning is from the common law. A 'public highway' (often just called a 'highway') is land over which the public has a legal right to come and go – regardless of whether it is physically trafficable. Again, this isn't the meaning that Lex needs to know.

The third meaning of the word highway is the meaning we find in the *Transport Accident Act 1986* and the *Road Safety Act 1996*. Here a highway is defined to be a 'road' or a road-related area. So (guess what?) now we need to figure out the meaning of the word 'road.'

This (you'll be glad to hear) is the final link in the chain. A 'road' as defined by the Road Safety Act is '*an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.*' A definition related only to the physical form and usage of the land, totally independent of its ownership or legal status.

Lex fell off his trail bike on his mate's driveway. Can he get compo?

Fortunately, this driveway is open to and used by the public. Lex's mate's mum runs a coffee shop, and passing traffic is welcome to come up the driveway to her car-park.

Therefore the driveway is a 'road,' therefore it's a 'highway,' therefore it's not 'private land,' and therefore Lex is eligible for compo. Whew!

For more detail see Transport Accident Act 1986 sections 41A and 41B

See you there! Lex Loci

LEX LOCI'S TRAVELS

3 OCTOBER 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex at the Scene of the Murder



The junction of the Murray and the Ovens. Locating the State border is difficult enough without the High Court's ruling. Photo – University of Melbourne Geography faculty

One day in 1979 Alexander¹ Joseph Reed was fishing from the southern bank of the River Murray when he had the misfortune to be shot dead by Edward Donald Ward.

The ensuing case went to the High Court – not on the question of whether Ward had murdered Reed, but on the question of whether the offence had been committed in Victoria or in New South Wales.

The High Court² came to the conclusion that the boundary was the top of the bank on the southern side.

Consequently, if water levels are normal, there is a strip of dry land on the southern side of the Murray which is actually in New South Wales. The murder had therefore been in NSW, and Ward was sent off for retrial in Sydney.

The High Court, having delivered itself of this decision, conceded that it could

cause difficulties for land managers. DELWP concurred. In their 1992 Management Plan for Barmah State Park and Barmah State Forest we read:

The location of the State border therefore creates a number of difficulties for land management agencies on both sides of the river.

Management of access, camping, boat launching, lighting of fires, control of erosion and enforcement of Park regulations are some of the potential problems ...

The two states have already come to agreements for Lakes Mulwala and Hume – so people boating and fishing there aren't governed by invisible serpentine lines on the surface of the water.

But many hundreds of kilometres of frontage are viewed and managed as if they're in Victoria, when they're not.

Lex thinks we're overdue for a cross-border agreement applying to the whole length of the River.

¹ Alexander, not Alfred – as mis-reported in the High Court transcript

² High Court of Australia, Ward v the Queen (1 May 1980)

See you there! Lex Loci

LEX LOCI'S TRAVELS

11 OCTOBER 2016

An ad-hoc one-pager from The Public Land Consultancy

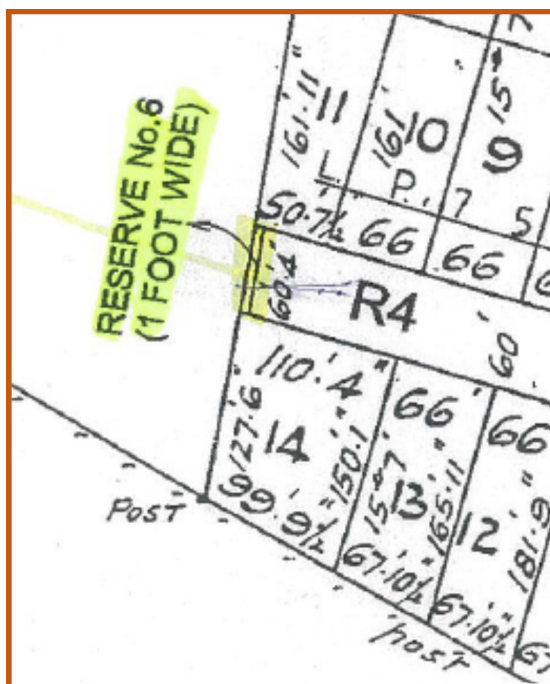
Lex and the Revengers

Grandpa didn't get on with his neighbors. When he subdivided his land, he made sure they couldn't benefit from the roads and drains he had paid for. He put in a revenge strip.

These reserves might be only 300 mm wide, or even narrower. They survive, for better or for worse, long after Gramp's departure.

In one such case, such a strip ran alongside a laneway. The properties abutting the lane didn't abut the lane – if you see what we mean. A perfectly reasonable development proposal was stymied – until VCAT pointed out that the council in question could easily remove the impediment, if it chose to.

In another case, however, the residents of grandpa's subdivision enjoyed their relative isolation, which was secured by 1-foot wide revenge strips across the ends of various roads. The council concerned had two opposing views before it – the developer of the neighboring land (who wanted the strips removed) and the existing residents (who wanted them to remain).



Fortunately, the removal of a revenge strip (section 24A, *Subdivision Act 1988*) requires a planning permit, which means that competing views can be expressed, heard, and evaluated.

The developer was invited to apply for such a planning permit, but faced with the prospect of multiple and vigorous objections, declined.

The residents say – thanks Grandpa!

See you there!
Lex Loci

* *Architectural Plans & Permits v Moreland City Council*, VCAT (13 June 2014)

LEX LOCI'S TRAVELS

9 NOVEMBER 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex Loci queues for a Dim-Sim

At South Melbourne Market they boast about having the best dim-sims in Melbourne.

Lex is skeptical about this claim, but queues up anyway just to relish the associated complexities of public land governance.



The start of the queue is out on the footpath – part of a government road, owned by the Crown, controlled by City of Port Phillip (CoPP) as Controlling Road Authority under the *Road Management Act 2004*, and managed by CoPP as Responsible Road Authority under the same Act. Here, on this side of the shop-counter, trading activity and street furniture are all governed by Council's local laws, made under the *Local Government Act 1989*.

Behind the counter, where the culinary delights in question are manufactured and sold, Lex finds a different set of governance arrangements. Here the land is ultimately owned by the Crown, but it's permanently reserved for the purposes of a market, and is the subject of a conditional Crown grant to CoPP, issued under the *Land Act 1863*.

Council as the land's controller has sub-delegated management to a 'section 86' Committee under the *Local Government Act 1989*. On the advice of this committee, Council has issued 70+ licences and leases to stall-holders, pursuant to the *Crown Land (Reserves) Act 1978*.

These leases (but not the licences) must also meet the requirements of the *Retail Leases Act 2003*.



Here, on the market side of the counter, activities and behaviors are governed by two sets of regulations simultaneously: the same local laws as apply out on the footpath, plus regulations made under the *Crown Land (Reserves) Act 1978*.

Lex has now reached the head of the queue, and to his disappointment finds that the dim-sim vendor doesn't want to know all these interesting facts. All she wants to know is whether he wants soy sauce.

See you there!
Lex Loci

LEX LOCI'S TRAVELS

21 NOVEMBER 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex Loci likes Numbie-Munjie (And Buttlejorrk and Teddywaddy and even Gorrockburkghap.)



*Map of proposed counties in
the Port Phillip District, 1848
National Library, Canberra*

**What is the fellow talking about?
Why, Victorian parishes of course.
There are 2914 of them.**

Whether Victorians know it or not, every terrestrial bit of the State is in a *parish*, which in turn is in a *county*. The Parish of Numbie-Munjie is in the County of Tambo, which is up Omeo-way, in the Victorian Alps.

Lex concedes that parishes do serve a purpose, archaic though it may be – but he sees no value in counties. Neither plays any political or administrative role, although parishes do contribute to the unique cadastral identifier for every parcel of land.

They also serve to evoke some social memory of Aboriginal languages. As colonial surveyors and land officers spread out across the countryside, they attempted to render Aboriginal words or phrases into English. Sadly, the pronunciation and meaning of words like Numbie-Munjie, Buttlejorrk and Teddywaddy have been largely lost.

As for counties – their names were more likely to reflect the Old Country: Anglesea, Gladstone, Grant, Rodney, Talbot and so forth. These days they serve no purpose whatsoever – even when it comes to cadastral identifiers they are utterly redundant.

One memory of the system of counties survives, in the form of the County Court, in Latrobe Street.

As its eleventh item of legislation, the newly-independent Colony of Victoria enacted the *County Courts Act 1852*. The intention was to set up a number of Courts, each with its own geographic jurisdiction.

This system didn't survive: in 1857 each County Court was given Victoria-wide jurisdiction, and in 1957 they were consolidated into one.

Lex says: Why not give the County Court a more appropriate name? But leave Numbie-Munjie alone. Please.

**See you there!
Lex Loc**

LEX LOCI'S TRAVELS

19 DECEMBER 2016

An ad-hoc one-pager from The Public Land Consultancy

Lex Rolls into Town

Then he Rolls Out Again

It could be Dimboola, or Tallangatta, or Boort or Orbost.

The kids in the back seat just want to stop for an ice-cream, but Lex has other matters on his mind.

As he passes the 60k speed sign, he slows down. Not merely because the law requires him to, but because he can now indulge in his favourite pastime: observing the intricacies of public land law.

Having slowed down, Lex can now count the street lights. And the number of abutting buildings. He has one eye on the odometer, so he can tell when he's travelled 500 metres.

What's going on here? Lex is looking for the point at which responsibility for the roadside transfers from VicRoads to the local municipality.

"Here we are!" he announces. The kids imagine he means the ice cream shop – but no.

"This is the point at which we have buildings or street lights at 100 metre intervals for a distance of 500 metres."

So it's the point at which the Shire of West Wimmera, or Towong, or Loddon, or East Gippsland (as the case may be) becomes responsible for the roadside¹.

There's another nuance, of course. To fully understand the demarcation, we need to distinguish between roadside, roadway, and pathway¹.

Is the distinction important? Just ask the City of Greater Shepparton. A pedestrian there suffered a nasty accident, and Council found itself working through such questions in the Supreme Court².

Anyway, Lex drives on.

At the far end of town is a similarly defined point at which responsibility transfers back to VicRoads.

The kids are unimpressed. But at least they got their double-chocolate Magnums on the way through.



See you there!
Lex Loc

1. Road Management Act 2004, sections 3 and 37
2. Clarke v Greater Shepparton City Council [2016] VSC 542 (8 September 2016)

Left: No, it's not the Locis. It's the Purnim family at Warrnambool. Photo courtesy Warrnambool Standard