

LEX LOCI'S TRAVELS

14 JANUARY 2019

An irregular one-pager from The Public Land Consultancy



Lex, Artworks, and the Gas & Fuel

Our Lex is wandering around the National Gallery of Victoria, at Federation Square.

That's where the NGV exhibits its collection of Australian art. Lex understands art to include paintings, sculptures, ceramics, cultural artefacts and so forth. Here's Arthur Boyd and Margaret Preston and Emily Kngwararray and Albert Namatjira. And here's a model of... What?? The Gas and Fuel buildings!!

It must be art, because it's in an art gallery. But for pre-millennials like Lex, the G&F towers were the antithesis of art, of culture: a blot on Melbourne's urban landscape.

The towers occupied the airspace over the railyards, precisely where the NGV's Australian gallery now stands. Built in 1965 by the Bolte Government, they dwarfed St Paul's Cathedral and obliterated the view of the City from the South.

Lex has two complementary questions: (1) if government needed office towers, why build them here, and (2) if this land was available to be developed, why government office towers? Complex, but at the core of the answers will be the idea of ['free land.'](#)

The laws of economics apply everywhere (surely - otherwise they're not laws, are they?) but somehow accounting systems treat public land differently. A public sector

entity building something on freehold land will factor in the purchase price of the land. The same building on public land which the entity already owns or controls costs less (economists will be squirming here, but it's true!)

Demolished in 1996 by the Kennett Government, the G&F towers gave way to Federation Square - including the NGV.

Lex's two complementary questions apply to Fed Square, just as they did to the G&F, but they now have more accessible and plausible answers. The 'free land' factor has been submerged by factors relating to urban function, social amenity, and civic pride.

Back to the NGV. What's its excuse for commemorating this repulsive eyesore? Lex reads that what he's looking at is not a sculpture, but an installation. The artist is one Callum Morton, whose works *'memorialise outdated forms of modernity, and present a melancholic urban archaeology.'*

Well that's a relief. The work is exhibited not as an exemplar of architectural excellence, but as a cautionary reminder of the dangers of letting governments loose on public land, unsupervised.

See you there! Lex Loci

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26 FEBRUARY 2019

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Lex Hits a Six at the Walhalla Cricket Ground

Lex has had an invigorating climb. The narrow, winding track he's just traversed is only 1k long, but it rises 200 metres vertically. Once, the ridge at the top was even higher, but in the 1880s gold miners levelled it off, to create a cricket ground.

Walhalla is renowned for its rugged topography, and its gold rush origins. These two attributes combine to present modern surveyors with a confused cadastre, and modern land administrators with corresponding policy dilemmas.

In the 1860s the inhabitants just wanted to dig holes, make fortunes, and patronise the town's 10 hotels and 3 breweries. Getting their property boundaries correct was a very low priority – unless those boundaries related to gold.

When four diggers pegged the sliver of land that lay on the line of Cohen's reef between two big mines – the Royal Mint and the Prince of Wales – the dispute went as far as the Privy Council in London. In settling the case, their Lordships rewrote the common law on forfeiture and abandonment.



The Walhalla (mixed gender?) cricket team, 1888.

The common law is still hard at work in Walhalla. The Baw Baw planning scheme encourages titles to be restructured; DELWP is prepared to sell odd bits of Crown land to abutting owners, but ownership may not be correctly reflected on the title documents.

So we see, in the Baw Baw planning scheme, a remarkable (maybe unique) provision: an allowance for 'adverse possession' fencing. No permit is required to put up a 'fence consisting of star pickets not less than 3 metres apart and joined by not more than two strands of plain fencing wire.'

But back to the cricket! In 1907 Australian test cricket captain Warwick Armstrong made a bet that he could belt a cricket ball from the Walhalla ground onto the roof of the Star Hotel in the township 700 feet "over the side." It seems he did not succeed, so Lex is giving it a go. Only trouble is, he left his bat down at the pub. Bother.

See you there! *Lex Loci*

Sources: Walhalla Chronicle, *A Sporting Life*, Feb 1996
Shire of Baw Baw - *Restructure Discussion Paper*, 2013
Armstrong, Henry J - *A Treatise on the Law of Gold Mining in Victoria*, 1891



*Walhalla is in
Gunaikurnai
country*

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LEX LOCI'S TRAVELS

20 MAY 2019

An irregular one-pager from The Public Land Consultancy

Lex Contemplates Perpetuity

Lex is at the Elvis Presley memorial in the Melbourne General Cemetery. He's humming the 1963 Elvis song 'never ending,' and contemplating perpetuity.

The *Cemeteries and Crematoria Act 2003* offers the prospect of interment 'in perpetuity.' Now our Lex is a bit suspicious about words like *temporary* and *permanent* – so what does he make of *in perpetuity*?



Let's be clear about this: Elvis himself is not buried here.

One might be forgiven for thinking that temporary means short-term, and permanent means long-term. Oh, no. When applied to Crown land, such words refer to the method by which the governance regime may be changed. A temporary reserve can be revoked by administrative action; a permanent reserve requires an Act of Parliament.

So what about 'in perpetuity?' The C&C Act sees interment as being either for 25 years, or 'perpetual.' The *Reference Areas*

Act 1978 sets certain pristine areas aside for scientific study 'in perpetuity.' The *Loch Public Hall Act 1966* binds the hall's trustees to use it as a place of recreation and amusement 'in perpetuity.'

Some light might be shed on this perpetuity business by the *Land Act 1958*. There's a whole slab of it devoted to perpetual leases – including provisions dealing with their resumption, annulment and termination. Here's one such provision that takes Lex's fancy: if some scoundrel contrives to amass more than 1170 hectares under perpetual leases, the excess may be subject to forfeiture.

It's a provision which dates back to 1898, and has just been rolled over every time the *Land Act* has been re-enacted. As DELWP heads into yet another rewrite of that Act, we can only hope that perpetual leases are finally relegated to the legislative cemetery.

So the point is: things change, even cemeteries. At the end of the day, reference areas, the Loch public hall, perpetual leases and even the Melbourne General Cemetery are only as permanent as parliament wants them to be.

Elvis, however, lives on forever:

*"I bring you never ending
never ending, never ending,
never ending, never ending,
never ending love..."*

See you there!
Lex Loci

LEX LOCI'S TRAVELS

18 JUNE 2019

*An irregular one-pager from
The Public Land Consultancy*

Lex and the Palimpsest* On the Mildura Waterfront

Lex hadn't even heard the word until he went to Mildura. There they have two of them.

The first is their biennial 'Palimpsest' cultural festival – celebrating the multiple layers of Australian and international arts. The second is the wide band of public land along the River Murray. Here the cadastral map is nothing short of a surrealist artist's canvas. A somewhat confused surrealist artist.

The earliest layer of this palimpsest was inscribed at the behest of Squatter Jamieson, who in 1860 claimed a 640 acre [Preemptive Right](#) where the Mildura weir now stands. Then a three chain road reserve was imposed on the landscape, later to be named Cureton Avenue.

In 1881 the Mildura parish plan, together with all such plans along the Victorian side of the Murray, were adorned with another three-chain Reserve, this time for 'public purposes.'

In 1886 the Chaffey Brothers painted in the biggest blob on the entire Victorian title-map: a 250,000 acre [irrigation](#) colony. At later dates, authorities overlaid it with an impressive grid of government roads.

Then along came railway engineers, their geometric straights and curves authorized by the *Woomelang to Yelta Railway Act, 1900*. And in 1931 came water engineers, over-daubing the scene with footprints of treatment plants. Then in 1980 the High Court scribbled out and redrew [the border](#) with New South Wales...



Mildura is about to see yet another layer superimposed on this palimpsest. Or perhaps we should say the original, underlying, base layer is about to be re-exposed: the First People of the Millewa Mallee have lodged their Native title claim. Lex salutes them!



The Mildura Waterfront.

Some 100 cadastral parcels – Crown land, freehold land, road reserves, railway land – parcels whose status, size and shape bear virtually no relationship to the land's actual usage and management.

* *A manuscript or parchment on which later writing has been superimposed, effacing earlier writing. Something reused or altered but still bearing visible traces of its earlier form...*

**See you there!
Lex Loci**

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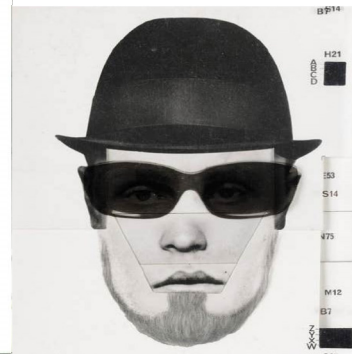
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LEX LOCI'S TRAVELS

12 JULY 2019

An irregular one-pager from The Public Land Consultancy

Lex takes on the Welshers, Urgers, Ticktackers and Touts at various Victorian racecourses



Lex is doing the rounds of Victorian country racecourses. So far he's visited Hexham, Newstead, Rupanyup, and Gunbower. There are plenty more.

Hexham? That's between Mortlake and Hamilton. Racecourse? There's no actual racecourse there – at least no place where racehorses actually race.

And as for urgers, ticktackers and touts (not to mention balancers, welshers, pickpockets and prostitutes) we'll come to them shortly.

It seems the word 'racecourse' has two different meanings. In the *Crown Land (Reserves) Act 1978* (at section 4(1)(za)) we find that the word refers to a parcel of Crown land set aside for the purpose of racecourse. In the *Racing Act 1958* (at section 24) we find that it refers to a place where horse racing may actually occur. They are not the same! The Hexham racecourse is the former but not the latter.

So what about the welshers, urgers, ticktackers and touts?

Well, it seems that such people are to be found hanging around racecourses – of one type or the other. Although when Lex visited Hexham he found nobody there but half a dozen sheep. And they weren't even jogging, let alone racing.

So we need regulations. And here they are, for Hexham, and Bendigo, and Kilmore racecourses, and many others. You'll find them in Gazettes dated 1933, or 1941, or 1958... *"No person who is reputed to be a thief, urger, ticktacker, balancer, welsher or prostitute shall enter on the said land and may be removed by the Trustees or Committee..."*

But surely such regulations were wiped off the statute books long ago? Sent to the legislative graveyard? All sorts of regulations and local laws sunset at the age of 10 years – but not Crown Land (Reserves) Act regulations. They just keep on keeping on, never to arrive at the finish post. Like the horse Lex put his money on.

See you there! Lex Loci

LEX LOCI'S TRAVELS

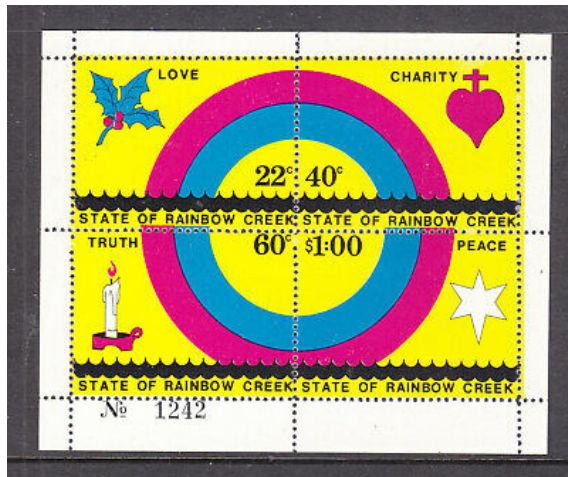
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7 AUGUST 2019

Lex Declares Independence At Rainbow Creek, Gippsland

Independence from Victoria! Independence from Australia!

In 1979, a bunch of landowners led by one George Barnes declared their independence from Victoria, and from Australia. As the Independent State of Rainbow Creek they lodged a secession document with the Governor of Victoria and the Governor-General of Australia.



The independent State of Rainbow Creek issued stamps, banknotes and even passports.

Lex was reluctant to lend his name to the rebellion, until he learned that the new State would remain loyal to the British Empire, and its anthem would be 'God Save the Queen.' Buckingham Palace was duly informed, but HMQ's response is not recorded.

Barnes' real grievance was not with the Governor, nor with the Governor General, but with the State Rivers and Water Supply Commission. And with the Thomson River.

The good old SRWSC had either caused the Thomson to change course, or had failed to prevent it from changing course of its

own volition. Either way, Rainbow Creek now traversed the Gippsland landscape where there had been no Rainbow Creek before.

And, before re-joining the Thomson further downstream, it went right through the middle of Barnes' and his neighbours' properties.

Those affected had to pay rates to the local council for land which was now underwater, because their title deeds did not show the existence of the creek. They had to pay a second levy to the SRWSC for using creek waters for irrigation purposes, and a third levy to the Thomson River Improvement Trust which was failing to prevent further erosion by the creek.

The Thomson continued to flow down its previous channel, albeit with a reduced torrent. This just served to further aggrieve the dissidents: they had lost land to one branch of the watercourse, but gained nothing in exchange. And they needed to build bridges to get to their own bottom paddocks - bridges which required consents from the SRWSC !

All around the State rivers continue to change course. Forty years on, we still don't have a system for reconfiguring the riparian cadastre. Crown 'water frontage' reserves are high and dry, private farms are inundated. CMAs and Landcare groups struggle on ...

George Barnes has since departed the scene. His micro-nation has been re-absorbed into Victoria and Australia. As for HMQ, Lex doesn't know whether she is pleased or displeased.

See you there! Lex Loci

LEX LOCI'S TRAVELS

20 SEPTEMBER 2019

An irregular one-pager from The Public Land Consultancy

Lex Resolves a Contradiction At Safety Beach, Dromana



Lex is well below sea level. He's in the Lexmobile, driving along Marine Parade, Dromana. It's a road which goes down, down, down... under the Martha Cove canal, then up, up, up the other side... and back to normal ground level.

As Lex knows, land is three-dimensional. Each parcel has some vertical extent – possibly reaching as far as heaven and hell¹. So the canal is part of the road. And what's more, roads are public highways.

The word *highway* is older than you might think². A public highway (or just 'highway') is land over which you or I or anyone else is entitled to come and go. That's the common law. Older than motor vehicles; older than Australia.

Here at Martha Cove the canal occupies part of the road reserve. That part of the road reserve which is right above Lex's head. This causes him two concerns: firstly, he hopes the structural engineers did their calculations right, back in 2005 when the thing was built. And secondly, he sees the canal as a legal contradiction.

That land occupied by the canal is the subject of a *lease* – from VicRoads as landlord to the Martha Cove Owners Corporation as tenant.

That's right, a lease. Not a licence. And what's the essential characteristic of a lease? Exclusive possession!

Yes, here is the contradiction. A public highway is available for anybody to enter; whereas a lease allows the tenant to lock anybody out. That's why most occupations of road reserves take the form of licences, permits, or gazetted authorities to occupy as if under a licence. But not this one!

The contradiction is overcome by clause 9 of schedule 5 of the *Road Management Act 2004*. This allows VicRoads to issue leases for portions of arterial roads not required for traffic. VicRoads, but not other road authorities. And Marine Parade, Safety Beach is a VicRoads (arterial) road.

The 'public highway' status of the leased stratum has gone into abeyance.

Whew! The contradiction is resolved. Lex can emerge from the underpass and get on with his journey. But he's still wondering whether the structural engineers did their sums right.

See you there!

Lex Loci

1. '[*ad coelum et ad inferos*](#)' as Lex's Latin master taught him.
2. If Ned Kelly had been in England, he would have been a *highwayman*.

LEX LOCI'S TRAVELS

20 NOVEMBER 2019

An irregular one-pager from The Public Land Consultancy

Lex watches where he steps at the Haymarket Roundabout

Lex is at the top end of Elizabeth Street, just where it branches into Flemington Road and Sydney Road. He catches a faint whiff of something he wouldn't want to stand in.

There's a huge flagpole here, in the middle of a huge traffic island. Google maps tells Lex that it's the 'Haymarket roundabout.'

There is no hay market here: the name survives from the century before last. Where we now find the Royal Melbourne Hospital, related medical establishments, and the University High School, there once stood the Melbourne Hay, Straw and Horse Market.



This horse-head sculpture once marked the entry to the horse market pavilion.

It was here that horse dealers plied their trade – buying and selling delivery cart nags, light harness horses, extra-heavy draughts, pretty saddle ponies, useful farm mares, and everyday hacks. And, depending whether it was a time of war or peace, they traded officers' stallions, Indian remounts and artillery pairs.

The horse-era is fast fading, but relics remain. When he walks down many bluestone lanes, Lex observes the ruts ground by the iron cartwheels. Here and there he still finds horse troughs, some

inscribed to their donors, Annis and George Bills. Just outside Seymour, Crown land is reserved as the Light Horse Memorial Park.

But when Lex checks out his favourite Acts of Parliament, it seems the horse era has been virtually expunged. The *Summary Offences Act 1966* still has something to say about horse drawn vehicles (and dog-drawn, and goat-drawn – but that's another matter). But the *Road Management Act 2004*, at section 128, extinguishes the long-standing common law distinction between carriageways, bridleways, and footways.

In 1958 the *Local Government Act* usefully provided that horse-mounted ministers of religion were not to be charged road tolls on Christmas day – a provision which did not survive into the 1989 Act. Ah, well.

But Lex does see an important relic of the horse-era whenever enters the Supreme Court, or Parliament House. Beside their doorways he still finds ornate cast iron boot-scrapers, whose purpose was to scrape off more than mere mud.



Boris at Number 10 Downing Street.
What are those things behind him?

And so we return to the faint odour which Lex thought he detected at the haymarket roundabout. Sorry: for better or for worse it's been overwhelmed by diesel fumes.

See you there!
Lex Loci

LEX LOCI'S TRAVELS

17 DECEMBER 2019

An occasional one-pager from The Public Land Consultancy

Lex at the North Pole



Lex Loci usually attempts to offer place-related commentary which is interesting and relevant to Australian 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 $1 + (1/2\pi)$ kilometres 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 Tripsavvy.com