

# LEX LOCI'S TRAVELS

28 FEBRUARY 2022

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

## Lex sips a Grange Burn

**To Lex, it sounds like a good Scotch whisky. Grange Burn single malt.**

No. It's actually the creek which runs through Hamilton. Seems it might have been named by Major Mitchell as he trekked through Gunditjmara country.

Anyway, a part of Grange Burn isn't where it used to be. It has been moved – not by the forces of nature which affect so many of our waterways, but by the operation of earthmoving equipment. Apparently a local landowner formed the view, a few decades back, that various bends should be taken out of it, and its general location should be somewhere else.

From what Lex knows of it, the frogs and platypus seem to have adapted – with a little help from the [local CMA](#). And so has the endangered Glenelg Spiny Crayfish.

**But what interests Lex is not the ecosystem, but the cadastre. When the Burn was moved, what happened to all those imaginary lines defining land parcel boundaries? Well, some of them moved, and others didn't.**

When our landowner realigned the waterway, he moved it onto his neighbour's land. His own property became bigger, and his neighbour's became correspondingly smaller.

In at the Land Titles Office they knew nothing of this, so the title documents remained unchanged.

Nevertheless, with the effluxion of time, a slab of land changed ownership, and became part of our enterprising landowner's estate. This is what's known as *adverse possession*. When our landowner sold up, the documents of conveyance announced that he was “*seized of a possessory interest of the land hereinafter described for an estate in fee simple in possession.*”

**But what about Grange Burn? Before the realignment it had occupied a strip of Crown land – and Crown land is unaffected by adverse possession. Our landowner cannot claim to be ‘seized of’ the land where the Burn used once to run.**

Across the middle of his paddock is a strip of Crown land, with no waterway in it. At the bottom of the paddock, between his land and his unfortunate neighbour's land, the actual waterway flows over freehold owned by one of them or the other; Lex is certain (well, almost certain) that it's not owned by the Crown... You'd have to be a Supreme Court judge to figure it out.

Anyway, the frogs and platypus just get on with life, thanks to the CMA, the council, and local conservationists. And Lex is off to the bar for a Grange Burn single malt. On the rocks. ♦



*Grange Burn is in Gunditjmara country*



See you there! Lex Loci