

LEX LOCI'S TRAVELS

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An irregular one-pager from The Public Land Consultancy

Lex Stumbles in the Gutter

Lex had planned to head this edition 'Lex Leaps Across the Gutter' but it didn't work out that way. *Oops!*

He is in the main street of some historic Victorian town. It could be Ballarat, or Beechworth or Malmsbury.



*Camp Street, Beechworth.
(photo Liz and Pete Marsh, bloggers)*

Here's his dilemma: should he admire the stone gutter as part of the heritage streetscape, or denounce it as a safety hazard? It's a dilemma for civic administrators too - caught between the Heritage Overlay (HO) in their planning scheme, the body of law relating to 'duty of care,' and the basic need to carry away rainwater.

A score of [trip-hazard cases](#) have come before the Supreme Court of Victoria in as many years.

Back in 1996, Mrs Anna Perovic (not a young woman) tripped while crossing a deep bluestone gutter in Ballarat. She was simply trying to get from her parked car to the parking meter.

Sturt Street, Ballarat is not unique. Since the Perovic case the courts have seen trip-

hazard litigation involving Central Goldfields, Campaspe, Boroondara, Wellington, Moyne, Whittlesea - and most recently, Shepparton.

A problem for these councils' lawyers is mounting a defence against Lex when he brings legal action. A problem for their infrastructure engineers is how to prevent Lex from tripping over in the first place.

In relation to the first problem (for the lawyers), one line of thinking is to wheel out sections 40 and 107 of the *Road Management Act 2004*, but that defence relies on whether council is a 'road authority' as against an 'infrastructure manager' and whether the gutter is or isn't 'road infrastructure.'

A second line of thinking is to wheel out Part XII of the *Wrongs Act 1958*, which offers the 'limited budgets' defence. It was a defence which failed City of Bayside when a cyclist hit a crash barrier.

So what about the second problem (the one for the engineers)? What they need to design is some sort of cross-over culvert thing.

It would have to satisfy the heritage people, who are waving around documents like [the Burra Charter](#). And it would have to not impede the rainwater. And it would have to not be a hazard in its own right.

Right now, Lex doesn't care about lawyers and engineers. He's just nursing his bruised shins.

**See you there!
Lex Loci**