

TERRA PUBLICA

NEWSLETTER OF THE PUBLIC LAND CONSULTANCY

~ Front Page ~

Off the rails

Between Hamilton and Casterton, a sound process goes [off the rails...](#)

~ What's new ~

Bulletin Items

Flood Mitigation
Traditional Owners
Water Storages
Native Vegetation
[Click here](#) for details.

~ PLC Courses ~

Calendar of Forthcoming Course Presentations

Course listing [click here...](#)
Program up to Oct 2012 [PDF file](#)
To register interest in one or more courses [click here...](#)

~ Questions from our readers ~

Can we book cars parked on the beach?

Most bayside beaches are Crown land, but there's an impediment: a little thing called 'the onus of proof'...

Can we allow cars to park on a nature strip?

The answer is 'yes' – but to arrive at that answer we need to haul in a lengthy chain of inter-connected law, link by link. [link by link...](#)

~ Forward to a friend ~

Know someone who might be interested in the email? [Let us know](#)

~Vol 12 No 7 September 2012~



Off the Rails...

The Hamilton to Casterton railway carried its last train in 1976. The line is 34 kilometres long, crosses a spectacular trestle bridge, and passes through some delightful pastoral landscape. Perfect for a rail trail.

So thought the local community. For 12 years a voluntary committee of management put its efforts into conserving the line's heritage values and protecting its biodiversity, while opening it up as a tourist attraction. Successive Ministers from both sides of politics were happy to appoint and empower the committee under the Crown Land (Reserves) Act 1978.

The Act is silent on the means by which Ministers choose people to serve on such committees. In the past, many were 'elected' at public meetings (or perhaps conscripted?); these days it's more likely that they are chosen through some better-structured selection process, supervised by DSE..

So it was at Casterton-Hamilton. A panel was appointed, comprised of a senior and experienced DSE manager, a representative of the CFA, a representative of the Shire, and an independent governance consultant from Melbourne..

The panel considered written applications from 16 applicants, assessed them

who and we'll send the current issue to them.

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- Vegetation Law

against relevant criteria, interviewed a short list, and recommended that 6 be appointed, with others being invited to serve on sub-committees. Exactly as it should be.

But now for the rail crash. The Minister decided to overturn the panel's recommendations and appoint his own Committee. And (surprise) they would be dominated by abutting landowners and mates of the local MP. The Chair-person of the panel had the embarrassing task of recanting on the announcements she'd already made..

Under the Crown Land (Reserves) Act it's perfectly legal for the Minister to appoint whomever he or she chooses. Many boards – like the MCG, Parks Victoria, the Royal Botanic Gardens, and the Zoo – are to some extent political appointments, often drawn from the ranks of ex-politicians. That's to be expected. But the Casterton Rail Trail? .

Note to the Minister's Office...

If you want to do the local member a favour by appointing his/her buddies to a Committee, then by all means do so – but attempt a modicum of subtlety. Like intervening before the panel has gone through its selection exercise, rather than after!

Bulletin: What's New

Flood Mitigation Infrastructure

The Parliamentary Natural Resources and Environment Committee has released its final report into flood mitigation infrastructure. The report makes recommendations relating to the ownership and control of levee banks.

For the Report, [click here](#).

Traditional Owner Settlement Act

Attorney General, Robert Clark, has introduced amendments to the Traditional Owner Settlement Act 2010.

For the Bill, [click here](#)

For the Second Reading Speech [click here](#)

Water Storages – Recreational Areas

The Minister for Water, Peter Walsh, has circulated a draft model by-law for Water Authorities managing 'Environmental and Recreational Areas'.

For a copy of the Model By-law, [click here](#).

Review of Native Vegetation Regulations

DSE has released a consultation paper 'Future Directions for Native

Vegetation in Victoria.’

The consultation paper, along with details for submitting feedback, are [published here](#).

Questions with notice...



Q: Can we book cars parked on the beach ?

Q: Can we allow cars to park on the beach ?

Questions asked by Enforcement Officers with a bayside council.

We're sure it seemed like a good idea at the time, the *Land Conservation (Vehicle Control) Act 1972*. Premier Dick Hamer was responding to a passing fashion for hooning up and down sand dunes in Mini-Mokes and Beach Buggies.

Together with the *Land Conservation (Vehicle Control) Regulations 2003*, this Act makes it an offence to allow a vehicle to be on Crown land other than a road or parking area. Penalty: 5 penalty units (that's about \$700).

Can you issue tickets to offenders? No you can't.

Most bayside beaches are Crown land, so they come under this particular Act. The impediment: a little thing called 'the onus of proof.'

By and large we subscribe to the presumption of 'innocent until proven guilty.' There are very few exceptions to this presumption – parking offences being amongst them. Normal parking offences, that is, under the *Road Safety Act 1986*. That Act sets up a system of 'operator onus' which reverses the onus of proof: if you own the offending vehicle, you're deemed to be guilty until you do in the real offender. It's the same with 'aggravated littering'

under the *Environment Protection Act 1979*: the vehicle's owner is deemed to be guilty of the offence, unless he or she grasses up the actual offender.

So, with normal parking offences, the end result is that we can identify our offender through their number plate. This vehicle is registered to X, so we prosecute X without needing any evidence that it was X who parked illegally. So we stick a parking ticket on their windscreen.

It's not like that with the *Land Conservation (Vehicle Control) Act 1972*. This Act contains no 'reversal of onus' provision. Our Enforcement Officer must identify the offender through means other than their number plate. And there's no provision for Penalty Infringement Notices (PINs) so any prosecution would have to be brought through summons to the Magistrates' Court.

Can a council negate this prohibition and allow vehicles onto the beach? Yes you can. Regulation 6(3) exempts various categories of vehicle, including those 'acting in accordance with the direction or written permission of the person or body having management or control of public land' – although we're unaware of what form such 'direction or written consent' might take.



Q: Can we allow cars to park on a nature strip?

Question asked by Enforcement Officers from an inner Melbourne Council

The answer is 'yes' – but to arrive at that answer we need to haul in a lengthy chain of inter-connected law, link by link.

Council's powers in relation to traffic stem from section 207 of the Local Government Act 1989, which authorizes the matters listed in Schedule 11 subject to the requirements of the Road Safety Act 1986. Schedule 11 Clause 1 provides for powers over parking on a 'highway' which term in this context includes nature strips.

The Road Safety Act 1986 is the head of power for the Road Safety Road Rules 2009 (the Road Rules) and for the Road Safety (Traffic Management) Regulations 2009. Rule 197 of the Road Rules makes parking on nature strips an offence – unless authorised by signage.

So who can put up that signage?

Under clause 10 of the Road Safety (Traffic Management) Regulations 2009 Council may erect traffic control devices (TCDs) – which include parking signs. ‘Major traffic control devices’ require the consent of VicRoads; ‘minor traffic control devices’ do not require the consent of VicRoads.

So what’s major and what’s minor?

Schedule 1 of the Road Safety (Traffic Management) Regulations 2009 provide (Item 37) that major TCDs include signs permitting parking at a place where it would otherwise be prohibited.

For a major TCD VicRoads grants the necessary authority either by delegation or by Memorandum of Authorisation. Now we turn to the VicRoads Traffic Engineering Manual, Volume 1, Chapter 2. It lists (Table 2.1) the various major TCDs which have been delegated to municipal councils.

Item 37 in table 2.1 relates to parking signs where parking would be otherwise prohibited. For the circumstances where VicRoads delegates this power, we are referred on to Chapter 9 of the Traffic Engineering Manual, Volume 1. Chapter 9 (table 9.1) lists several types of parking which would normally be unauthorized, but the list does not include parking on nature strips. It must therefore be assumed that the power has not been delegated, and must be specifically authorized by VicRoads.

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