

FOOTNOTES TO BLACK SATURDAY

Escape at Yarra Glen

Terra Publica stories seldom get quite as dramatic as this one.

In our December 2008 edition, we reported on a County Court decision relating to the legal status of an unused road at Yarra Glen.

The Court agreed with Robert and Christine Dove (our clients) that they had the right to use the government road, even though it was held under licence by their neighbours, the Fenelons.

On Black Saturday (7 February 2009), the Doves' house burned to the ground. They were very lucky to survive. They made their escape along the road in question.

It's yet another compelling reason for reviewing both policy and law relating to unused roads. As *Terra Publica* argued two years ago:-

It should be recognised that access may be reasonably required along some licensed roads, but not others ... who should be permitted access to an unused road, and in what circumstances?

DSE did itself no credit when it failed to show any leadership in resolving the Fenelon-Dove dispute. Given the disturbing proximity of the case to matters now before the Coroner and the Royal Commission, there is no longer any excuse for inaction.

It's time for DSE to stop running away from the issue, and actually sit down with the MAV, the VFF and the CFA and work out how to fix it. ♦

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Could the Fire Truck get down this Road?

It's a reasonable question, you might think, for a planning officer to ask in a fire-prone area; a matter on which the CFA itself might have an authoritative opinion.

But whether the CFA even gets to be asked depends on whether it's a 'road' for the purposes of the *Planning and Environment Act 1987*. If it's not a road, then the CFA isn't a referral authority.

This is one of a number of Acts which offer an *inclusive* rather than a *comprehensive* definition of road: "road includes highway, street, lane, footway, square, court, alley or right of way, whether a thoroughfare or not and whether accessible to the public generally or not."

The word 'includes' clearly suggests that there may be other things which constitute 'roads' – but it seems common-property roadways are not amongst them. In two cases, each involving Maroondah City Council, VCAT found that such roadways are only private accessways or driveways.



In the first case ('AMS') Member Jeanette Rickards found: *Just because it provides access to a number of dwellings does not change its status from a driveway providing access to an individual dwelling. It is a private driveway or accessway on land owned by or the responsibility of the owners of the land.*

It follows that, in a subdivision creating such a non-road, the Country Fire Authority is not a referral authority, and has no power to require fire-truck access and fire hydrants.

In the second case ('B R Smith') Deputy President Helen Gibson confirmed the earlier decision and made some very pertinent observations on its repercussions:-

The disastrous bushfires of Black Saturday have heightened concerns about fire safety. It cannot be assumed that urban areas are immune from the threat of wildfire.

If there are minimum requirements relating to fire safety and emergency vehicle access to properties, then it is desirable that they be applied. If those standards are well founded, then it should make no difference whether the accessway to dwellings is privately owned or a public road.

If the government intends that the Country Fire Authority should be a referral authority in cases where a subdivision creates a common property driveway ... then an amendment to the Victoria Planning Provisions is required.

How refreshing to see a court not merely interpreting the law, but actually advocating its reform. ♦

References...

Terra Publica Vol 8 No 8 (Dec 2008)

Fenelon v Dove [2008] Victorian County Court (19 December 2008)

AMS Pty Ltd v Maroondah CC [2009] VCAT 17 (8 January 2009)

B R Smith & Assocs v Maroondah CC [2009] VCAT 766 (6 May 2009)

PUBLIC LAND AND 'LIVEABILITY' – p 3



In the News

The mainstream media picks up stories from Terra Publica...

THE AGE

March 9, 2009

Jason Dowling

Ever had trouble finding someone's house?
Couldn't find a street sign or road on a map?

Well, it may never have been officially named, along with countless other roads, lanes and private driveways in Victoria that are in geographic limbo.

Victoria's Registrar of Geographic Names is reviewing how places and roads are named. Project officer Laura Kostanski said it was crucial roads had officially registered names.

"It is important they are officially registered because the details are utilised by emergency service operators and Australia Post," Ms Kostanski said.

A spokeswoman for the royal commission examining Victoria's bushfires said if the naming of roads proved to have been an issue in the response by emergency services to the fires, then it might well be considered by the commission.

A recent publication by the Public Land Consultancy reported problems in naming roads, including the view of one local government officer that his council was wary of naming roads because "people out there might then think that we are responsible for maintaining them".

The Municipal Association of Victoria has hired the Public Land Consultancy to work on a new discussion paper on the road-naming issue for council staff.

Association chief executive Rob Spence said the MAV wanted to remove confusion around place names and locations. "We are trying to get absolute accuracy in rural areas about naming and locations. That to me is a really critical issue so you can ensure when the emergency services are going somewhere they know exactly where they have got to go — that's a good thing," he said. ♦

To read more about councils' road-related powers and responsibilities, see *Terra Publica*, Jan-Feb 2009

THE AGE

May 26, 2009

Peter Ker

A Battle is looming on the banks of Victoria's rivers and herds of hungry cattle are in the line of fire.

Large swathes of river frontage in Victoria is Crown land, but 17,000 kilometres of it is licensed to private operators. Many of the licences go to farmers owning nearby property, allowing them to graze their cattle down to the edge of some of Victoria's most important rivers, including the Murray, Goulburn and Campaspe.

Thousands of the five-year licences are up for renewal this year and environmentalists have urged the State Government not to reissue them because of the damage cows do to river bank ecosystems and water quality.

The fight against riverfront grazing was boosted last year when Sustainability Commissioner Ian McPhail used his landmark State of the Environment report to call for phasing out uncontrolled grazing on Crown river frontages. He recommended the Government take action during this October's licence review, and Victorian National Parks Association spokesman Nick Roberts agreed, saying licences should be issued for conservation not grazing.

"Cattle along rivers is Third World management and continues to erode the health of our rivers. The potential water-quality impacts for human health are also a serious concern," he said.

But Victorian Farmers Federation spokesman Ian Lobban said grazing should continue on river frontages. "Who else is going to manage that land if not the adjoining landowners who are going to manage the weeds and so on?" he said. "There's no access to a lot of these frontages other than through private property."

Environment Minister Gavin Jennings said the Government planned to reissue most of the licences, but may consider setting aside high-priority stretches of river frontage for conservation projects. ♦

To read more about the need for reform of riparian governance, see *Terra Publica*, June 2008

Readers of Terra Publica should not act on the basis of its contents which are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. They do not, nor are they intended to, constitute legal or specific advice. The Public Land Consultancy is available to provide advice on public land matters and will, on request, arrange legal advice for clients from its associate Maddocks, of 140 William Street, Melbourne.

Urban Public Land – Its Contribution to Liveability

As the Victorian Environment Assessment Council (VEAC) proceeds with its investigation of public land in metropolitan Melbourne, it has to address the meaning of 'liveability.' It's a bit hard to pin down – nevertheless, here's our contribution towards a conceptual framework for considering the contribution urban public land makes towards it.

Indicator of Liveability	Natural <i>Open and fully accessible</i>			Artificial <i>Enclosed and inaccessible</i>		
	Parks and Gardens Foreshores	Creeks and Rivers Utility easements Railway reserves	Sports complexes Playgrounds	Roads and footpaths Roadsides and road-related areas	Galleries and Libraries School halls, Health centres	Municipal Offices Utility infrastructure Police stations
<i>Healthy, safe and inclusive communities</i>	Open-air activities Physical and mental reinvigoration		Active and passive sport Adult- and child-focused recreation	Communication Social interaction	Cultural and educational activities Health and well-being	Civic governance Water, sewerage, etc Law and order
<i>Dynamic, resilient local economies</i>	Conservation-related employment	Communication and transport infrastructure	Recreation employment Farmers' markets	Al-fresco dining Footpath trading	Community notice-boards	
<i>Sustainable built and natural environments</i>	Conservation of flora Habitat for fauna Landscape	Remnant vegetation and habitat Landscape		Urban vegetation Community gardens	Heritage buildings	Recycling depots
<i>Culturally rich and vibrant communities</i>	Egalitarian and cross-cultural interactions	Community gardens and allotments	Sporting clubs Playgroups	Street festivals Street art and sculpture	Events, exhibitions, social functions	
<i>Democratic and engaged communities</i>	'Friends' groups Conservation volunteers	'Friends' groups Conservation volunteers	Committees of Management	Processions Rallies and protests	Cultural societies Ethnic-based social clubs	Local government activities

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Can a Committee for a Crown reserve also manage an unused Government road ?

Question which should have been asked (but wasn't) by a near-Melbourne municipality acting with the best of intentions.

Here's an unused government road with high-quality remnant vegetation. Here's a council keen to facilitate community-based conservation programs. Here's an incorporated community group with all the skills, resources and enthusiasm to take on the job. Let's sign up a Management Agreement !

Sounds good? Can't fault it. BUT – when the community group happens to be a Committee of Management under the *Crown Land (Reserves) Act 1978* – sorry guys, you've just gone *ultra vires*.

The CL(R) Act provides for the establishment and incorporation of community-based Committees of Management, and defines their powers and duties. These powers do not extend to managing land outside their specific Crown reserve. So it's a bit surprising to find that, in the

case we're looking at here, the arrangement was sanctioned by DSE – which should have known better.

Next question - What to do about it?

Answer 1 – Ignore it. What's the risk? We're not looking at big-money contracts; both the council and the committee have insurance cover (probably); and there seems little scope for third-party challenges (we hope). The auditors may not even notice (fingers crossed).

Answer 2 – Fix the land status. Discontinue the road under either the *Land Act 1958* or the *Local Government Act 1989*, reserve it under the *Crown Land (Reserves) Act 1978*, and appoint the Committee to manage it. Twelve months' work at the least, all sorts of side issues (like extinguishing public rights over the road), and no certainty of arriving at the desired result.

Answer 3 – Fix the Act (we like this answer). Back in July 2008, *Terra Publica* addressed the gross deficiencies of that slab of the CL(R) Act which allows Committees to become incorporated. At the end of the day, section 14A exposes committee members and third parties to unacceptable risks and burdens. We argued that it should be rewritten along the lines of the *Cemeteries and Crematoria Act 2003*. And here's another reform to make at the same time: with the consent of the Minister, a Committee of Management should be allowed to enter into agreements for management of other land. ♦

Our Professional Development Program
June to September 2009

	Melbourne	Western Victoria	North-Western Victoria	North-Eastern Victoria	Gippsland
Crown Land Law, Policy & Practice	30 July Docklands (Melb City Council in-house course) 14 August Holiday Inn, Melbourne CBD	25 June BEST Centre Ballarat	<i>Date to be fixed</i> Kerang	26 August Benalla	28 July Century Inn, Traralgon
Land Law for Managers of Roads Streets and Lanes	30 June Crowne Plaza Melbourne CBD	20 August Mercure Hotel, Geelong	<i>Date to be fixed</i> Kerang	31 July Gateway Motel, Wangaratta	6 August Century Inn Traralgon
Land Law for Managers of Rivers and Riparian Land	27 August Docklands (Melb City Council in-house course)		<i>Date to be fixed</i> Kerang	25 August Carrington Motel Shepparton	7 August Century Inn Traralgon
Land Law for Service Utilities	18 June Russell Kennedy Melbourne CBD 13 August Russell Kennedy Melbourne CBD	3 June 09 Barwon Water Geelong	<i>Date to be fixed</i> Kerang	<i>Date to be fixed</i> Shepparton	<i>Date to be fixed</i> Traralgon
Public Land for Urban Planners	12 June Holiday Inn, Melbourne CBD 11 August Holiday Inn, Melbourne CBD		<i>Date to be fixed</i> Bendigo		
The Land, its Traditional Owners and the Law	6 July Koorie Heritage Trust Melbourne CBD	17 August Gilly's Restaurant, Hamilton			
Vegetation and the Law	2 July East Melbourne (Melb Water in-house course) 14 July ACF, Carlton	<p>Maximum numbers - 10 persons per course</p> <p>For details of all our courses go to: www.publicland.com.au/professional_development.htm</p> <p>To register, contact Natasha Herbert on (03) 9534 5128 or email natasha@publicland.com.au</p>			
Land Law for Coastal Authorities	4 August Maddocks Melbourne CBD				

Public Land @ 5 Million
Melbourne, the Future, and Public Land

Papers from our May conference are now available on our website.

Many thanks to all our speakers, commentators and sessional chairs

Bugger. We forgot to allow for the bike paths

