

## GHOST STORIES

Does the Class Struggle continue on the Other Side? Or have the ghosts of militant Trade Unionists settled their differences with the ghosts of Western district graziers? If so, they may find common cause in the protection of certain patches of public land.

The Eight Hours monument in Russell Street (1903), and the Clock Tower in the centre of Camperdown (1896) are protected respectively by the ghosts of militant stonemasons and the ghosts of the Manifold squattocracy.

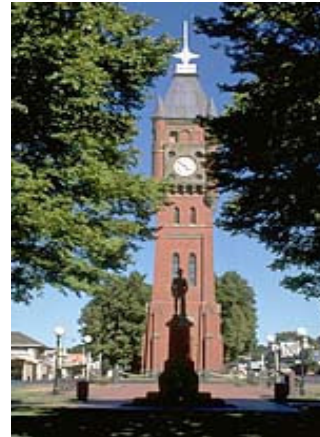
Just as well, because many such sites get little effective protection from our modern systems of public land governance.



The little triangle opposite Trades Hall, commemorating the stonemasons' campaign for an eight-hour day, is Crown land – but not reserved under the Crown Land (Reserves) Act. In fact its status is mere Government Road. Under the Melbourne Planning Scheme, it's not zoned PPRZ (Public Park and Recreation Zone), as you might expect, but MUZ (Mixed Use Zone) like the freehold land surrounding it.

Camperdown's municipal pride and joy is the central median of Manifold Street, with its avenues of elms, war memorial and clock tower.

It too is Crown land with the status Government Road, and quite untroubled by the Crown Land (Reserves) Act. The Planning Scheme zones it as RDZ1 (Road Zone 1) which is a zoning widely, although erroneously, accepted as coinciding with the status of a VicRoads Arterial Road.



Apart from their ethereal defenders, these two particular sites are also protected by listings on the Victorian Heritage Register. The same can't be said, however, for dozens of other 'parks,' large and small, scattered around the suburbs and provincial towns.

Islands of green used by communities as recreational space for decades are, in fact, portions of road reserves. If the road authority wants to put in that new roundabout or turning lane it can do so without hindrance. Then there's another danger: if some nearby development has a detrimental effect on the land (such as overshadowing or traffic generation), then objections will have little weight. Detriment to a *road* would not be regarded as seriously as detriment to a *park*.

What's to be done? Many of these cases surely warrant a formal road closure, re-reservation for the purpose of 'public parks and gardens' under the Crown Land (Reserves) Act, and rezoning as PPRZ under the relevant Planning Scheme, possibly with a Heritage Overlay.

In this way, community values and history would be recognised and protected. We reckon the ghosts (of whatever social class) would approve. ■

## Vegetation and the Law: Final Scheduled Presentations



Having presented this course 24 times over 15 months, we are now putting it into mothballs. After June the course will still be available, but only as an in-house course, if requested.

- 8 May 2007 - Maddocks, Melbourne
- 7 June 2007 - Bell Motor Inn, Preston

*Presenter: Brendan Sydes, Principal Solicitor, The Environment Defenders Office*



# New TLAs !

In this issue of *Terra Publica* we would like to tell you all about the regulations which will make the new *Aboriginal Heritage Act 2006* work, but they are still under wraps.

The best we can do is list the new TLAs (that's Three Letter Acronyms) that will enter our vocabulary when the Act and the Regulations are finally proclaimed, probably at the end of May. (Sure, some of them are not new, and some are four, five or even more letters...)

<b>AH Act</b> the <i>Aboriginal Heritage Act 2006</i>	The new Victorian Act about to supersede the AARP Act and Part IIA of the AATSHP Act
<b>AAV</b> Aboriginal Affairs Victoria	A branch of DVC (that's the Department for Victorian Communities)
<b>CHA</b> Cultural Heritage Agreement	An agreement between two or more parties. May be noted on title and runs with the land. CHAs do not negate the need for CHPs and CHMPs
<b>CHP</b> (Aboriginal) Cultural Heritage Permit	A permit issued by AAV (may be vetoed by a RAP) to disturb land for purpose of uncovering Aboriginal cultural heritage, carry out scientific research, carry out activity likely to harm cultural heritage, or buy or sell an Aboriginal object or remove it from Victoria
<b>CHMP</b> Cultural Heritage Management Plan	A report recommending measures to be taken to protect Aboriginal cultural heritage affected by the development or use of land. It will be required as specified by regulations, may be assessed by RAPs or AAV, and may address avoidance or minimisation of harm to heritage; custody and management of heritage, etc
<b>RAP</b> Registered Aboriginal Party	The primary source of advice to the Minister. There may be more than one RAP for an area, if VAHC considers it appropriate. RAPs may advise on CHPs; approve CHMPs; enter into CHAs; apply for IPDs and OPDs
<b>ILUA</b> Indigenous Land Use Agreement	One form of VFA (that's a Valid Future Act) made under the NT Act (that's the Commonwealth <i>Native Title Act 1994</i> )
<b>NNTT</b> National Native Title Tribunal	The body established under the NT Act to register Native Title claims, decisions and ILUAs
<b>IPD</b> Interim Protection Declaration	The Minister may make IPDs or OPDs. An IPD may run for 3 months
<b>OPD</b> Ongoing Protection Declaration	It is an offence to contravene IPDs or OPDs. Big penalties.
<b>AARP Act</b> <i>Archaeological and Aboriginal Relics Preservation Act 1972</i>	The Victorian Legislation about to be repealed and replaced by the AH Act (that's the <i>Aboriginal Heritage Act 2006</i> )
<b>AATSHP Act</b> <i>Aboriginal and Torres Strait Islander Heritage Protection Act</i>	The 1984 Commonwealth Act, Part IIA of which is about to be superseded by the Victorian AH Act 2006
<b>VAHC</b> Victorian Aboriginal Heritage Council	A body comprised of 11 traditional owners, which advises the Minister about cultural heritage, determines who will be RAPs, and recommends on IPDs and OPDs.
<b>WJJWJ</b> Wotjobaluk, Jaadwa, Jada-wadjali, Wergaia and Jupagalk	The five groups who mounted Victoria's first successful native title claim, over Crown land around the Little Desert and Wimmera River. A second successful claim has now been made by the Gunditjmarra. Check it out at <a href="http://www.nntt.gov.au/media/data/files/gunditjmarra_map.pdf">www.nntt.gov.au/media/data/files/gunditjmarra_map.pdf</a>
<b>RIS</b> Regulatory Impact Statement	The formal analysis of proposed regulations required under the SL Act (that's the <i>Subordinate Legislation Act 1994</i> )..... ■

## And, or, um, err...

Life can sometimes be difficult for Parliamentary Counsel.

A carefully drafted Bill can be changed on the floor of the House, at midnight, when a Minister agrees to adopt some unforeseen policy nuance brought up by the Opposition. Cross-references between Acts can be a nightmare. Two different Ministers can propose to insert new sections into an Act, each with the same section number (like section 7C, *Limitation of Actions Act* \* ). It's the unfortunate parliamentary drafts-person who has to sort it out, in meaningful words.

Even so, there's no excuse for loose syntax, especially the misuse of those vital conjunctions *and*, and *or*.

Take a look, for instance, at Section 15(1)(c) of the *Crown Land (Reserves) Act 1978*

### 15. Powers of committees of management

- (1) A committee of management of any land appointed under section 14—
  - (a) ...
  - (b) ...
  - (c) may carry out works and improvements on the land:  
Provided that in the case of works or improvements on coastal Crown land—
    - (i) the consent of the Minister administering the **Coastal Management Act 1995** has been first obtained; and
    - (ii) the works are carried out in accordance with any management plan prepared under the **Coastal Management Act 1995** which relates to the land;
    - (iii) the works or improvements are being carried out solely to maintain the land;

Check out the conjunctions between (i), (ii) and (iii). The Committee must (i) obtain the consent of the Minister **and** (ii) have a Management Plan **and/or???** be undertaking the works solely to maintain the land. Really?

Perhaps it was intended to read:

- (i) the consent of the Minister administering the **Coastal Management Act 1995** has been first obtained; OR
- (ii) the works are carried out in accordance with any management plan prepared under the **Coastal Management Act 1995** which relates to the land; OR
- (iii) the works or improvements are being carried out solely to maintain the land;

Then again, it may have been intended to read:

- (i) the consent of the Minister administering the **Coastal Management Act 1995** has been first obtained; OR
- (ii) the works are carried out in accordance with any management plan prepared under the **Coastal Management Act 1995** which relates to the land; AND the works or improvements are being carried out solely to maintain the land.

Next, let's take a look at the *Water Act 1989*:

### 188. Designated waterways and designated land or works

- (1) An Authority may—
  - (a) ...; or
  - (b) declare any of the following within its district to be designated land or works—
    - (i) ...;
    - (ii) any land which—
      - (A) abuts a waterway; or
      - (B) is within 20 metres of a waterway—  
and which is ...

Here it's not so much a question of syntax as geography. Can the land which abuts a waterway be of *any* width? Are we really concerned about land which lies within 20 metres of a waterway and yet does *not* abut it?

We suspect the intention was simply to address "any land within 20 metres of a waterway." Who knows? Let's hope it doesn't go to court.

You might think that such glitches would be identified and removed when the Act in question next came under Parliamentary Counsel's scrutiny – for instance, when a new section 188A is being inserted into the *Water Act 1989* through the provisions of the *Water (Governance) Act 2006*.

The new 188A will extend the designated waterway concept from waterways controlled by CMAs to waterways controlled by Melbourne Water, but unlike s.188 land, there is no discretion in relation to s.188A land – the discretionary 'may' has become a non-discretionary 'is.'

When wording like this appears in an Act we are led to suspect that no-one actually read the Bill – including the bureaucrats, the Minister's staff and the parliamentarians who actually voted for it. Surely not. ■

\* See *Terra Publica*, August 2006

*Note: In the quotes from Acts, we have supplied the indentation, which assists to reinforce the syntax, and therefore illuminate the meaning. An ellipsis (...) indicates an omission.*

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## Happy Snaps

Here's part of the new Performing Arts complex going up on Southbank.

In the course of this project, the Public Land Consultancy has been engaged by both Major Projects Victoria and Arts Victoria

Our advice related to the use of airspace above roads for architectural features, options for the development of Crown land as a car park, and options for the status and governance of internal access-ways. ■

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**Presenter: Megan Goulding**

*Interim CEO, Wurundjeri Land Council;  
Principal, Goulding Heritage Consulting*

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Dorothy Jenkins,  
Training Course Co-ordinator

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