

LEX LOCI'S TRAVELS

23 JANUARY 2018

An irregular one-pager from The Public Land Consultancy

Lex Jumps the Fence alongside Gardiners Creek, Hawthorn

Lex is sauntering along the Gardiners Creek Trail. He has a few problems. One: getting mown down by cyclists. Two: the incessant noise from the Monash freeway. Three: what's troubling our Lex just now is a fence.

Consulting his handy copy of all the title boundaries along the trail, Lex sees a fence that he reckons shouldn't be there. Seems an abutting owner has decided to fence in land owned by VicRoads.

It's not a road, so how come VicRoads owns it? Lex figures that it must be the remnant of some larger block acquired in the 1960s for the freeway.

He feels a bit ambiguous about the freeway. He wasn't too happy when it was built, and poor old Gardiners Creek was overwhelmed by concrete, but at the same time he does like to zoom along it from time to time on his trips to Gippsland.

He wasn't too happy when VicRoads went into compulsory purchase mode and bought up swathes of residential suburbia, but at the same time he doesn't want such land, now publicly owned, to fall back into private hands.

While Lex deliberates over these contradictions, he sits and reads some court judgements. Aha! Here is *Roads Corporation (that's VicRoads to you and me) v Pearse*, heard by Supreme Court of Victoria in 2012.

Seems our fence has been there since 1993, and the abutting owner was claiming the enclosed land through adverse possession. Perhaps he had been following another notorious Supreme Court case - *Monash City Council v Melville*.

The Court concluded that VicRoads is 'the Crown' - at least for the purposes of the *Limitation of Actions Act 1958*. So the land is protected from adverse possession. VicRoads remains its owner, and will, in due course, remove the fence. Lex is pleased.

Sources: [Victorian Government Solicitors Office](#)
[Stonnington Leader, 22 July 2014](#)



Michael Donnelly,
Springtime in Burwood,
detail

See you
there!
Lex Loci