

From Section 86 to CACs



The Farmers' Market at the Natimuk Frinj Festival

Photo Melissa Powell

It's a sad fact about Victorian public land: if you want to see ordinary citizens managing their own community facilities, you have to get well out of Melbourne. In Natimuk (population 449) there are 35 community groups. In St Kilda (pop 17,000+) we have Veg Out and the Bowling Club, but otherwise leave public land to the Council.

Land management entities may be established under various heads of power, most of which have been around for decades. These legal forms are well understood by those municipalities wanting to auspice or support their residents and ratepayers in these enterprises. But one such head of power is undergoing dramatic change: 'section 86' committees are about to be replaced by Community Asset Committees (CACs).

'Section 86' is a reference to the outgoing *Local Government Act 1989*. It allows a council to set up special committees of councillors, council staff and other persons, to which it may delegate any of its functions, duties or powers. In recent years, use of this provision has come under critical scrutiny, with many councils preferring to work through Incorporated Associations set up under the *Associations Incorporation Act 1981*.

The essential point to understand here is that whereas a section 86 committee is a creature of council, an Incorporated Association (IA) is a creature of its own membership.

Council may well contract the IA to manage the same facility that the Section 86 committee had managed – but it's the IA which chooses its own members, adopts

its own rules, and conducts its own business. It's a formula well-suited to the sporting club, the historical society and the 'friends of' group – but not for entities more properly controlled by the council.

Now, along comes the [new Local Government Act 2018](#) (yet to be proclaimed!). Here we find that a council can establish two forms of committee: Section 61 delegated committees, and Section 62 Community Asset Committees (CACs). The former (sec 61) more closely parallel the old section 86 model; they must include councillors, and their powers, duties and function are set by the council itself. The latter (sec 62 CACs) need not include councillors; they will have their powers, duties and functions set by the council CEO. Importantly, Section 62 CACs may be established only for the purpose of managing a community asset.

No longer will there be a compelling need to transfer effective control of council assets to Incorporated Associations – entities which council does not ultimately control. In country towns we may well find the relevant Council setting up a CAC to act as landlord for several community facilities. Such a CAC would be answerable to Council alone.

Incorporated Associations will, of course, still be an essential part of the picture. The Natimuk Brass Band *Inc* and the Arapiles Historical Society *Inc* will continue to use public land under a lease, licence or some other form of permit.

And we will continue to enjoy the Natimuk Frinj Festival and the Natimuk Farmers' Market. ■

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What is a 'Road' ...
for the purposes of the *Road Management Act 2004* ?

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Consultancies we declined to accept, but maybe should have...
Part 1: Lots of LOTs.

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Professional Development courses for August–December 2018

NEW: Public Land Reconfiguration
NEW: Statutory Approvals for Public Land Development

Picture – Jeremy Bannister, Ballarat Courier



Consultancies we have Declined

Lots of LOTs

It's not often that we decline to take on work. When a prospective client contacts us, our inclination is to do whatever we can to help them. In this case we didn't accept, but should have. Sorry.

In August 2015 we took a call from a very distressed lady calling from Buangor, just west of Ballarat. "VicRoads is felling hundreds of magnificent old trees. Can you stop them?"

Our response was (we regret to say) dismissive. "We are certain that VicRoads will have obtained all the necessary statutory consents. They will be fully compliant with the native vegetation rules, and they will have done a full Environment Effects Statement. Sorry, madam, we don't think we can help you."

Soon afterwards she, together with other protestors, [chained themselves](#) to one of the doomed trees. To no avail: the tree, together with 1349 others, was felled and the Western Highway was duly realigned.

Yes, there had indeed been an Environment Effects Statement (EES), premised on the removal of 221 Large Old Trees (LOTs). In fact, the number of LOTs destroyed was 1350. How could VicRoads get it so wrong? That's 600% wrong!

VicRoads publicly acknowledged the error, accepted responsibility and apologised for their significant miscalculation. In a 26-page *mea culpa* dated March 2016, they went on to analyse the causes, spell out key learnings and identify improvement opportunities.

The first of seven recommendations is that someone should actually *count* individual LOTs before getting into the relevant statutory approval process, whether it be an EES, a Planning Scheme Amendment, or a Planning Permit.

The bottom line? The cost of native vegetation offsets had been estimated at \$850K based on removal of 221 LOTs, but this escalated to \$4.2M when the actual number of 1350 LOTs was realised. As for the road alignment, it seems that even if the tree count had been correct, the preferred option would be unchanged.

And what if we had accepted the distressed lady's pleas? In retrospect, we might have tried to help her on a *pro-bono* basis, but would that have saved the trees? Probably not. ■

Drilling down into the Cadastre

Looking for land information can be difficult. Your portal may be LASSI, or Landata, or Railmap, or UrbisPro...

- If you're looking for original Crown dealings, you'll need to know which County, Parish or Township you're in;
- If you're looking for official boundaries of Crown reserves and National Parks, it will help if you know its 'LEGL' Plan number;
- If you're looking for a title document, you'll need a street address, a Vol/Fol number, a Council property number, or a Standard Parcel Identifier (SPI);
- If you're looking for a Survey Report you'll need a Plan Reference – comprised of a Document Prefix, followed by a Document Number. Here are some of those two-letter prefixes...

Some of the survey plan types...

- CD – Crown Diagram
- CP – Consolidation Plans
- CS – Cluster Plans
- FS – Forest Surveys
- LP – Plan of Subdivision
- PC – Plan of Consolidation (Subdivision Act)
- PS – Plan of Subdivision (Subdivision Act)
- SP – Strata Plan
- TP – Title Plan
- BP – Boundary Plan
- MS – Miscellaneous Plan
- OP – Original Plans (Crown)
- RA – Road Alignment
- RE – Re-establishment Plans
- YF – Yearly Field Notes (Crown)

Land Information and its Interpretation

Wed 31 October – Melbourne (Venue: Law Institute of Victoria)

One-day Training Courses – August to December 2018

*of the United Kingdom
Defender of the
come Greek
of the Parliament
covered from sale*

Restrictions on Title

Mon 27 August – Melbourne
(Venue: Russell Kennedy)



Leases and Licences of Public Land

Fri 31 August – Melbourne
Wed 5 September – Ballarat
Wed 14 Nov – Shepparton



Includes an update on the new Marine and Coastal Act

Coastal Land Management

Tues 28 August – Melbourne
Wed 31 October – Warrnambool
Thurs 29 November – Traralgon



Roads Governance

Wed 29 August – Geelong
Thurs 1 November – Melbourne
Thurs 15 November – Echuca
Thurs 22 November – Hamilton



Roads Governance for Surveyors

Tues 4 Sept – Melbourne
(Venue: Russell Kennedy)



Encroachments on Public Land

Tues 7 September – Melbourne
(Venue: Law Institute of Victoria)



Land Law for Managers of Rivers and Lakes

Thurs 20 September – Bendigo
Thurs 18 October – Melbourne



Crown Land Law, Policy and Practice

Tues 9 October – Hamilton
Thurs 11 October – Melbourne
Fri 26 October – Mildura



The Law relating to Works on Roads

Mon 15 October – Melbourne
(Venue: Russell Kennedy)



Volunteers and Risk Management

Wed 24 October – Melbourne
(Venue: Law Institute of Victoria)



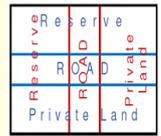
Land Law for Managers of Parks and Gardens

Thurs 25 October – Melbourne
Fri 23 November – Ballarat



Referral Authorities and the Victorian Planning System

Tues 30 October – Melbourne
(Venue: Law Institute of Victoria)



Public Land Reconfiguration

Tues 20 November – Melbourne
(Venue: Law Institute of Victoria)

NEW!



Statutory Approvals for Public Land Development

Tues 23 October – Melbourne
(Venue: Law Institute of Victoria)

NEW!



Land Information and its interpretation

Wed 31 October – Melbourne
(Venue: Law Institute of Victoria)



The Law relating to Subdivisions

Tues 13 November – Melbourne
(Venue: Law Institute of Victoria)



Native Title and Aboriginal Heritage

Date TBC
(Venue: Law Institute of Victoria)



Offences and Enforcement on Roads

Date TBC – Melbourne
(Venue: Russell Kennedy)

Cost \$550 per person
including GST, Course notes and working lunch.
Discounts for host organisations

All courses are of one-day duration;
starting time 9:00 am, finish 4:30 pm

Enrolments and Enquiries – Jacqui Talbot –
jacqui@publicland.com.au

For details of all these courses go to
www.publicland.com.au/professional-development

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