



Coastal Conflicts Some Holiday Reading

The foreshore is a conflict zone. There's an on-going battle between private interests and the public good. We consultants are like beachcombers examining the washed-up debris. From our casework we form a view about which way the conflict is turning. Let's examine a few bits of detritus we've observed on this contested shoreline.

Auntie's Last Will and Testament

A few years back, a somewhat distressed gent came into Parliament House to see the Minister responsible for Crown land. He had a complaint about a coastal Committee of Management.

"They are trying to take over my holiday site."

The poor fellow had been given twelve months' notice that the site on which he had a permanent caravan would not be available the following year.

He got to the nub of the problem. "It's my caravan, and so is the site it stands on. It's not theirs to dispose of!" He pulled a document from his briefcase. "The site was left to me by my Auntie. See, here's her Will."

Sure enough, there it was in black and white:

"And I leave my caravan and its site at xxx caravan park to my dear nephew. May he enjoy it for many summers to come."

It came as a surprise to him to learn that the site was not his Auntie's to dispose of. The Committee, acting in what it saw to be the public good, had politely taken back what he erroneously believed to be his private property.

The bigger issue here is the culture of entitlement. It's public land, and I'm a member of the public, therefore I can commandeer it. The culture goes back to the squatters – and continues to thrive...

The Neil Mitchell Pub-Test

On the [3AW Drive program](#), the redoubtable Neil Mitchell feigns horror. A Crown land Committee of Management has decided to 'award a tender to itself.' Mitchell declares it to be a decision which 'won't pass the pub test.'

In this case the Committee is the Great Ocean Road Coastal Committee (GORCC); the land which it is not leasing is the Anglesea Caravan Park; and we don't know which pub Mitchell frequents.

The story is a beat-up. The outgoing caravan park operator, imbued with the culture of entitlement, has campaigned against the non-renewal of his lease as if it were an eviction – and Mitchell seems not to understand the difference.

All over the State you'll find Crown reserves which are not leased out. Reserves which are managed directly by their Committees of Management, or by the local Council, or by Parks Victoria. What's the problem? We can't imagine Mitchell criticising some farmer who decides not to lease out the back paddock, or some home-owner who decides not to let the spare room on Air B&B...

The bigger issue here isn't [GORCC's tendering process](#) – as far as we can tell there's nothing wrong with it – but the proclivity of journalists to invent stories to fill the mid-summer news hiatus.

Room for a Pool...

If there's no room in your backyard for your swimming pool, just build it on the public land next door. [Solomon Lew tried](#), but in the face of strenuous opposition, failed. Nevertheless, we're aware of other cases in which the encroacher got away with it.



Solomon Lew's pool, being demolished

In 2005 a landholder claimed 'adverse possession' over a slab of the ocean beach – which on paper was a freehold road reserve. As we all know, a road

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Coastal conflicts – continued

reserve can't be claimed through adverse possession if it is a public highway. The Titles Office enquired as to whether it had been *proclaimed* as a public highway (it hadn't) but failed to ask whether it had become a public highway by other means (it had).

So the encroacher's claim was accepted, despite vigorous protests from neighbours. End result: a private swimming pool virtually on the beach.

We hope the lessons from this case have already been learned. Encroachments now are less likely to be tolerated, and adverse possession claims more likely to be challenged. We hope.

In the same vein, we all remember the 2013 [Christmas present](#) from the Titles Offices to Lindsay Fox. They acceded to his assertion that his Portsea title had somehow become larger. This wasn't an adverse possession claim, but one based on the 'doctrine of accretion.' Matthew Guy (Planning Minister at the time) vowed to reverse the land-expansion – but it didn't happen. Both Lindsay's new boundary and the doctrine remain untouched.

Voteless Fossils

The conflict between private interests and public good is about to hot up on [Beaumaris foreshore](#). Here we have a Miocene fossil site of international significance – but the Beaumaris Motor Yacht Squadron (BMYS), which already covers half the site, is planning to expand.

As the Commodore explained: *"If we do nothing when our lease comes up for renewal in 2018, BMYS may have a difficult time explaining what we have done as custodians of our leased area. It may make the renewal of our lease difficult at that time."*



Fossilised jawbone of an extinct whale

A curious argument. We have been allowed to bury 1.2 hectares of the fossil site, so in order to ensure our future tenure let's seek permission to cover over another 3740 square metres.

Despite his argument failing to attract majority support within the Club, we are very conscious of the fact that boaties get a vote, fossils don't.

The previous Government's response was to require an Environmental Effects Statement. An EES will analyse the BMYS proposal, but it will NOT identify and analyse alternative futures for the site. Worse, an EES gives proponents a false expectation: if we pass, then our planned development will surely be approved. That's a fundamental failure of the entire EES system.

Fight them on the Beaches

It may take years, but environmental concerns can eventually trigger (no pun intended) a positive shift in the private-public balance.



Limeburner's Point, Geelong – as it was ten years ago.

At [Limeburner's Point](#) on Corio Bay, a Geelong gun club was not merely rendering a stretch of coastline inaccessible, but according to the EPA was polluting the shallows with lead shot and hydrocarbon-laced clay targets. When told their lease would not be renewed they refused to move until the State found them an alternative home. It took eight years, but in the end they vacated the site.

Towards a new Marine and Coastal Act

On public land as important as the Victorian coastline, public sector agencies need to initiate their own plans, and not merely respond to plans thrown up by self-interested encroachers pinching a bit of ocean foreshore, or lessees lobbying against their Committee of Management, or speedboat owners in need of a function centre. The culture of private entitlement must be wiped out by the cultures of conservation and civic amenity.

It falls to the Government to act in defence of the public interest. As it drafts the new [Marine and Coastal Act](#), let's hope it's viewing its own Coastal Strategy as something more than just another glossy publication. ■

<p>Questions?</p> <p><i>Our retainer-based advisory service may be the answer.</i></p> <p>We can provide:</p> <ul style="list-style-type: none"> • a ten minute phone discussion • a brief exchange of emails, • a more formal written opinion, <p>or even a 'QandA' article in <i>Terra Publica</i>...</p>	<p>How our retainers work...</p> <p>Your authorised staff call our experts whenever they need our advice; we keep a dropbox log of time committed; we send you a quarterly invoice against your purchase order.</p> <p><i>It's a service being taken up by metropolitan and provincial councils. If it interests you, please call David on (03)9534 5128</i></p>
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Q & A

If Council intends to lease or licence Crown land, must the proposal be publicly exhibited?

Question asked by a Lease Administration Officer from a rural municipality.

Here, Council is acting as a Committee of Management, so we have to look at two Acts – the *Crown Land (Reserves) Act 1978* and the *Local Government Act 1989*. The first has nothing to say about exhibiting; the second offers us section 190 – which is what our questioner had been looking at.

Section 190 of the LG Act provides that certain leasing proposals have to go through the exhibition process defined by section 223 of the same Act. This involves advertisement, receipt of submissions, and giving submitters an opportunity to be heard.

Does the LG Act apply to leases under the CL(R) Act? We have seen attempts to argue that council acting as a Committee of Management is somehow not council acting as a council. We are unconvinced – and there seems to be no case-law on the matter.

Our take on it is this. Any lease should be exhibited, whether it's a lease under the CL(R) Act or any other Act. It's not just a matter of risk avoidance, but also of good government. Even if nothing unforeseen emerges, you will have demonstrated transparency and openness.

If objectors do pop up, they must be listened to. If they are merely reiterating some concern that has already been aired, they can be thanked and sent on their way. We have seen objectors attempt to use the section 223 process to reopen matters which had already been conclusively dealt with during an earlier planning permit application.

Take care however! A council must avoid going into a section 223 process with a closed corporate mind. It is essential that it entertain the possibility, however remote, that some objector will prompt a rethink. And also remember, if the proposal changes significantly, a new exhibition process may be warranted.

As for licences (as against leases) there is no legislative requirement to advertise at all. Section 190 very clearly relates to leases, not licences. Here, exhibition is clearly a matter of policy rather than law. Factors in making a decision about exhibiting might include whether this is a totally new arrangement or a roll-over of some pre-existing arrangement, whether it is commercial in nature, and whether it might affect third parties. If it is a Crown licence, feedback from an advertisement could help you to make a case to DELWP that it will be 'not detrimental' to the purpose of the reserve – but we can't guarantee that! ■

In 2017 we are reconfiguring our one-day roads courses. Our long-standing course 'Land Law for Managers of Roads Streets and Lanes' will become 'Roads Governance,' and will be augmented by two new courses on 'Works on Roads' and 'Roads - Offences and Enforcement'

Roads Governance

- The ownership, control and management of roads, streets and lanes, urban and rural
- Their creation, closure, deviation and discontinuation.
- A look at half a dozen Acts of Parliament relating to roads.
- A look at the most relevant case law; clarification of legal concepts and terminology

Works on Roads

- The roles and responsibilities of Road Authorities, utilities and infrastructure managers
- The Acts, Regulations and Codes governing road works
- Issuing and enforcing Works on Roads permits for private builders
- The law governing works safety and traffic control

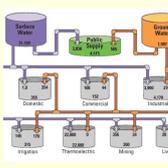
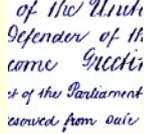
Roads - Offences and Enforcement

- Road-related law: Acts, Regulations and Local laws
- Authorised Officers and their powers of enforcement
- Infringement Notices, Procedures and Penalties
- Taking a prosecution to the Magistrates' Court

This course satisfies Section 71 of the Road Management Act 2004, which requires Authorised Officers to hold appropriate qualifications or have appropriate training – subject to the endorsement of their council or agency.

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

Our One-day Training Courses
February to June 2017

	<p>Crown Land Law, Policy and Practice <i>Tues 28 February Thurs 30 March – Mildura</i></p>		<p>Referral Authorities and the Victorian Planning System <i>Thurs 9 March</i></p>
	<p>Land Law for Service Utilities <i>Thurs 16 March</i></p>		<p>Roads Governance <i>Wed 22 March</i> <i>* Special venue: Graduate House (University of Melbourne)</i> <i>Tues 16 May – Mildura</i></p>
	<p>Works on Roads <i>Thurs 23 March</i> <i>* Special venue: Graduate House (University of Melbourne)</i></p>		<p>Property Law for Statutory and Strategic Planners <i>Tues 28 March</i></p>
	<p>Leases and Licences of Public Land <i>Fri 28 April</i></p>		<p>Native Title and Aboriginal Heritage <i>Friday 5 May</i></p>
	<p>Land Law for Managers of Rivers and Lakes <i>Tues 9 May</i></p>		<p>Restrictions on Title <i>Thurs 11 May</i></p>
	<p>The Law and Subdivisions <i>Thurs 18 May</i></p>		<p>Offences and Enforcement on Roads <i>Tues 23 May</i></p>
	<p>Environmental Law for Public Sector Land Managers <i>Wed 24 May</i></p>		<p>Coastal Land Management <i>Thurs 25 May - Warrnambool</i></p>
	<p>Managing Volunteers and Grants <i>Thurs 8 June</i></p>	<p>Mildura presentations</p>	<p>Crown Land Thursday 30 March Roads Governance Tues 16 May</p>

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

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

Unless otherwise noted, all courses are at **Law Institute of Victoria**, 470 Bourke Street Melbourne

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