

From Little Things, Big Things Grow

One customer gets ripped off by a big bank – no one takes any notice. One woman is molested by the boss – no-one believes her. One disabled person lacks adequate care – so what?

As we have seen, isolated cases build up into major causes. They become the subject of Royal Commissions, of ‘Me-Too’ campaigns, of NDIS programs. Let’s call it issue-agglomeration.

So it is (on a different scale, certainly) with public land. One right of way is blocked off, one public hall stands empty, one river frontage is infested with weeds... nothing doing! If there is to be an effective response, we need issue-agglomeration.

Within each municipal council, CMA, or citizens’ group someone needs to notice patterns, undertake the analysis, and arrive at the appropriate generalisation: public halls are underutilised; river frontages are mismanaged, back lanes have failed to move out of the era of the night-cart. From there to the strategic response: let’s revitalise the public halls; let’s resource the Landcare groups, let’s see the lanes as opportunities. In other words, big-picture management.

The list of day-to-day issues goes on: each so minor as to seem trivial, except to those immediately affected. The failed drain built by the long-defunct authority; the paper road bisecting the farm; the waterway which changes course; the club which erroneously believes it owns the clubhouse. Each is symptomatic of some bigger policy deficiency: we can multiply triviality by a hundred, by a thousand.

Some seemingly minor issues find their way into the courts: the trip hazard on the Echuca footpath; the stormwater pit in Shepparton; the lock on the gate in Yarra Glen. They suddenly become big issues, million dollar issues. Perhaps they’re management failures: it could be argued that they should have been resolved by public officials, not by lawyers.

But there comes a point at which the local response is insufficient. We need Government to develop the even-bigger-picture response: the legislative reform, the budget appropriation, the state-wide publicity campaign.

How is Spring Street to know that such a response is called for? Maybe it’s the Get-Up political campaign, or the shock-jock media, or the High Court judgement. But it’s usually far more mundane: a dull sequence of discussion papers and submissions.



The legislative protection from encroachers now enjoyed by most Council land can be traced back to two specific cases in Banyule and Monash.

The well-established process of seeking and making submissions is effective, but tends to be reactive. The government decides what question needs to be asked, what propositions advanced, what options evaluated.

So what about the proactive submission? Most Council land now enjoys legislative protection from adverse possession, thanks to a pro-active campaign initiated by Monash and Banyule Councils.

Even with reactive dialogues, let’s not forget what causes government to call for submissions. Often, when you drill down, the impetus was some representation made by one or two individual councils, or backbench MPs – each responding to one or two specific cases, each affecting only a handful of citizens.

The take-home message? Get into issue agglomeration: you have more power than you may think! ■

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Landcare Groups

*Can we help you to
help your waterways?*

The State Government is offering grants for practical, locally driven projects that are helping communities adapt to climate change.

Grants of between \$25,000 and \$75,000 are available for two project categories:

- Projects that build the capacity for communities and stakeholders to respond or adapt to climate change impacts
- Projects that deliver tangible actions that help communities adapt to climate change impacts they are already facing.

If you're thinking about applying for a grant for waterway management, we can help with:

- Information about title boundaries, Crown land reservations, and historic/current management arrangements
- Options for on-going legal protection of works you undertake, including options for reassigning management responsibilities.

Call one of our consultants on (03)95345128 or email consultants@publicland.com.au

Applications close on 31 March 2019.
To apply [click here.](#)

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LGPRO Annual Conference 20 and 21 February 2019

Workshop Number 1
'ENGAGING ON THE BIG DIFFICULT STUFF'
Sponsor: The Public Land Consultancy

This interactive session is all about exploring how we can tackle community engagement for substantial, complex and potentially controversial issues.

Drawing on his experience co-designing and facilitating processes such as the Liveable Yarra, St Kilda Triangle Brief development, Infrastructure Victoria's 30 year priorities and many other projects, **Max Hardy** will both provide some ideas, stories and principles, as well as facilitating this workshop.

2018: Some Highlights of our past year



The Land Lake Wendouree

Our Client Ballarat City Council

We advised on Law and policy relating to tenures of so-called 'private' boatsheds



Our Client Wyndham City Council

The Land Federation Trail (until recently, Melbourne Water's Main Outfall Sewer)

We advised on Governance issues and options for this 24k long linear reserve



The Land Many hundreds of Council-controlled community facilities

Our Client City of Greater Geelong

We advised on Options for systems and policies relating to facility allocation and pricing, - for community consultation in 2019



The Land

Wetlands at the mouth of the Barwon

Our Client

Corangamite CMA

We advised on

Ownership of CMA-managed assets throughout the Corangamite catchment

POCKET PARKS

And the Arithmetic of Accessibility

How to evaluate public open space? We're inclined to see it as a quality thing, not a quantity thing.

Nevertheless, some aspects of open space lend themselves to arithmetic analysis. One quantifiable statistic is the perimeter to area ratio. This could be taken as an indicator of accessibility. The greater the ratio, the more hinterland lies within walking distance, or cycling distance, of each hectare of open space.

A refinement of this statistic is the area of hinterland within (say) 0.5k of the perimeter.

Let's say we want 1 hectare of parkland. It could be one single square, 100m x 100m, or four squares each of 50m x 50m. The former configuration results in a hinterland of 95ha, but the subdivided-into-four configuration has a hinterland of 340ha.



Reclaiming the bitumen. The City of Melbourne is reconfiguring a series of road intersections in North Melbourne, creating pocket parks.

Let's illustrate with two examples from our list of 2018 engagements: Parks Victoria's Albert Park Reserve, and Wyndham's Federation Trail.

With an area of 225 hectares, Albert Park is one of Melbourne's biggest public parks – but is it accessible? It has a perimeter of 7000m, and a 0.5k hinterland of 425 ha.

Compare this to Federation Trail, through Wyndham. It's 25k long by 40m wide. That gives us an area of 100 ha, a perimeter of 50,000m, and a 0.5k hinterland of 2500 ha.

So the famous Albert Park Reserve may well have its attributes, but when it comes to accessibility, it's beaten hands down by Federation Trail – until recently Melbourne's lowly Main Outfall Sewer. ■

Q
&
A

Question:

In response to an adverse possession application, the Titles Office asks us if a road is on the Road Register. Does this mean we have to put all roads on the register, just to protect them from adverse possession?



Question asked by an Asset Manager in a rural municipality

Answer: No, No, No!

What we're looking at here is a longstanding failing of the Titles Office. They ask the wrong question, and therefore set themselves up to make the wrong decision, even if they've been given the right answer to that wrong question.

There are plenty of encroachments onto roads. Sometimes the encroachers head off to the TO, looking to become registered proprietor through adverse possession.

Now, roads are protected against adverse possession if they are (a) Crown land, or (b) 'Council land' or (c) public highways. From their vantage point the TO can tell whether (a) or (b) applies, but there may be doubt about (c).

If a road is a public highway it is eligible to be listed on a Council's road register. If a freehold road has been correctly placed on the register, it may be deduced that it's a public highway, and is therefore protected. **But roads which are public highways may be omitted from the register, at the municipality's discretion.** So it cannot be concluded that failure to appear on the register is evidence that land in a road is available to be stolen.

Then how do we know if a freehold road is a public highway? There are several ways this may come about – including the common law doctrine of dedication and acceptance. Whether this doctrine applies is a matter for the courts – but a council is in a very good position to make an informed guess.

The question the TO should ask is: 'In Council's opinion, is this road a public highway?' If the answer comes back 'yes' then the TO should tell the claimant to go away, and come back with a court ruling – if they can get one. Nothing to do with the road register. ■

Readers of *Terra Publica* should not act on the basis of its contents which are not legal advice, are of a general nature, capable of misinterpretation and not applicable in inappropriate cases.

If required, The Public Land Consultancy can obtain formal legal advice from one of its legal associates.

One-day Training Courses – February to May 2019

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Restrictions on Title

Mon 25 February – Melbourne
(Venue: Russell Kennedy)



Encroachments on Public Land (half-day)

Fri 1 March – Geelong

Fri 22 March – Melbourne
(Venue: Law Institute of Vic)



Referral Authorities and the Victorian Planning System

Tues 5 March – Traralgon
Thurs 7 March – Melbourne
(Venue: Law Institute of Vic)



The Law relating to Works on Roads

Thurs 14 Feb – Swan Hill
Mon 18 March – Melbourne
(Venue: Russell Kennedy)



Crown Land Law, Policy and Practice

Tues 5 February – FULL
Tues 5 March – Horsham
Fri 15 March – Melbourne
(Venue: Law Institute of Vic)



Roads Governance

Thurs 7 February – FULL
Tues 26 March – Melbourne
(Venue: Law Institute of Vic)
Date TBA – Hamilton

**Includes an update
on the new Marine
and Coastal Act**

Coastal Land Management

Wed 27 March – Melbourne
(Venue: Law Institute of Vic)



Leases and Licences of Public Land

Thurs 14 March – Melbourne
(Venue: Law Institute of Vic)



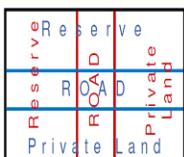
Native Title and Aboriginal Heritage

Thurs 21 March – Melbourne
(Venue: Law Institute of Vic)



Land Law for Managers of Rivers and Lakes

Thurs 28 March – Melbourne
(Venue: Law Institute of Vic)



Public Land Reconfiguration

Tues 19 March – Melbourne
(Venue: Law Institute of Vic)

NEW!



Statutory Approvals for Public Land Development

Tues 7 May – Melbourne
(Venue: Law Institute of Vic)



Land Law for Managers of Parks and Gardens

Wed 13 Feb – Swan Hill
Thurs 28 Feb – Melbourne
(Venue: Law Institute of Vic)



Offences and Enforcement on Roads

Monday 1 April – Melbourne
(Venue: Russell Kennedy)



Land Information and its interpretation

Date TBA



The Law relating to Subdivisions

Date TBA

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

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

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

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