

## Hard Acts to Follow

In there at Spring Street, it's our MPs who dream up policies, but the task of putting those policies into words falls to parliamentary drafts-persons.

Between them, MPs and these parliamentary staff put together three well-established forms of statute. The first is the amending Act, the second is the repeal-and-start-again Act, and the third is the totally new never-seen-this-before Act.



*The amendment yet to happen.  
Perhaps one day they'll build the dome.*

### The Amending Act

The first form is very familiar to Parkies: the *National Parks Act 1975* has been amended 156 times, including amendments made by 32 *National Parks (Amendment) Acts* of various dates. Here the legislative drafters and MPs have a relatively straightforward task: the new provisions must be slotted into the principal Act, which may need to be pushed around to accommodate them. The amending Act, having served its purpose, can then go out of existence.

Amongst the amending Acts passed by the current parliament we find the *Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018*, and the *Planning and Environment Amendment (Public Land Contributions) Act 2018*.

### The Repeal-and-Start-Again Act

The second form of legislation is less frequent, which is perhaps unfortunate. Acts amended many times can become incoherent and cumbersome. Worse, their unamended provisions just linger on, unexamined. The *Land Act 1958*, the *Forests Act 1958*, and the *Crown*

*Land (Reserves) Act 1978* are amongst the worst offenders, resembling patchwork quilts. In such cases we hope for a new repeal-and-start-again Act. Indeed, we are promised such new Acts in the 4-year course of the next parliament.

But back to the current Parliament. Here we find that the *Coastal Management Act 1995* is about to be replaced by the *Marine and Coastal Act 2018*. We find that the *Parks Victoria Act 2018* is about to totally replace the *Parks Victoria Act 1995*. But both these repeal-and-start-again Acts also make dozens of amendments to other patchwork-quilt Acts. Perhaps it's inevitable.

### The Totally-New-Never-Seen-This-Before Act

In our third category we find the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*, due to come into operation on 30 September. It is a truly new, self-contained Act, which causes no amendments to any other Act. The gestation of this Act may have been fraught with complications, but its drafting was relatively straightforward.

### Now for the Difficult Bit

Finally we come to the *Local Government Act*. We don't know whether to date this 1989 or 2018, because it's both.

Over recent months, Parliament has been debating a new *Local Government Bill 2018*. It's passed the lower house and is now in the upper house. As drafted, it will come into effect over various dates from 1 Nov 2018 to 1 Jan 2020. Over the same period, the 1989 Act will be repealed, bit by bit.

So in the time between proclamation of the new Act (presumably late 2018) and 1 Jan 2020, there will be two Local Government Acts in operation. We hope that somebody in there has mapped it all out, and can assure us that there won't be too many conflicts between them.

Here's the curious bit. Large slabs of the 1989 Act will vanish, but not all of it. Remnants will survive, even after 2020. These including the bits relating to roads: Div 2 of Part 9, and Schedules 10 and 11. Pity – in our opinion here at *Terra Publica*, they're also overdue for a rethink and rewrite. So – perhaps there will be another Act to follow... ■

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#### A Matter of Necessity

or Crossing the Creek

#### A Place in the Sun

That's \$1.2 billion, not million

### Page 3

#### Reconfiguring Public Land

Which leads us straight into...

#### The Hashtag Challenge...

### Page 4 Professional Development courses for July–December 2018

#### NEW: Public Land Reconfiguration

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

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# A Matter of Necessity

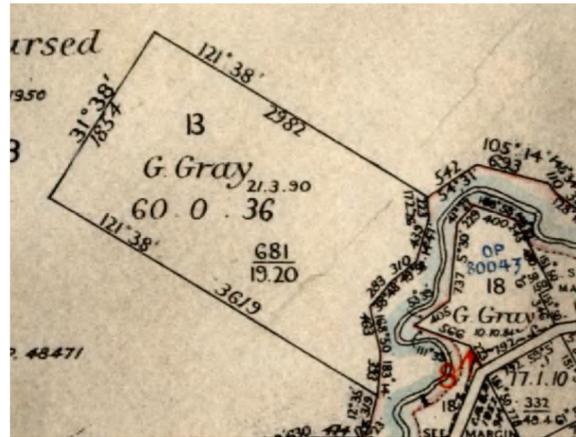
As population increases and freehold land gets subdivided and developed, the Crown land next door may take on a new importance. It may provide the only access.

Do freehold landowners have a legal right to cross the Crown land? The fundamental principle is the [presumption of consent](#): Yes, you can enter onto Crown land unless some law decrees otherwise. Having said that, there are many such Acts and regulations that will prevent our abutting landowner from cutting down the vegetation, putting a culvert across the watercourse, and building a driveway. So, in most cases, the practical answer is: No, you can't.

When the private land is being subdivided, we expect each lot to have actual or prospective practical access. And, of course, the developer must provide direct legal access to the road network. But there's an exception: the [Easement of Necessity](#).

This is the common law doctrine that recognises an implied right of access to an otherwise landlocked parcel. It relies on the actual or presumed intention of the parties which created the landlocked block. Let's look at Crown Allotment 13, Parish of Greensborough – a 60 acre block laid out by the Government Surveyor and alienated to one G. Gray in 1890. And it has no road abuttal !

We can safely assume that the Crown's intentions in 1890 were that G. Gray and successors would access CA 13 across Diamond Creek, to the South-East. So what happens a century later, when a subsequent owner wants to subdivide?

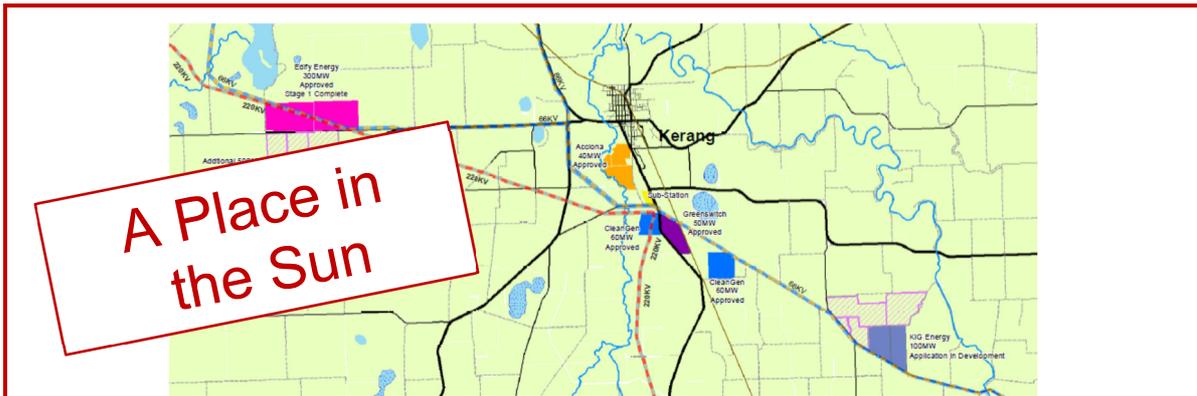


The doctrine of necessity provides the fundamental right to cross the Crown land, and we know that, in general, whatever rights (and limitations) apply to a parent parcel pass to parcels subdivided from it.

In this case, neither the developer nor Nillumbik Shire Council wanted to head into the County Court for confirmation. They turned instead to section 6 of the *Subdivision Act 1988*. Here we find that the Minister administering the *Land Act 1958* may authorise access across Crown land.

The Minister, having (naturally) read [Bradbrook](#) on the doctrine of necessity, didn't want to get into the courts either, and so provided the required authorisation. CA 13 is now subdivided into three blocks, each of which gains access across the permanent Crown reserve containing Diamond Creek.

But what about *practical* access? Who gets to build and maintain the ford, bridge, culvert or whatever? Certainly not the Crown. Without doing the research, we guess it will be the subdivision's Owners Corporation, pursuant to a 'section 173' agreement under the *Planning and Environment Act 1987*. ■



We always enjoy a trip to Kerang. There's a good pub in Victoria Street, and a good bakery around the corner. And plenty of sunshine.

Put together the sunshine, the State Government's clean energy target, and agricultural land traversed by a 220kV transmission line – what do we get? The solar energy capital of Victoria.

[Gannawarra is boasting](#) nine solar energy projects either with permits in place or in the pipeline.

**They're talking 640 Megawatts, and \$1.2 billion in investment. Yes, that's billion, not million.**

The power companies in question need to assemble large parcels of land. They may need to close, divert, or reconfigure road reserves, physical roadways, and access easements. Which is where we come in, here at The Public Land Consultancy.

Solar is a growth industry, so we can hope for a few more trips to sunny Kerang. ■

# Public Land Reconfiguration and...

We might be at McNab Avenue, alongside the Footscray Railway Station. Or on the Mercer Street side of Geelong Station, or the Maroondah Highway side of Ringwood Station, or in Young Street alongside Frankston Station.

We might be in Mildura, looking at the long undervalued tract of public land between Seventh Street and the River....

These places are all prime candidates for reconfiguration. Here we don't have to wait for some private-sector developer: a large proportion of these precincts is public land – maybe Crown land, or freehold owned by VicTrack, or road reserves.

**Here's the problem. We are not confident that academia fosters the skill-sets necessary to manage such projects.**

Professionals coming out of universities may have a qualification in property development – by which we mean the development of freehold property already owned by some private entrepreneur.

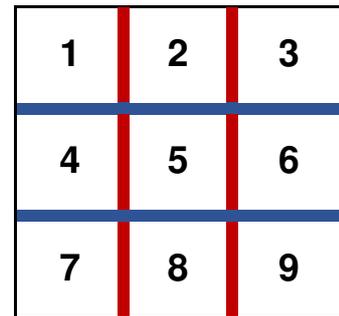
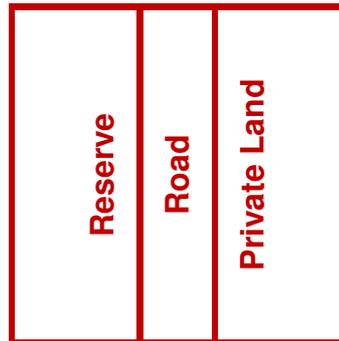
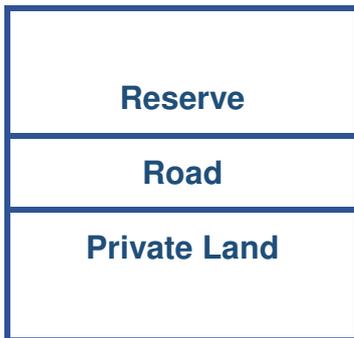
They may be planners, skilled at managing the planning system, which either *allows* or *prevents* development – a system which can not *cause* development to happen.

**But as for the reconfiguration of a Melbourne railway station precinct, or a set of rural river frontages, or a messy collection of council car-parks, would they know where to start?**

They may benefit from our new course on Public Land Reconfiguration. The first exercise we would give them is the *Hashtag Challenge*...

## ...the *Hashtag Challenge*

**Q:** How do we get from **THIS** to **THIS**?



*Let's start by constructing a nine-box hashtag.*

*The easy bit: three of the nine boxes will remain unchanged...*

### Public Land Reconfiguration ...

**Here's a tract of land.** Initially, it's divided into three: a reserve, a road, and some private land (as shown in **BLUE**). We want it reconfigured into a reserve, a road and some private land (as shown in **RED**). How can this be done?

**Hint:** It has nothing to do with the planning scheme. The whole tract could be zoned residential, or commercial or farming – we don't care. The planning system may *allow* this reconfiguration, or may *prevent* it, but it cannot *cause* it.

So – how to *cause* the tract of land to go from **THIS** to **THIS**?

**A:** It all depends.

Yes, it depends on quite a few things: is the reserve Crown land or freehold land? Is the road a government road or a subdivisional road? Is it on the Council's road register? And what are the 'abuttals,' *i.e.* the status of the land just outside the overall box? Is the owner of the private land willing, unwilling, or open to persuasion?

**Above all, who are 'we'?** Are we the Council, a private developer, or the Minister for Planning? Maybe we are the Level Crossing Removal Authority, or Development Victoria...



**To explore this theme further, sign up for our new one-day course Public Land Reconfiguration**

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.

One-day Training Courses – August to December 2018



**Native Title and Aboriginal Heritage**

*Fri 3 August – Melbourne  
(Venue: Law Institute of Victoria)*

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**Restrictions on Title**

*Mon 27 August – Melbourne  
(Venue: Russell Kennedy)*



**Roads Governance**

*Thurs 16 August – Melbourne  
Wed 29 August – Geelong  
Thurs 15 November – Echuca  
Thurs 22 November – Hamilton  
Tues 27 November – Warragul*



**Crown Land Law, Policy and Practice**

*Thurs 20 September – Hamilton  
Thurs 11 October – Melbourne  
Fri 26 October – Mildura  
Thurs 8 November – Sale*

**Includes an update on the new Marine and Coastal Act 2018**



**Coastal Land Management**

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



**Leases and Licences of Public Land**

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



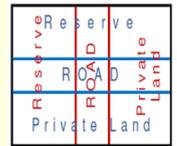
**Roads Governance for Surveyors**

*Tues 4 Sept – Melbourne  
(Venue: Russell Kennedy)*



**Encroachments on Public Land**

*Tues 7 September – 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 Law for Managers of Parks and Gardens**

*Thurs 23 August – Shepparton  
Thurs 25 October – Melbourne  
Fri 23 November – Ballarat*



**Land Law for Managers of Rivers and Lakes**

*Thurs 13 September – Bendigo  
Thurs 18 October – Melbourne*



**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)*



**Referral Authorities and the Victorian Planning System**

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



**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)*



**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](mailto:jacqui@publicland.com.au)

For details of all these courses go to [www.publicland.com.au/professional-development](http://www.publicland.com.au/professional-development)