

15th December, 2016.

The Director,
Consumer Property Law Review,
Policy and Legislation Branch,
Consumer Affairs Victoria,
GPO Box 123,
Melbourne, Vic., 3001,
consumerpropertylawreview@justice.vic.gov.au

Dear Director,

**Consumer Property Law Review
Options for Reform
Sale of Apartment Buildings
Part 5 of the Subdivision Act 1988
Consultation Questions 60-64**

As previously advised, my principal concern relates to the existing unanimous resolution provisions of the *Subdivision Act 1988* which enable reasonable proposals for the sale of an aged commercial building to be defeated by one or two disgruntled unit owners.

These unanimous resolution provisions can lead to considerable injustice in cases where one or two owners are against the resolution and holding out without good or reasonable cause.

I have read the recently published options paper and set out hereunder my response to the relevant consultation questions relating to Part 5 of the *Subdivision Act*. In responding to these questions I would like to stress that I am dealing with commercial buildings and not residential buildings. Insofar as I am aware there is presently no distinction in the *Act* between commercial and residential buildings; and this is an issue which will need to be addressed in the amending legislation so that there are rules for the sale of residential buildings with separate & less restrictive rules for the sale of commercial buildings.

Question 60

Which option, and why, is the best and fairest way to provide for more flexible process to sell buildings governed by owners corporation?

My preference is option **21C Tier 1** (80% of lot entitlement for commercial buildings regardless of age) with VCAT supervision not mandatory; but with the right for the matter to be taken to VCAT by a dissenting lot owner where the

onus is on that lot owner to establish that the proposal is not likely to produce economic benefits.

I am involved in a matter where a majority of owners of a commercial building have accepted a good offer from a developer to sell, but one owner without cause is blocking the sale. The subject building is very old and in poor condition. The upkeep is expensive and the security negligible. The property should be demolished. It is surrounded by development sites on which have been or soon will be erected substantial office or apartment blocks. The offer if accepted by the recalcitrant unit holder would provide him with a windfall substantially in excess of the current market value of his unit. Indeed it would provide him with more than sufficient funds to purchase or lease a substantial alternate office in the near vicinity; and leave him with plenty of change.

Question 61

Under Option 21D, which voting threshold and VCAT processes are preferable, and why?

Loading thresholds. I have no difficulty with the 75% of lot entitlement and lots in Tiers 1 & 2. However, Tier 1 is unacceptable given that there is a mandatory VCAT process for wholly commercial buildings. The Tier 2 threshold (80% of lot entitlement and lots) would be acceptable given that the VCAT process is limited to applications by a dissenting lot owner; however, wholly commercial buildings are **not included** in this option. As for the unanimous resolutions for younger buildings, given that the purpose of this reform is to replace unanimous resolutions with reasonable options, I cannot agree.

Question 62

Under Option 21E, which sub-alternative is preferable, and why?

Option 21E. The problem here is that the approved plan must be referred to VCAT for approval even if there be overwhelming economic benefit and no application by a dissenting lot owner.

Option 21E-2 whilst less restrictive provides that the lot owner can apply to VCAT but with the onus on the respondents to establish that there is economic benefit rather than on the applicant to establish that there is no economic benefit. **Option 21E-2 would be acceptable if the onus were reversed as is the case in option 21D-Tier 2.**

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Question 63

If the 'less restrictive' sub-alternative, should the special resolution be 75% per cent of lot entitlement only and should the burden of proof be on the applicant rather than the respondents?

I think I have already answered this. I cannot imagine a case where the resolution to sell would not result in substantial economic benefit and compensation for all lot owners, including any mischievous applicant. So the burden of proof of non economic benefit must be on the applicant.

Question 64


To what extent do the options to reform the Subdivision Act improve decision-making processes within owner corporations?

The proposed decision making processes will result in a fair and just outcome for all, including the dissenting unit holder who has the safeguard of VCAT intervention in the unlikely event that a sale would not result in substantial economic benefit. Whilst I do not object to VCAT supervision, my only concern is that the dissenting lot owner may file an application with VCAT for no reason other than to delay the inevitable. That is all the more likely given that a dissenting lot owner will not be burdened with an order for costs, whatever the outcome.

Conclusion

So, what I am proposing is that with suitable safeguards the *Subdivision Act* be amended so as to permit the sale of all commercial buildings where the support is 80% or more as per option 21C-Tier 1. By suitable safeguards I mean non mandatory VCAT reviews by a dissenting lot owner with the onus on that applicant lot owner to establish non economic benefit.

Yours sincerely,



John Smith

