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Owners Corporation and other Acts Amendment Bill Exposure Draft
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SUBMISSION; OWNERS CORPORATION AND OTHER ACTS AMENDMENTS BILL EXPOSURE DRAFT

Reeds Consulting is one of the major Land Development consultancies in Victoria. We provide an extensive range of Surveying services, specialising in complex high density-built form subdivisions within Owners Corporations.

Reeds Consulting and our predecessor company KA Reed & Co have been at the forefront of “Strata” subdivisions in Victoria since the inception of the Strata Titles Act in 1969 and we were pioneers of complex Building & Owners Corporation subdivisions following the introduction of the Subdivision Act 1988.

In the last 20 years alone Reeds Consulting have completed more than 1500 plans of subdivision creating approximately 50,000 lots affected by Owners Corporations. We currently have almost 300 live applications pending approval in the SPEAR System, many of which will create new Owners Corporations and thousands more lots affected by these Owners Corporations.

Many of our current and past projects are amongst Victoria’s most complex and high-profile developments. We believe we have the knowledge, experience and expertise required to make informed comments regarding this proposed legislation.

In this submission we will confine our comments to the proposed changes to the Subdivision Act contained within the Exposure Draft.

Division 2 – Amendment of Subdivision Act 1988

New section 27EA inserted

27EA Initial owner to engage surveyor

- (1) For the purposes of preparing a plan under this Part, an initial owner must engage a licensed surveyor to set out the initial allocation of lot liability and lot entitlement in the plan.
- (2) Subsection (1) does not apply to a tier four owners corporation within the meaning of section 7(5)(a) of the **Owners Corporations Act 2006.**”

Comment; We support this proposed amendment. This is not a significant change as all plans of subdivision are prepared by Licensed Surveyors and the current practice would be, in almost every instance, that the Entitlement and Liability schedules are prepared as part of the plan by the Licensed Surveyor. In large complex projects the determination of Entitlements and Liabilities is often done in consultation with other relevant professionals such as Lawyers and Owners Corporation Managers. We assume that the use of the term “set out” is intended to mean that the Licensed Surveyor is to “document” the E&L values in the plan (current practice) and is not intended to imply that the surveyor is to be solely responsible for the “determination” of

E&L's. It is essential particularly on large and/or complex projects that the determination of appropriate E&L's can be done as a collaborative process in conjunction with others.

Plan must specify lot entitlement and lot liability

For section 27F(1) of the **Subdivision Act 1988 substitute** –

- (1) A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify-
 - (a) Details of lot entitlement and lot liability; and
 - (b) How the lot entitlement and lot liability is allocated in accordance with subsection (4)

Comment; In principle we support this amendment although we seek some further advice in regard to how this is intended to be specified on the plan. Is it to be a notation on the Entitlement and Liability schedule? Is it intended that the current provisions in sec 27F(2) & (3) will remain as these require information to be provided in a separate document, not as part of the plan. There should be no requirement to do both.

New section 27F(4) inserted

- (4) For the purposes of this section-
 - (a) Lot liability in the plan must be allocated equally between the lots unless the following applies-
 - (i) If there is a substantial difference in size between the lots-lot liability must be allocated on the basis of the size of the lot and the proportion that size bears to the total size area of the lots;
 - (ii) If different lots have a bearing on the consumption of common utilities or the cost of maintaining the common property-lot liability must be allocated on the basis of the size of the lot and level of use by that lot of the common utilities and the common property;
 - (iii) If the number of occupiers in each lot has a greater bearing on the consumption of the common utilities or the cost of maintaining the common property than the size of the lot-lot liability is to be allocated on the basis of the number of bedrooms in the lot; and
 - (b) Lot entitlement in the plan must be allocated on the basis of the market value of the lot and the proportion that value bears to the total market value of the lots at the time that the plan is registered.

Comment; There is nothing currently within the Subdivision Act which suggests or prescribes how lot Entitlements and/or Liabilities are to be calculated or determined when a new Owners Corporation is created on a plan. Sections 33(2) and 33(3) currently provide direction but only in the case where existing Entitlements and/or Liabilities are proposed to be changed. The proposal to introduce a section into the Act (new sec 27F(4)) to direct how Entitlements and Liabilities “must” be created needs to be very carefully considered.

The concept of providing some standards and guiding principles certainly has merit but having a limited number of very prescriptive options will not cater for the complexity and variety of developments we are now experiencing.

In regard to the determination of liability the basic concepts outlined in proposed subdivision sections (i), (ii) and (iii) above are generally sound and could be applied successfully to a significant majority of small to medium sized “simple” residential developments. As previously mentioned, Reeds Consulting creates hundreds of Owners Corporations every year and in many cases, we would adopt principles similar to (i), (ii) and (iii) when determining lot liabilities. However, the increasing complexity of developments means that in many cases these proposed simple principles may not be adequate to provide the best possible outcomes.

Proposed sub-section (iii) refers to the number of bedrooms as a determining factor. Certainly, we have used this methodology to good effect in many instances over the years, but it is limited to residential lots and has no relevance to commercial/retail or industrial lots. In many instances now, developments contain significant mixed-use components and it is very common for a plan to contain residential, retail and commercial/office lots.

With other common mixed uses such as Hotel, Serviced Apartment, affordable housing, community facilities and even schools being incorporated into the development. Owners Corporations are regularly being created to deal with special uses within a development such as car stackers, health clubs and wine stores etc. These large mixed-use developments are normally staged over many years and require the creation of complex, multi layered Owners Corporation structures to manage the development successfully. The determination of the Entitlements and Liabilities within these complex owners corporation structures will require the ability to go beyond the simple prescriptive principles contained in proposed section 27F(4) in order to obtain the best possible “fit for purpose” outcomes for each development.

In regard to proposed section 27F(4)(b) relating to the determination of lot Entitlement we agree that the basic principle of using the “market value” is relevant in most cases, particularly in simple small to medium single use developments.

We very, very strongly urge and recommend that any reference to market value of the lot “at the time that the plan is registered” is removed completely from the proposed amendments. The inclusion of this reference to the time of registration shows a complete lack of understanding of the subdivision process.

It must be understood that the initial Plans of Subdivision (including the proposed Owners Corporation Entitlement and Liability schedules) are prepared to go into Contracts of Sale to allow pre-selling of the lots. This is often well before the development has even started construction and is likely to be 1 to 3 years (or more) before the plan can be registered. The lot Entitlements are currently being determined (for the initial plan) based on the anticipated market value at the time the lots are actually being contracted for sale.

It is totally unacceptable to prescribe that these Entitlements be recalculated and amended at the point of plan Registration, presumably based on some form of theoretical re-valuation of the lots at the time. This process would incur significant additional costs and time delays at the most critical and time sensitive point of the whole subdivision process. And, importantly, will open up the opportunity for every lot purchaser to void their contract if their lot Entitlement has been altered in any way.

The process of “staged subdivisions” must also be considered as these will normally take place over a period of many years. It is essential to ensure that lots in early (or later) stages are not disadvantaged because of movements in the market over time. For example, it is not appropriate that an apartment in stage 1 would have a significantly different entitlement to an identical apartment in stage 5 just because of movements in the property market values over a five year period. Any fair and proper determination of Entitlements, especially for staged subdivisions must allow for the ability to standardise values over time to a baseline.

To summarise our comments in relation to proposed section 27F(4)(b) we agree that relative values are an appropriate method of calculating lot Entitlements in many instances. However, due to the complexity of many developments, there must be alternative methods available and it is absolutely essential that any reference to “value at the time of Registration” is completely removed from any proposed amendments to the Act.

How can lot entitlement and liability be altered?

(1) For section 33(1) of the **Subdivision Act 1988 substitute-**

“(1) If there is a unanimous resolution of the members, the owners corporation must apply to the Registrar to alter the lot entitlement or lot liability.

(1A) An application under subsection (1) must be made-

(a) In the approved form; and

(b) Within 60 days of the passage of the unanimous resolution.”

(2) For section 33(2) and (3) of the **Subdivision Act 1988 substitute –**

“(2) In the making any alteration to the lot entitlement or lot liability, the owners corporation must act in accordance with section 27F(4).”

Comment: The proposed amendments to section 33 are considered logical in context of the inclusion of the new section 27F(4), subject to the content of section 27F(4) being satisfactory.

We have no further comments regarding the remaining proposed changes to the Subdivision Act.

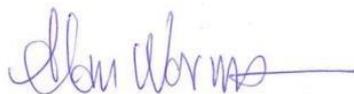
Conclusion

Reeds Consulting is generally supportive in principle to the proposed amendments to the Subdivision Act. However, we have significant concerns that the proposed amendments appear to be focused on simple residential developments and do not cater for developments that are large or mixed use or complex or multi-staged. The content of new section 27F(4) is simply not adequate to deal with the level of complexity involved in many modern subdivision developments. In particular we emphasize that it is essential that section 27F(4)(b) removes any reference to value "at the time of Registration" as this will have a significant detrimental impact on all affected subdivisions and the content of Section 27F(4)(a)(i), (ii) and (iii) should be substantially reviewed to ensure that the options are workable and are applicable to a wide variety of subdivisions of all types and complexity.

Reeds Consulting are prepared to provide any further information or consultations in regard to the content of this submission or any other relevant issues regarding the proposed Amendment Bill.

Should you have any queries please do not hesitate to contact the undersigned or Tom Champion.

Yours faithfully
REEDS CONSULTING PTY LTD



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