

South Yarra Project (Subdivision and Management) Bill

EXPLANATORY MEMORANDUM

Clause 1: provides that the purpose of the Act is to provide a legal structure for the sub-division and management of certain land at South Yarra.

Clause 2: states that the Act will come into operation on a day or days to be proclaimed.

Clause 3: defines “by-laws”, “car park management prescription”, “common allotment”, “common property”, “development plan”, “leased property”, “open space management prescription”, “primary allotment” and “South Yarra land”.

Clause 4: provides that the objectives of the Act are—

- (a) to provide a means to regulate the rights and obligations of owners and occupiers of the South Yarra land;
- (b) to provide a means for controlling and managing common property; and
- (c) to provide a basis upon which legal rights and obligations arising in respect of each stage of the development of the South Yarra land can be conferred.

Clause 5: provides that the Act binds the Crown.

Clause 6: provides the effect of the approval of subdivision by the Registrar of Titles of land referred to in the Schedule to the Act.

Sub-clause 1: provides that upon approval of the plan of subdivision there is a body incorporated pursuant to this Act and that the common allotment together with the lease hold interest in the land vests in the body corporate.

Sub-clause 2: provides that the *Companies (Victoria) Code* does not apply to a body incorporated by virtue of this Act.

Sub-clause 3: provides that the body corporate has perpetual succession and a common seal and is capable of suing and being sued in its corporate name.

Sub-clause 4: provides who the members of the body corporate are in certain instances.

Sub-clause 5: provides the rights and liabilities of persons who have ceased to be members of the body corporate.

Sub-clause 6: provides that a body corporate may sue in respect of damage or injury to common property.

Sub-clause 7: provides that the body corporate and the common property vested in it are regulated by this Act.

Sub-clause 8: defines “registered proprietor” for the purposes of this section.

Clause 7: provides that the Registrar of Titles shall give effect to the vesting of a common allotment in a body corporate without an application and without payment of a fee.

Clause 8: provides what implied rights and easements each primary allotment and common allotment have upon approval of the Registrar of Titles of a plan of subdivision specified in the Schedule.

Clause 9: provides for the application of certain sections in the Strata Titles Act to a body corporate under this Act with certain modifications which make the body corporate a

similar creature to the classic Strata Title body corporate. Those sections of the Strata Titles Act which are applied with modifications are:

Section 15 which deals with the duties of a body corporate;

Section 16 which deals with the powers of a body corporate;

Section 17 which deals with the recovery of amounts for members;

Section 18 which deals with the recovery of monies expended for repairs and other work;

Section 19 which deals with the recovery of monies expended for repairs and other work rendered necessary by fault of any person;

Section 20 which deals with notices requiring work to be done;

Section 21 which provides that the Trustee may recover amounts paid;

Section 22 which deals with the limitation of liabilities of members;

Section 23 which deals with the Certificate of Liability;

Section 30 which deals with the Administrator;

Section 31 which deals with the voting rights of mortgagees;

Section 32 which deals with the service of documents;

Section 33 which deals with the default by a body corporate;

Section 44 which deals with an application to the Court.

Clause 10: provides for the additional duties of a body corporate to those provided in section 15 of the Strata Titles Act including compliance with the provisions of the car park management prescription and open space management prescription, to insure against liability, to observe the terms and conditions upon which any leased properties vested in the body corporate and to keep in safe custody the duplicate certificate of title of any common allotment vested in the body corporate.

Clause 11: sets out the additional powers of a body corporate to those set out in section 16 of the Strata Titles Act.

Clause 12: provides for the additional duties and powers of a body corporate within the meaning of the Strata Titles Act which by virtue of this Act becomes a member of a body corporate incorporated by virtue of this Act.

Clause 13: provides that a body corporate incorporated by virtue of this Act must not dispose of the common property and it has no power to hold any real property other than the common property.

Clause 14: provides that a body corporate incorporated by virtue of this Act may by special resolution make rules in respect of certain matters including the management of common property, preservation of good order on common property, provision of necessary services and facilities on common property, safety of persons on common property, the issuing of permits in relation to the common property, imposition of fees and any other matter relating to the control and management of the common property. It also provides the mechanism upon which the rule is made and that the rules must be kept and made available.

Clause 15: provides that a body corporate incorporated by virtue of this Act may make by-laws. It also provides as to what matters it cannot make by-laws effecting and the obligation to keep a record of the by-laws and make them available.

Clause 16: provides the means by which unit entitlement or unit liability if a member of a body corporate incorporated by virtue of this Act as determined by its by-laws may be amended or altered.

Clause 17: provides that an administrator or member of a body corporate or a registered mortgagee of a primary allotment may apply to the Supreme Court for relief if a building or other improvement on the common property is damaged or destroyed. It also provides the powers of the Supreme Court in respect of this application.

Clause 18: provides rights of persons in relation to the open space. Any person is entitled to enter the open space between the hours of sunrise and sunset. However, any person who is a member of a body corporate incorporated by virtue of this Act or who is a member of a body corporate under the Strata Titles Act that is a member of a body corporate incorporated by virtue of this Act may, subject to the by-laws use the common property at any time.

Clause 19: provides the means by which two bodies corporate can amalgamate common property vested in them.

Clause 20: provides the means by which items specified in Schedule 1 may be amalgamated.

Clause 21: provides the means by which the Schedules may be amended.

Clause 22: in sub-clause (a) corrects a mistake in the 1984 Act and sub-clause (b) merely indicates the change in terminology in requiring a reference to a management company to include a reference to a body corporate.

Schedule 1: merely shows the link between the plan of subdivision, the primary allotments, the body corporate, the common allotments, the leased property and the by-laws.

Schedule 2: provides the terms and conditions of the lease of the land upon which the car park is located. This is necessary because the ownership of the car park is split between various registered proprietors. These various registered proprietors comprise the lessors and they lease the property to the body corporate who, in the terms of the lease, manages and controls the car park. It is also envisaged that the body corporate may sub-lease it to a commercial operator. The lease recognizes that the lessors or the successor in title have been allocated certain areas by the by-laws of car parking space and this lease protects that entitlement and their entitlement to access.

Schedule 3: sets out the by-laws of the bodies corporate. These deal with the unit entitlement and unit liability of the members of the body corporate; the outgoing and liabilities of the body corporate and its members, the designation of car parking spaces, the address for service; the rights of members of the body corporate to enjoy and use the common property; admission of members of the public to certain areas of open space; compliance with the requirements of the car park management prescription and open space management prescription; performance and observance of the terms and conditions of the lease set out in Schedule 2; the duty to properly maintain the common property and the application of by-laws set out in the Strata Titles Act with certain modifications.

