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# How to change your strata plan of subdivision in Victoria

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9th September 2021

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# Our topic today:

How to change your strata plan of subdivision in Victoria

A webinar with Nikki Jovicic from LookUpStrata

*Including some questions at the end.*

Presented by Tim Graham  
Partner, Bugden Allen Graham Lawyers







## Amending plan of subdivision

- If there is a unanimous resolution, the OC may:
  - dispose of common property
  - purchase common property
  - alter the boundaries of land affected by the OC
  - increase or reduce the number of lots
  - create new lots or new common property;
  - create and name an OC
  - dissolve itself
  - merge
  - create, vary or remove any easement or restriction
  - consolidate into a single lot
  - create, alter or extinguish lot entitlement or lot liability



# Amending plan of subdivision

- *Subdivision Act (SA)* gives VCAT the power to order that the plan is altered in the absence of a unanimous resolution. Two alternatives:
  1. Pursuant to ss34D(1)(a) and (2), which cumulatively provide that an OC (or person with an interest in the land affected by it) may apply to VCAT for an order requiring to OC to do any of the things set out in ss.32 and 33 of the SA although there is no unanimous resolution authorising the application
  2. Pursuant to ss34D(1)(b) and (3) which cumulatively provide that an OC (or person with an interest in the land affected by it) may apply to VCAT for an order consenting on behalf of a member or group of members of the OC to the doing of any of the things set out in ss.32 and 33 of the SA.



# *Butten v Khung & Ors (Real Property) [2010] VCAT 252*







# Conroy v Owners Corporation Strata Plan 30438 (Owners Corporations) [2014] VCAT 550



Photo courtesy of realestate.com.au

# Altering lot entitlements & liabilities

Section 33 of the *Subdivision Act* states:

- (2) If the owners corporation makes any change to the lot entitlement, then the owners corporation must consider the value of the lot and the proportion that value bears to the total value of the lots affected by the owners corporation
- (3) If the owners corporation makes any change to lot liability, then it must consider the amount that it would be just and equitable for the owner of the lot to contribute towards the administrative and general expenses of the owners corporation



# Conroy v Owners Corporation Strata Plan 30438 (Owners Corporations) [2014] VCAT 550

VCAT determined:

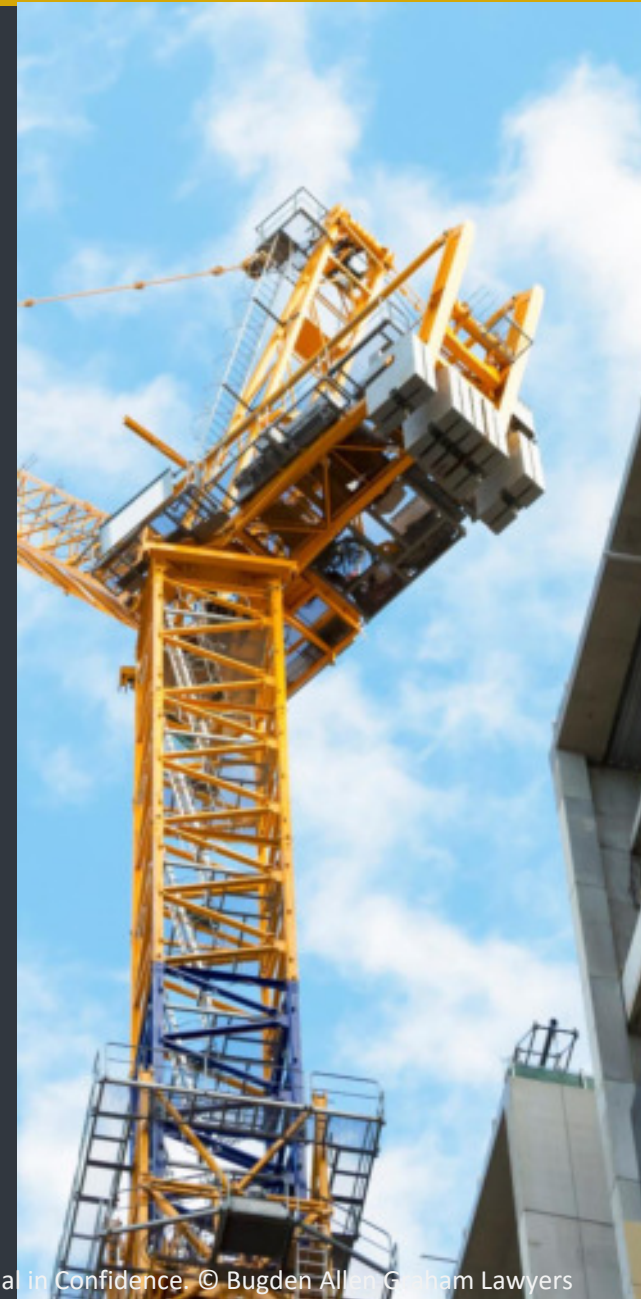
- s.34D(1)(a) separate and independent from s.34D(1)(b)
- s.34D(1)(a) not subject to any express limitation
- Limitations on powers conferred by s.34D(1)(b) do not apply to s.34D(1)(a)
- s.34D(1)(b) should not be given primacy over s.34D(1)(a)





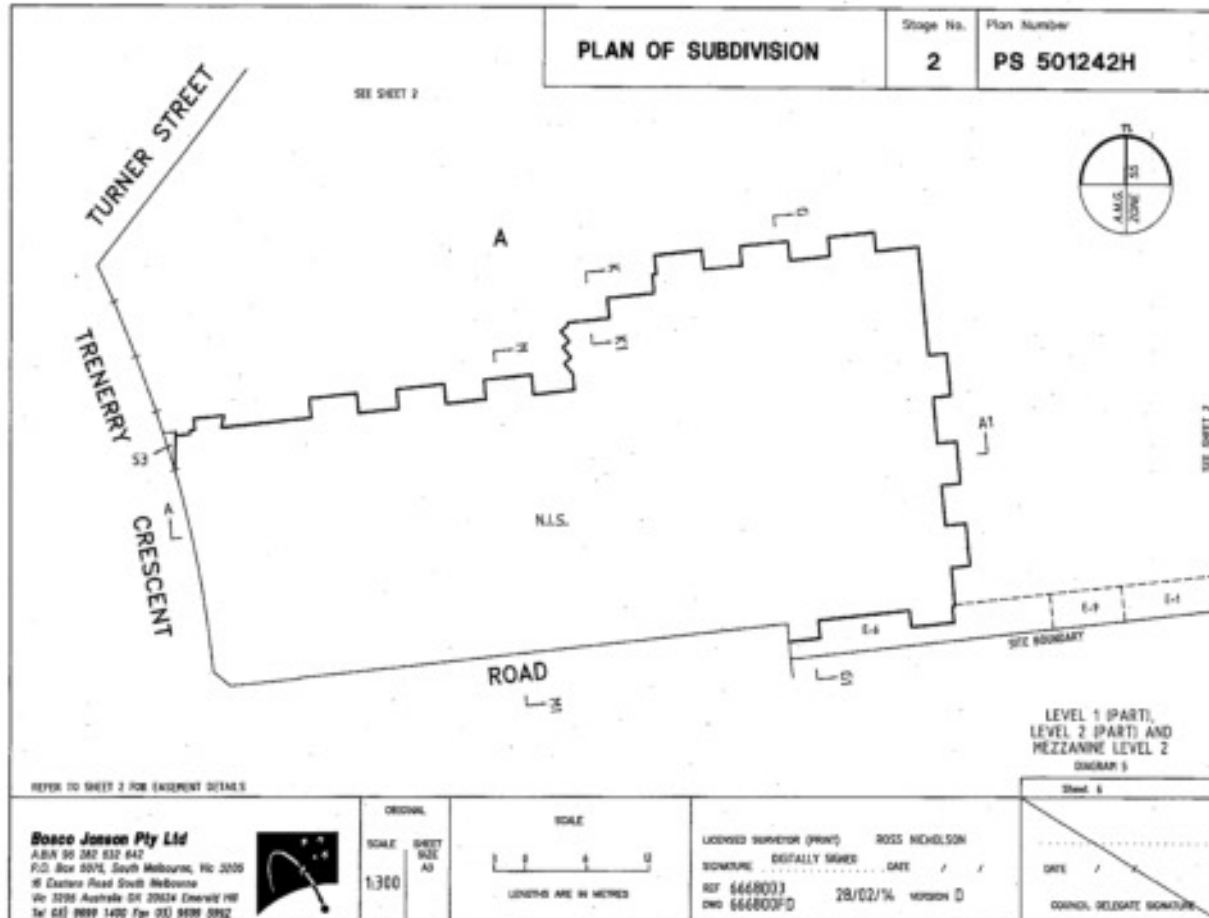
# The Concept Developer Pty Ltd v Conroy & Ors [2015] VSC 464 (14 September 2015)

- open to the tribunal on its merits review to conclude that the lot liabilities specified by the plan of subdivision were not just and equitable and should be altered.
- obligation to maintain part of the building within the boundaries of an individual lot is not a relevant consideration
- nothing in the text of s 33(3) that warrants taking account of a premium paid by an owner when purchasing a lot
- purchaser's knowledge of lot entitlement and liability is not a relevant consideration because it is subject to change





# Altering lot entitlements & liabilities





# Altering lot entitlements & liabilities

OWNERS CORPORATION SCHEDULE

Stage No. **2** Plan Number **PS 501242H**

Owners Corporation No. 1 Plan No. PS 501242H

Land affected by Owners Corporation: 53, LOTS AND COMMON PROPERTIES IN STAGE 1 OF PS 501242H

Limitations on Owners Corporation: UNLIMITED

Notations:

53 IS NOT A MEMBER OF OWNERS CORPORATION NO.1

Lot Entitlement and Lot Liability								
Lot	Entitlement	Liability	Lot	Entitlement	Liability	Lot	Entitlement	Liability
LOTS IN STAGE 1 53	27715	32355						
	69977	1						
TOTAL	PS501242H	32355						

**Brown Johnson Pty Ltd**  
ALSO KNOWN AS BROWN JOHNSON PTY LTD  
1/11 BROWN JOHNSON, SOUTH MELBOURNE, VIC 3207  
40 Eastern Street South Melbourne  
Ph: 5500 10000 Fax: 5500 10000  
Toll Free 1800 1000 1000 Fax: 5500 1000

**LORRAINE HAMILTON (NAME) ROSE HAMILTON**  
SIGNATURE: [Signature] DATE: [Date]

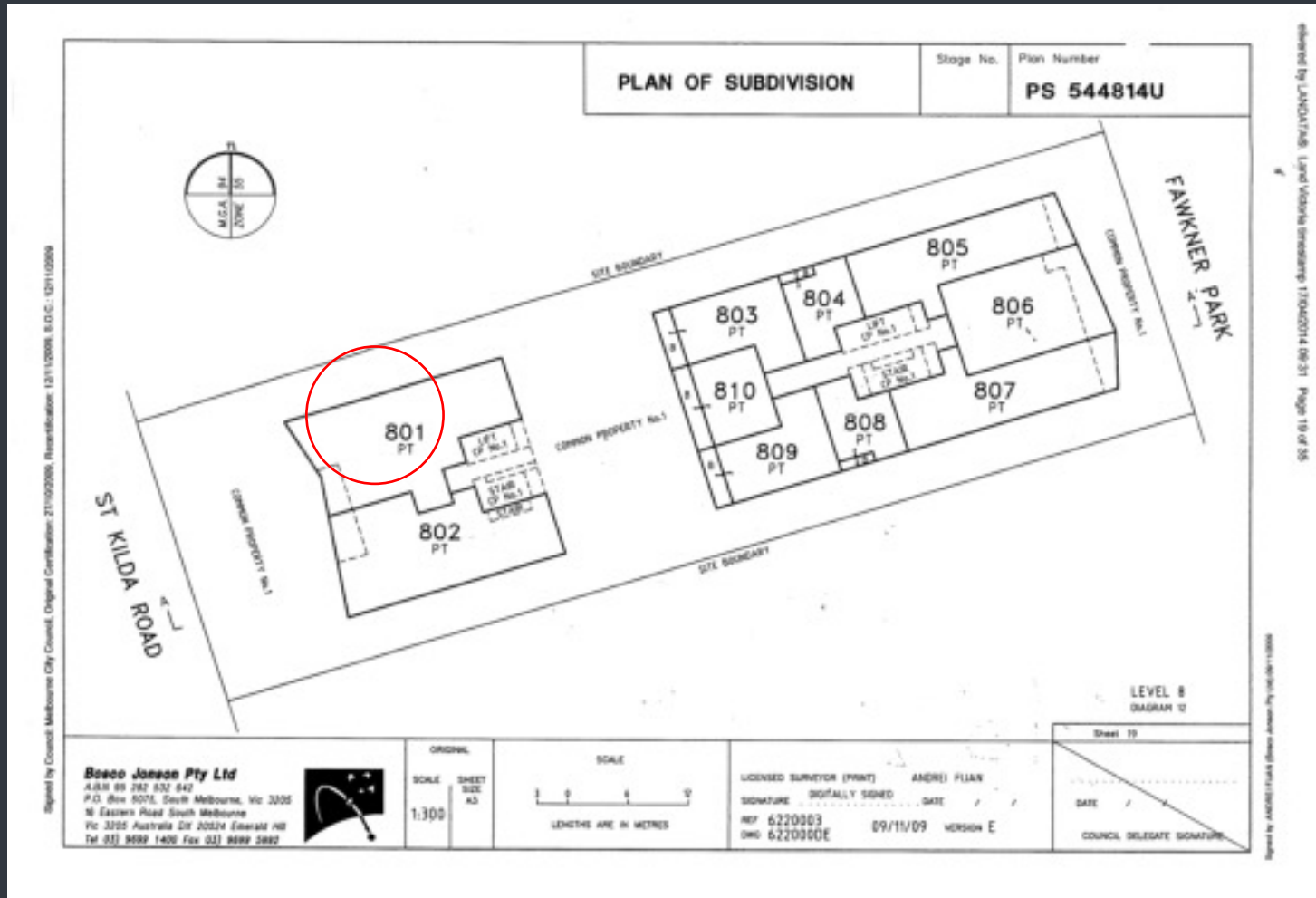
MY GUARANTEE: 28/10/2014  
THE GUARANTEE: 28/10/2014

Signatures of the members of the Owners Corporation (if any) and the Guarantor (if any) must be obtained.

Lot Entitlement and Lot Liability			
Lot	Entitlement	Liability	Lot
LOTS IN STAGE 1 53	27715 69977	32355 1	

# McMahon v Owners Corporation No.1 PS544814U (unreported)

## VCAT Ref.OC3061/2015







## *Latrobe Valley Pty Ltd v Langstaff (Owners Corporation) [2018] VCAT 654*

- Application proceeded under s.34D(1)(b) and (3)
- Sought to excise one of seven villa units to facilitate warehouse / showroom development on adjacent land, and reconfiguration
- VCAT was not satisfied that the economic or social benefits to the subdivision as a whole were greater than economic or social disadvantages to the owners of the non-consenting lot





## ***O'Gorman v Owners Corporation RP 018831 (Owners Corporations) [2017] VCAT 579***

*“In the circumstances of this application, I consider that the considerations which apply to an application under s 34D(1)(b) are relevant. It will not always be the case that the considerations under s 34D(1)(b) are relevant in an application under s 34D(1)(a). Amending an obvious mistake in a plan of subdivision is an example where the considerations under s 34D(1)(b) might not be applicable. However, in circumstances where a lot owner is seeking to acquire common property and amend lot liability such that all of the lot owners are affected in some way, the considerations under s 34D(1)(b) are relevant.”*







## Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W [2021] VSC 373 (25 June 2021)

*“... the Tribunal cannot make an order under s 34D(6) requiring an owners corporation to apply to the Registrar under ss 32 or 33 to alter a plan of subdivision on an application under s 34D(1)(a), if there is not a unanimous resolution of the members, without also making an order consenting on behalf of the members who did not vote in favour of the resolution. In order for the Tribunal to make the latter order, it must be satisfied of the relevant conditions in s 34D(3). Where a member has refused to consent by voting against the resolution, the Tribunal could only make an order consenting on behalf of that member if satisfied of the matters set out in s 34D(3)(c) — including that ‘the purpose for which the action is to be taken is likely to bring economic or social benefits to the subdivision as a whole greater than any economic or social disadvantages to the members who did not consent to the action’.”*





# Ecoville: the vision



Photo courtesy of Ronson Tensile  
Architecture





# Ecoville: the reality



Photo courtesy of Philip Mallis, Flickr





# Ecoville: the reality



Photo courtesy of The Age



# British Columbia

- In *The Owners Strata Plan LMS 2768 v. Jordison*, 2012 BCSC “enhanced enforcement mechanism” used to force compliance with the strata corporation’s by-laws and the Act.
- In *The Owners, Strata Plan NW 1245 v. Linden*, 2017 BCSC 852 [*Linden*] the court said that an application for forced sale under s. 173(1)(c) is “essentially a motion for contempt.”



Photo courtesy of  
[tourismvancouver.com](http://tourismvancouver.com)





# Owners Corporations and Other Acts Amendment Act 2021

*Section 88(3) After section 27F(3) of the Subdivision Act 1988 insert—*

*"(4) For the purposes of this section—*

- lot liability in the plan must be allocated equally between the lots unless—*
  - there is a substantial difference in size between the lots; or*
  - different lots have a bearing on the consumption or use of common utilities or the cost of maintaining the common property;*
  - or the number of occupiers in each lot has a greater bearing on the consumption or use of the common utilities or the cost of maintaining the common property than the size of the lot; and*
- 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.*





Thank you very much for your time.  
If you have any questions about this presentation, please contact:

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