

# **Subdivision Bill**

## **EXPLANATORY MEMORANDUM**

### **PART 1—PRELIMINARY**

*Clause 1* establishes the purposes of the Act.

*Clause 2* provides for the Act to come into operation on proclamation.

*Clause 3* sets out the meaning of various terms used in the Act, including “certified plan”.

*Clause 4* describes the application of the Act, in particular to subdivision of land, buildings or airspace.

*Clause 5* sets out the main steps in the procedure under the Act.

### **PART 2—CERTIFICATION OF PLANS**

*Clause 6* provides that a Council must certify a plan within the prescribed time. The Council must refuse to certify a plan of subdivision, consolidation, or for the creation or removal of an easement in specified circumstances.

*Clause 7* establishes a five year validity for certification of a plan.

*Clause 8* sets out the circumstances in which a plan for certification must be submitted to a referral authority.

*Clause 9* sets out the duties of a referral authority in dealing with a plan.

*Clause 10* enables a Council to agree to or require alterations to be made to a plan submitted for certification. It cannot agree to or require certain alterations.

*Clause 11* allows a Council, on application, to amend a certified plan prior to registration. An application must be referred to any relevant referral authority unless the application is made by an acquiring authority.

*Clause 12* requires that a plan must specify existing and proposed easements, provides for implied easements and rights and for the repair of damage caused by use of an easement.

### **PART 3—REQUIREMENTS UNDER PLANNING SCHEMES**

*Clause 13* sets out when the provisions of this Part do not apply to acquiring authorities, Ministers or Departments.

*Clause 14* makes provision for Councils or referral authorities to approve engineering plans for works required as part of subdivision. The Council may make a charge for an engineering plan it prepares.

*Clause 15* requires that works must comply with the certified plan, the approved engineering plan and standards in a planning scheme or permit. A Council or a referral authority may make a charge for supervision.

*Clause 16* sets out provisions for commencement, supervision and maintenance of works.

*Clause 17* requires the Council to fix the levels of new roads within the specified time.

*Clause 18* contains provisions relating to public open space in a subdivision. Maximum percentages which a Council may require for land are specified. The owner and the Council may agree on a higher percentage.

*Clause 19* sets out the process for valuation for public open space including an appeal right.

*Clause 20* sets out Councils' powers and responsibilities with respect to public open space.

*Clause 21* requires a Council to issue a statement of compliance as soon as possible after specified requirements are met.

#### **PART 4—REGISTRATION OF CERTIFIED PLANS**

*Clause 22* provides that the Registrar of Titles must not register a plan unless certain requirements have been met.

*Clause 23* provides for the lodging of a plan with the Office of Titles where a planning scheme directs the creation, removal or variation of easements, restrictions or encumbrances.

*Clause 24* describes the effect of registration of a plan.

*Clause 25* requires the Registrar of Titles to notify the Council when a plan is registered and to notify the Council if a plan is withdrawn or rejected by the Registrar. The Council must notify any affected referral authority.

*Clause 26* makes provision for submission of boundary plans to the Registrar.

#### **PART 5—SUBDIVISIONS WITH BODIES CORPORATE**

*Clause 27* states that a plan may provide for the creation of one or more bodies corporate to be specified on the plan.

*Clause 28* sets out the effect of registering a plan containing common property.

*Clause 29* makes provisions relating to bodies corporate, including the Constitution, duties, functions, powers, rights and liabilities specified in the regulations. The *Companies (Victoria) Code* does not apply to a body corporate.

*Clause 30* sets out how a subdivision containing common property may be altered.

*Clause 31* provides for the alteration of lot entitlement and liability.

*Clause 32* requires the Registrar to record changes and alterations on the plan. The body corporate must inform the Registrar of any change of its address.

#### **PART 6—MISCELLANEOUS**

*Clause 33* provides requirements where land has been compulsorily acquired.

*Clause 34* provides power for an owner to acquire or remove easements if permitted to do so by a Council.

*Clause 35* sets out provisions relating to staged development.

*Clause 36* provides for disputes involving bodies corporate to be arbitrated by a Magistrates' Court. It also provides for the appointment of an administrator to replace a body corporate.

Clause 37 provides for disputes under the Act to be referred to the Administrative Appeals Tribunal for determination. A dispute under section 33 must be referred to the Minister.

Clause 38 provides for appeals to the Administrative Appeals Tribunal against failure or refusal by a Council or a referral authority in respect of specified matters.

Clause 39 enables the Council to delegate all its powers other than those specified.

Clause 40 enables the Minister to delegate powers, duties and functions under the Act to the Chief Administrator or any officer of the public service. When the Minister has the functions of a council, any of these functions may be delegated to a council, Minister or a public authority.

Clause 41 enables the making of regulations under the Act.

Clause 42 sets out repeal and savings provisions for the *Strata Titles Act* 1987, *Cluster Titles Act* 1974 and certain sections of the *Local Government Act* 1958.

Clause 43 provides that Acts specified in Schedule 2 are amended as specified in that Schedule.

Clause 44 sets out amendments to the *Sale of Land Act* 1962.

Clause 45 sets out amendments to the *Building Control Act* 1981.

Clause 46 repeals the *Southgate Project Act* 1986 which will be replaced by the amendments set out in clauses 44 and 45 and clause 12 of the Bill.

Schedule 1 sets out the public open space formula and gives an example.

Schedule 2 contains consequential amendments to other Acts.

