T R A N S C R I P T

LEGISLATIVE ASSEMBLY ENVIRONMENT AND PLANNING COMMITTEE

Inquiry into Renewable and Affordable Energy for Apartments

Melbourne – Thursday 30 April 2026

MEMBERS

Juliana Addison – Chair
Martin Cameron – Deputy Chair
Jordan Crugnale
Daniela De Martino
Wayne Farnham
Martha Haylett
David Hodgett

WITNESS

Tim Graham, Fellow, Australian College of Strata Lawyers.

The CHAIR: Welcome to the public hearing of the Legislative Assembly Environment and Planning Committee Inquiry into Renewable and Affordable Energy for Apartments. All mobile telephones should now be turned to silent. I am pleased to welcome Tim Graham back to this inquiry, from the Australian College of Strata Lawyers.

All evidence given today is being recorded by Hansard and broadcast live on the Parliament's website. While all evidence taken by the committee is protected by parliamentary privilege, comments repeated outside of this hearing, including on social media, may not be protected by this privilege.

You will be provided with a proof version of the transcript to check. Verified transcripts and other documents provided to the committee during the hearing will be published on the committee's website.

Tim, I invite you to make a 5-minute opening statement, and then we will get into the questions. Over to you.

Tim GRAHAM: Thank you, Juliana. Mercifully, I think it will be closer to a 2-minute opening statement, but thank you for your indulgence. The Australian College of Strata Lawyers is a self-governing association which seeks the development of laws for the common good and to achieve the highest standard of good governance under those laws. The college comprises of fellows, members, academic members, associate members and government members. Within our numbers are the authors of most of the leading texts and research papers on this subject, as well as those practitioners who, through their body of professional work, publications and presentations, are recognised as the leading practitioners in this area of law. Our members can offer those working in this area, including government, valuable advice and assistance and support.

Our members variously represent all stakeholders in the area, including owners, occupiers, OCs, community associations, managing agents, building managers, governments, consent authorities, developers and financiers. Our members choose to operate under a collegiate model because of our association not being aligned with any particular industry and representing no vested economic or political interests. The college is self-governing as an association of practitioners which seeks the development of laws for the common good and to achieve the highest standard of good governance under those laws. Our membership represents a significant resource available to government and all stakeholders in the development of strata law and associated areas.

The principal objects of the college are variously as follows: to establish and administer to the highest standards a system of specialist accreditation for lawyers skilled in the discipline, which is defined in our constitution as the practice of strata law; to promote the highest standards of professional practice; facilitate research and dissemination of research materials on all aspects of the discipline; foster a collegiate relationship among accredited specialists and other members; promote public awareness and knowledge of the discipline; and work in a non-political way to improve laws relevant to the discipline. Finally, the college has a public-interest focus, and over time, exponentially, it expects to build a substantial body of knowledge and skills important to this expanding area of law and the sector more generally. Thank you.

The CHAIR: Tim, thank you for being in here. We always have a really good session when you come and talk to us because of your expertise in the area, and it has been a hot topic – owners corporations – so it is good to have you here and to be able to speak to you and ask you questions. Several stakeholders have advocated for lowering the owners corporation approval threshold to 50 per cent, requiring sustainability as a standing agenda item at meetings and expanding the definition of sustainability in owners corporation law modelled on the New South Wales provisions. Can you foresee any issues with implementing strata governance reform modelled on New South Wales provisions, please?

Tim GRAHAM: Thanks, Juliana. There are a couple of questions in that, all of which are incisive. Starting with New South Wales, it has certainly legislated to include as an evergreen standing item in AGM agendas sustainability and capital works plans necessary for the replacement of common property assets sustainably. Where Victoria sits currently, there were amendments commencing on 1 December 2021 which did two things relevant to this sustainability question. Section 138B of the *Owners Corporations Act* was inserted, and that relates to the retrofitting of hot water systems and solar panels, and heat- or solar-absorbing roofs. What it

provides is that an owners corporation cannot unreasonably withhold its consent to a lot owner affixing those sorts of sustainability items. There is a presumption that if the objection is aesthetic only, then it is an unreasonable withholding. There is a corollary presumption that if the installation impedes access to common property or rights of way, then withholding consent will be reasonable. At that level there is no special resolution requirement. But that is the owners corporation consenting to owners affixing these works exterior to their lots. It is not necessarily the owners corporation carrying out these renewable energy works. I will deal with that separately.

The CHAIR: Sorry, Tim, can I just ask: if one tenant or one owner, whatever we want to call them, wants to put in an electric charging station for their e-car and they are putting it in their own garage spot and it does not impinge on anyone else, they should be able to do that. Would that be an example?

Tim GRAHAM: An example of an owner doing works within lots is subject to the issuance of a building permit if necessary and a planning permit if necessary. Those are largely the extent of controls over what someone can do within their lot. As far as a rule, it is simply none of an OC's business to interpose into people's lots and dictate private behaviours. It is not the OC's power and function to tell someone what religious observance they should follow within their lot or something. It is where there is an impact outside the lot of various activities – you think of noise or smell or, in the case of retrofitting, building works.

The tricky thing in Victoria is, and where there is a distinction with New South Wales – I might have mentioned it last time, but if I did not and in any event to refresh your memory – the boundary can lie at the interior face, meaning the walls, floors and ceilings are common property and the owner effectively only owns their space. They can lie at the median, which is the halfway point of the structural walls, floors and ceilings, or the exterior face, which is less common. In that example, Juliana, an owner would not impact any common property or the owners corporation if it owned the walls, floors and ceilings. Those are pretty rare. It is most common to see this on newer plans, by which I mean plans of subdivision. Since the *Subdivision Act* commenced in 1989, interior faces by far and away are the most frequent. Prior to 1989, under the *Strata Titles Act 1967* it was more typical to see boundaries lying at the median of walls. Then from a datum point, upper and lower boundaries are dictated usually by reference to, for example, site level or a metre below or 10 metres above site level – those sorts of boundaries.

I hope I have not overcooked that, but it would be rare for an owner to, using your example, install an EV that would be wholly within the lot. Subject to where the boundaries on the plan lie, it would be typical that it is going to encroach into common property and potentially other lots. There is a balance between an owner's right to do that. If the OC does not consent, it may well have an implied easement that permits it. But the problem is when you start creating penetrations into common property, that can do all sorts of insidious, deleterious things, like, at its worst, damage the structural integrity of the building. If it is not quite as bad as that. You can still have this perforation issue which allows water, compromises fire safety courses, waterproofing and noise separation. Whilst the proposition of a right to have EVs and indeed other sustainable renewable sources is recognised by me and by the college and applauded, it needs to be balanced against that whole building effect on the common property and other owners. So it is acceptable for someone to have an EV charger, but not at the expense of the structural integrity of the common property building.

The CHAIR: That is why I always welcome your contribution. Thank you, Tim.

Tim GRAHAM: Does that make sense?

The CHAIR: It absolutely makes sense.

Tim GRAHAM: Good.

The CHAIR: I feel smarter already. Thank you for that.

Tim GRAHAM: You are very kind.

David HODGETT: But what about the voting threshold?

The CHAIR: Yes, sorry, the 50 per cent.

Tim GRAHAM: Fair point. I might not have come to that. I know what the SCA submission was, and we spoke to that last time. Juliana referred to other stakeholders. I am not across the granularity of their submissions, but I expect it works something like this. Under section 52 of the *Owners Corporations Act* a special resolution, which is 75 per cent, is required for significant alteration. Under section 53 a special resolution is required for upgrading works. A 'significant alteration' is not defined. I often unhelpfully say it means an alteration that is not insignificant, and that takes us absolutely nowhere. You look at the cases by VCAT, and 'significant' has tended to, as the eponym suggests, be pretty high up the scale. The first case was a building on St Kilda Road where there was a retail store down the bottom and residential above, and the retail store changed a window into a sliding door and moved its location. That was challenged on the basis that it was significant and should have attracted a special resolution, which it lacked. The tribunal disagreed and said that was insignificant. So it is going to be subjective because there is no definition, and maybe that is an area to look at. There is only one, off the top of my head, case where an alteration was found to be significant and works carried out absent a special resolution were found to be in breach, and it was construction of a wooden bin corral on a villa-type development site in the suburbs. The upgrading works are defined in section 53. It is anything requiring a building or a planning permit, so it is going to catch most things, I think, of any import.

As to whether that threshold should be lowered to make it easier not to meet these definitions and to carry out the works, I am in favour of that. I emphasise the point made a moment ago that protection of the asset is paramount. The college's by-line is 'for the common good'. Gary Bugden came up with that years ago, and it is quite brilliant. Individual rights within lots having no impact elsewhere are sacrosanct and none of the OC's business, but where there is impact elsewhere it needs to be tempered. We applaud owners doing sustainable things but not to the disadvantage of the common good in the building overall. I think those interests can be managed without the need for a special resolution. I do not see any qualitative reason why that level of threshold should be needed to approve the carrying out of sustainability works. There is sufficient protection in an ordinary resolution, I would have thought.

Martin CAMERON: Can that be written into law as such – as in, if we are trying to electrify a building, that the progression to actually be able to get onsite and do all the preliminary work so it can be presented to the owners corp is not so long and hard to do? Is that something that could be looked at – there is a special resolution for renewable energy being retrofitted to an OC?

Tim GRAHAM: Respectfully, within the paradigm of owners corporation decision-making I do not think there is such a lead time. I think obviously the permit process is often lamented as being long and laboursome, and it is beyond my bailiwick or remit to say too much about permit requirements. There are stakeholders that know much more about that than me, but it strikes me nevertheless that that is where the delay arises. An owners corporation is relatively agile in its decision-making. Even with a special resolution, a meeting has got to be called on 14 days notice. A special resolution can be passed on an interim basis, since the Act commenced 18¼ years ago, if the vote at a meeting or in a ballot is 50 per cent in favour of the special resolution but less than the required 75 per cent. If there is not more than 25 per cent against the vote, then it carries on in the interim basis, and that becomes final 29 days later – or 'upon the expiration of 29 days' is the nomenclature – unless there is a petition by a person valid to petition. Having done the diligence, unless there is complete abrogation, if you have got 50 per cent buy-in, you can get a decision through the interim procedure in about 45 days minimum, but you might call it 60 days with a bit of padding for notices to go out et cetera. I think that is really where the delay sits, respectfully.

Martin CAMERON: Okay, yes. Thank you.

Wayne FARNHAM: Tim, I might put you on the spot here a little bit, but I am interested in your view. There has been a lot of talk about reform on owners corporations from stakeholders that have come in. What is your view? What needs to be reformed with owners corps?

Tim GRAHAM: We need more than my 25 minutes to do that justice, Wayne, but I can make the overarching observation: when those amendments under the *Owners Corporations and Other Acts Amendment Act* came into operation in December 2021, it was part of the reform and part of that amending enactment that those amendments themselves would be reviewed within five years, which takes us to the end of this year. To its credit, the government has gone wider than the minimum in looking at those amendments and has looked at other things with respect to government. It has obtained an independent report, but it has not released that, so I do not know what it says and we do not know what the government is going to do. But the indications, from the

questions of the independent panel anyway, were that they are looking at a few areas. Financial hardship was one. The college takes a view that does not need to be touched. Owners corporations are historically characteristically accommodating of sincere cases of financial hardship, and the concern is that it will just be abused by people that could not be stuffed paying their bills on time. There is discussion about the appointment of a commissioner as a potential filter to VCAT proceedings. That certainly exists in other states. In Victoria – my own view is possibly, but there needs to be research done in terms of what the commissioner's powers and functions are and jurisdictions et cetera. None of that has been looked at, to my knowledge, with any detail. The other thing they are looking at – they wrongfully, with respect, keep calling it 'collective sales' when they mean termination of strata schemes. They are two different things. Termination of a scheme that is beyond its use-by date currently requires unanimous resolution. Other states – New South Wales first went in at 75 per cent with a whole lot of conditions attached, and there was about a 10-year lag before that was really used, and it is still in its infancy. Whereas collective sales are all owners banding together and entering into contracts with a developer that are co-dependent on each other contract settling. So that is what they are looking at.

As for what needs reform, I think, with respect, there has been significant missed opportunity to actually go back and do a holistic review of an Act that has just achieved major age – that is, it turned 18 on New Year's Eve. And there are so many disconnects in it – inconsistent language. There has just been this symbiosis between OC disputes going to VCAT. It is not a court of record. Its decisions are not authoritative, but it makes them. And then we get these bandaid amendments. The OC Act was amended 16 times in 10 years before this suite of amendments. It is almost annually, and oftentimes it is reactive to the decisions of a non-authoritative decision-maker. One example is there is this thing called the benefit principle, where the rule is that fees are paid in accordance with liability, and there is an exception to that and fees can be charged on some other basis. It started with a lot that benefits more from a repair and maintenance item paying more. As a result of decisions and about three tranches of amendments, we are now in a situation where we have got in fact five benefit principles: one for annual fees, one for special fees, one for insurance, one where a repair notice is issued and one for upgrading works. They are all applied differently. They all have different criteria to apply, and if so, they work differently. So it is just this distending – it lacks process. So the answer, having given that illustration to the direct question in what needs to be fixed, is really I think a whole rethink in terms of some structural elements to the Act, consistence in drafting and not this patchwork effect that we have had as a result of that process of reactive decision-making of a non-authoritative tribunal.

The CHAIR: Thank you, Tim. Wow, the amount that we cover when you come. Your time has come to an end, which is impossible to believe, because it just flew. But thank you so much. As I said, your expertise is unrivalled, and we really, really appreciate the contribution that you have made to this inquiry twice now. Thank you.

Tim GRAHAM: Very kind, Juliana. Thank you for those kind words, everybody.

The CHAIR: If there is anything else that you have not had the opportunity to share with us yet and would like to, please be in touch. We will now end the broadcast.

Witness withdrew.