

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

OWNERS CORPORATIONS LIST

VCAT REFERENCE NO. OC2017/2020

CATCHWORDS

ADMINISTRATIVE LAW – Orders sought under *Subdivision Act 1988* (Vic), s 34D – No unanimous resolution of members – Whether Tribunal could make an order under s 34D(1)(a) of the *Subdivision Act* without also making an order consenting on behalf of each member who did not vote in favour of the resolution – consideration of s 34D(3)(c) and changes made to it by *Owners Corporation and Other Acts Amendment Act 2021* (Vic) — Tribunal could not make an order under s 34D(1)(a) of the *Subdivision Act* without also making an order consenting on behalf of each member who did not vote in favour of the resolution – to make an order consenting on behalf of each member who did not vote in favour of the resolution Tribunal required to be satisfied of the s 34D(3)(c) criteria – s34D(3)(c)(i) requires the member or group of members who is not consenting to be a majority shareholder – here the non-consenting member is a minority shareholder - s 34(D)(3)(c) criteria could not be established – *Real Estate Victoria Pty Ltd. v Owners Corporation No 1 PS332430W* [2021] VSC 373 applied – *Conroy v Owners Corporation Strata Plan 30438* [2014] VCAT 550 not applied.

PRACTICE AND PROCEDURE – Application to strike out or dismiss proceeding under s 75 of the *Victorian Civil and Administrative Tribunal Act 1988* (Vic) – proceeding hopeless – proceeding struck out.

PRACTICE AND PROCEDURE – Decision made by a Supreme Court judge sitting as the Supreme Court conflicts with a Tribunal decision made by a Supreme Court judge sitting as President of the Tribunal – Tribunal bound to follow Supreme Court decision – *Minister for Environment and Conservation v Kupfer* (2003) 16 VPR 67, and *People's Investment Co Pty Ltd. v Commissioner of State Revenue* [2004] VCAT 2024 applied.

APPLICANT:

Owners Corporation 1 PS331627G

RESPONDENT:

Pacific Rim Marketing Group Pty Ltd ACN: 067 887 834, Alan Lindsay, Glenda Joy Romey, Julie Elisabeth Andersson, Dr Nic Wynne, Mai Leng Lam, Denise Mary, Rajesh Singh, Sudath Karunaratne, Peter Sau-Oon Chang, David Rail Pty Ltd ACN:003288999, Chris Forte, Carol Forte, Natalie Maree Osborne, Richard Alan Osborne, Chandrasekharan Pather, Edwina Hung, Brian Jecks, Peter Beer, Smazo Pty Ltd ACN:613333136, Maurice Barbaro, Alicia Flack, Philip Flack, Christian Frahm, Carina Frahm, Clinton Frederick Bravo, Phoenix Asset Holdings Pty Ltd ACN:601756987, Benjamin Hooper, Holly Hooper, Andrew Robson, Kathleen Robson, Isabella Yu, Arthur Shtern, Joseph Anthony Zoppy, Linda Magson, Marie Murphy

INTERESTED PARTY(S):

Owners Corporation 2 Plan No. PS331627G

WHERE HELD:

Melbourne via videoconference

BEFORE: Vice President Judge Marks
HEARING TYPE: Preliminary Hearing
DATE OF HEARING: 12 April 2022
DATE OF ORDER: 17 June 2022
CITATION Owners Corporation 1 PS331627G v Pacific Rim Marketing Group Pty Ltd (Owners Corporations) [2022] VCAT 657

ORDERS

- 1 The proceeding be struck out pursuant to s 75 of the *Victorian Civil and Administration Act* 1998 (Vic).
- 2 Costs reserved.

JUDGE MARKS
VICE PRESIDENT

APPEARANCES:

For the Applicant: Mr N. Dragojlovic of counsel
For the First Respondent: Mr J Twigg QC with Mr A Downie of counsel

REASONS

- 1 Two applications came before the Tribunal in this matter on 12 April 2022. The first respondent sought to have the entirety of the proceeding struck out or dismissed under s 75 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**). The applicant wanted leave to file amended Points of Claim (varying them further in the course of the hearing).
- 2 Detailed written submissions had been filed, and these were amplified in oral submissions made during the hearing.
- 3 At the close of the hearing, I said I would make an order striking out the proceeding under s 75 of the VCAT Act, giving oral reasons for this. These are the written reasons I was then requested to provide.
- 4 The applicant in this proceeding is an owners corporation which seeks to have the land in question consolidated into a single lot under s 32(j) of the *Subdivision Act 1998* (Vic) (**Subdivision Act**).
- 5 It put forward a proposed resolution to the owners to that effect. If that resolution were passed unanimously, the owners corporation would be empowered by s 32(j) of the Subdivision Act to seek consolidation.
- 6 Although the majority of the owners agreed to pass the resolution (96.55% of them), the first respondent (holder of 3.45% of the shares) refused to agree.
- 7 In circumstances where the first respondent, a minority shareholder, refuses to agree to the resolution, the applicant applies to have the Tribunal make an order under s 34D(1)(a) of the Subdivision Act, requiring or authorising the owners corporation to proceed to consolidate the land into a single lot under s 32(j).
- 8 The first respondent seeks to have the proceeding struck out on the basis the Tribunal does not have jurisdiction to make that order.
- 9 I am satisfied that the Tribunal does not have jurisdiction to make the order sought by the applicant, for the reasons given below.
- 10 To understand the issues thrown up by this case, it is first necessary to look at the relevant powers given to owners corporations, and to the Tribunal, in sections 32, 33 and 34D of the Subdivision Act.
- 11 Amendments to the Subdivision Act took effect on 1 December 2021, as discussed below.
- 12 The parties agreed that the Tribunal needs to consider the applicant's claims in this proceeding in light of the legislation as it stands now.
- 13 The relevant clauses must be construed in the light of the principles of statutory construction, discussed by the High Court in *Project Blue Sky Inc. v Australian Broadcasting Authority* (1998) 194 CLR 355.

14 Part 5, Division 5 of the Subdivision Act provides mechanisms for the resolution of disputes relating to owners corporations. Applications may be made to the Tribunal relating to these.

15 As Richards J explains in *Real Estate Victoria Pty Ltd v Owners Corporation No. 1* [2021] VSC 373 at [67], in Division 5:

...three sections provide for applications to be made to the Tribunal in relation to such a dispute, one general, and two more specific.

- a) Section 34A(2) provides for an application for an order determining a dispute or any other matter under the Subdivision Act or regulations affecting an owners corporation.
- b) Section 34B(2) provides for an application for an order determining a dispute in relation to an easement.
- c) Section 34D(1) provides for application for particular orders relating to plans of subdivision.

16 Sections 32 and 33 of the Subdivision Act set out various matters an owners corporation may proceed to do, where there has been a unanimous resolution of all the owners.

17 Relevantly, under section 32(j), an owners corporation may proceed to consolidate into a single lot all the land affected by the owners corporation where a unanimous resolution has been made and if certain matters are complied with. Section 32(j) provides:

If there is a unanimous resolution of the members, an owners corporation may proceed under this Division to do one or more of the following —

...

- (j) consolidate into a single lot all the land affected by the owners corporation if—
 - (i) it is an unlimited owners corporation and, if any land affected by it is also affected by a limited owners corporation, the members of that limited owners corporation by unanimous resolution consent to the consolidation; or
 - (ii) none of the land affected by the owners corporation is land affected by another owners corporation;

18 Although sections 32 and 33 refer to the requirement of a unanimous resolution, the lack of one is not the end of the matter.

19 Section 34D of the Subdivision Act provides for circumstances where particular persons (including the owners corporation itself) may apply to VCAT for an order that will have the effect of permitting things to be done under s 32 or s 33 which have not been the subject of a unanimous resolution.

20 Section 34D provides:

- (1) A member of the owners corporation, an owners corporation, an administrator of an owners corporation or a person with an interest in the land affected by the owners corporation may apply to the Victorian Civil and Administrative Tribunal for—
 - (a) an order requiring or authorising the owners corporation to do any of the things set out in section 32 or 33; or
 - (b) an order consenting on behalf of a member or group of members of an owners corporation to the doing by the owners corporation of any of the things set out in section 32 or 33; or
 - (c) an order consenting on behalf of a person whose consent to the registration of a plan is required under section 22; or
 - (d) an order restraining the owners corporation from doing any action under this Act or the regulations.
- (2) The Victorian Civil and Administrative Tribunal may make an order on an application under subsection (1)(a) even though there is no unanimous resolution of the owners corporation authorising the action.
- (3) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(b) unless it is satisfied that—
 - (a) the member or group of members cannot vote because the member is or the members are dead, out of Victoria, or cannot be found; or
 - (b) for any other reason it is impracticable to obtain the vote of the member or members; or
 - (c) the member has or the group of members have refused consent to the proposed action and—
 - (i) the member owns or the group of members own more than half of the total lot entitlement; and
 - (ii) all other members of the owners corporation consent to the proposed action; and
 - (iii) 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 member or the group of members who did not consent to the action.
- (4) For the purposes of sections 32 and 33, an order made on an application under subsection (1)(b) is to be treated as a vote by the member in favour of the proposed action of the plan.

- (5) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(c) unless it is satisfied that—
 - (a) the person whose consent is required is dead or out of Victoria or cannot be found; or
 - (b) it is otherwise impracticable to obtain the person's consent; or
 - (c) it is impracticable to serve the person with the notice under section 22(1B).
 - (6) Subject to this section, the Victorian Civil and Administrative Tribunal may make any order it thinks fit on an application under this section.
- 21 S 34D(1)(a), read together with s 34D(2), empowers the Tribunal to make an order requiring or authorising the owners corporation to do any of the things set out in section 32 or 33, even though there has not been a unanimous resolution of the owners.
- 22 S 34D(1)(b), read together with s 34D(4), enables the Tribunal to make an order effectively substituting its consent to a resolution for that of a member or group of members who does not consent, in certain circumstances (those set out in s 34D(3)).
- 23 In this case, there is no dispute that the Tribunal is not able to make an order under s 34D(1)(b). None of the circumstances set out in s 34D(3) apply, on the facts.
- 24 Section 34D(3)(c) provides for an order under s34D(1)(b) to be made where the member or group of members who refused consent own more than half the total lot entitlement. In other words, they must be a majority shareholder. Here, the first respondent – the one shareholder who has not agreed to the relevant resolution – is a minority shareholder.
- 25 The applicant instead makes its application under s 34D(1)(a).
- 26 It seeks to have the Tribunal make an order under s 34D(1)(a) requiring or authorising the owners corporation to proceed with the consolidation, in circumstances where it agrees the Tribunal could not have made an order under s 34D(1)(b) consenting to the relevant resolution in relation to consolidation on behalf of the first respondent.
- 27 The issue before me turned on whether the Tribunal has jurisdiction to make an order pursuant to an application under s 34D(1)(a) in those circumstances.
- 28 I am satisfied that it does not, for the reasons given by Richards J in *Real Estate Victoria Pty Ltd v Owners Corporation No. 1* [2021] VSC 373 (**REV**).

29 The facts in *REV* involved, in part, the relevant owners corporation seeking to obtain an order from the Tribunal under s 34D(1)(a), requiring the owners corporation to apply to the Registrar of Titles to alter lot entitlement (under s 33 of the Subdivision Act). The circumstances were that no unanimous resolution in favour of the application had been obtained, and the owners corporation had not established the necessary facts to enable the Tribunal to make an order under s 34D(1)(b) consenting to the resolution on behalf of those owners who had not agreed.

30 As Richards J stated, at *REV* [69], s 34D provides ‘for the applications that may be made to the Tribunal for different kinds of orders relating to plans of subdivision. The Tribunal’s power is that given in s 34D(6), namely to make any order it thinks fit, subject to the section’.

31 One of the questions Richards J answered in that case is the same as the question before me (at *REV* [11(2)]):

In circumstances where a resolution of members of an owners corporation has not been carried unanimously can the Tribunal make an order under s 34D(1)(a) of the Subdivision Act in respect of the subject matter of the resolution in the absence of any further order under s 34D(1)(b) consenting on behalf of each member who did not vote in favour of the resolution?

32 Richards J’s answer was (at *REV* [11(2)]):

No, the Tribunal could only make an order under s 34D(6) requiring [the relevant owners corporation] to apply to the Registrar to alter the lot entitlement and lot liability if it also made an order consenting on behalf of the members of [the relevant owners corporation] who had voted against the [relevant] resolution.

33 I agree with Richards J’s analysis, and I consider that I am bound to follow it in this case in any event.

34 The applicant submitted that the Tribunal was not bound by the decision in *REV* because there was an earlier decision by another Supreme Court judge to the opposite effect, in relation to the construction of s 34D of the Subdivision Act. That case was *Conroy v Owners Corporation Strata Plan 30438 (Owners Corporations)* [2014] VCAT 550 (*Conroy*), decided by Garde J, a Supreme Court judge sitting as President of VCAT. Garde J considered that ss. 34D(1)(a) and s34D(1)(b) were alternative and cumulative provisions with different criteria. Richards J considered the decision in *Conroy* in *REV* [48]–[54].

35 The applicant argued that in effect, the Tribunal was faced with two conflicting decisions of Supreme Court judges so could decide which one to follow (and it should follow *Conroy*).

36 However, I agree with the first respondent’s submissions on this point. It argued that the decision in *Conroy* is a decision of the Tribunal, whereas the

decision in *REV* is a Supreme Court decision, and so the Tribunal is bound to follow *REV*. It submitted:

37. In *Minister for Environment and Conservation v Kupfer* (2003) 16 VPR 67, Morris J stated, at paragraph [9], that he held the view that when sitting as a member of the VCAT, he was bound by decisions of single judges of the Supreme Court.

38. In *People's Investment Co Pty Ltd v Commissioner of State Revenue* [2004] VCAT 2424, Morris J again said:

[21] I consider that the tribunal, however constituted, is bound by the ratio decidendi of the Politis decision [being a decision of the Victorian Supreme Court], unless it is inconsistent with some other decision of a superior court above the tribunal in the judicial hierarchy.

[22] The applicant submitted that, because I am a justice of the Supreme Court of Victoria, the Tribunal as presently constituted, was not so bound. But as a matter of logic I do not consider that this makes any difference. I am sitting as the Tribunal; and I am exercising the powers of the Tribunal. The principle of stare decisis operates by reference to institutions, not people. It is true that appeals from the Tribunal, when constituted by a judge, must be heard by the Court of Appeal of the Supreme Court of Victoria. But this is a statutory courtesy designed to respect the role of a judge when exercising the jurisdiction of the Tribunal and to enhance the role of the President and Vice Presidents of the Tribunal. It does not change the nature of the judicial hierarchy.

37 The applicant also argues that the *REV* decision is not binding on this Tribunal because the legislation Richards J applied in *REV* has since been amended by the *Owners Corporations and Other Acts Amendment Act 2021 (Vic) (the Amending Act)*. The amendments took effect on 1 December 2021.

38 One amendment made was to s 34D(1)(a). It previously did not include the words 'or authorising' after the words 'an order requiring'. (I note that Richards J was aware that amendment to s34D(1)(a) was pending, and stated that her conclusions on another aspect in that case were supported by it: See *REV* [44]). That amendment does not affect the analysis in this case.

39 The change made to s 34D(3)(c) is significant, however.

40 I emphasise the changes and their effect in the extracts below, in bold format, and underlining.

41 Previously, s 34D(3) stated:

- (3) The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(b) unless it is satisfied that—
- (a) the member or group of members cannot vote because the member is or the members are dead, out of Victoria, or cannot be found; or
 - (b) for any other reason it is impracticable to obtain the vote of the member or members; or
 - (c) the member has or members have refused consent to the proposed action and—
 - (i) **more than half of the membership of the owners corporation having total lot entitlements of more than half of the total lot entitlement of the members of the owners corporation consent to the proposed action; and**
 - (ii) 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.

42 Now, s 34D(3) states:

The Victorian Civil and Administrative Tribunal must not make an order on an application under subsection (1)(b) unless it is satisfied that—

- (a) the member or group of members cannot vote because the member is or the members are dead, out of Victoria, or cannot be found; or
- (b) for any other reason it is impracticable to obtain the vote of the member or members; or
- (c) the member has or **the group of members** have refused consent to the proposed action and—
 - (i) **the member owns or the group of members own more than half of the total lot entitlement; and**
 - (ii) **all other members of the owners corporation consent to the proposed action; and**
 - (iii) 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 member or the group of members who did not consent to the action.

43 In other words, in order to make an order where application was made to it under s 34D(1)(b), the Tribunal used to have to be satisfied, as a necessary

precondition, that more than half of the shareholders *agreed* to the proposed action. Now, it needs to be satisfied as a necessary precondition that more than half do *not* agree.

44 Put another way, previously the Tribunal could be asked to substitute its consent for that of the *minority* shareholder, or group of shareholders. Since the amendment the Tribunal can only be asked to substitute its consent for that of the *majority* shareholder or group of shareholders.

45 The applicant argues the Tribunal is not bound by *REV*, given those changes.

46 It says that in *REV* one of the necessary preconditions in s 34D(3)(c) existed, in that a majority of shareholders (75.3%) agreed to the proposed order – as was then required under s 34D(3)(c)(i). If the applicant in that case had satisfied the Tribunal of the other precondition – in s 34D(3)(c)(ii) – the Tribunal could have acceded to the application under s 34(1)(b) and made an order consenting on behalf of the minority who had not agreed to the resolution. However, the applicant in *REV* did not satisfy the Tribunal of the s 34D(3)(c)(ii) requirements.

47 The applicant here draws a distinction with the *REV* decision, because on the facts in this case, the first necessary precondition under s 34D(3)(c) – in the amended section 34D(3)(c)(i) – is not established. The member who does not consent to the relevant course of action does not own more than half the total lot entitlements, as required by section 34D(3)(c)(i).

48 I disagree that this distinction makes any difference to the necessary analysis.

49 In *REV*, Richards J clearly set out how the relevant provisions of the Subdivision Act are to be construed, on a careful analysis. Nothing about the change to the condition set out in s 34D(3)(c)(i) alters that analysis.

50 What is not dealt with in s 34D(3)(c), as it stands, is the situation we have in this case where a minority of shareholders is refusing consent.

51 However I am satisfied that s 34D(3) covers the field in which the Tribunal may give its consent in place of a member who is not consenting to something under ss 32 or 33. The fact that Parliament has seen fit to change some of the circumstances in which the Tribunal can do that does not affect the chain of reasoning of Richards J in *REV*.

52 The applicant says that cannot have been what Parliament intended, in that it leaves no ability to resolve an impasse if a minority does not consent.

53 It submits:

11. Further, it is significant that after the decision in *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W* [2021] VSC 373 which was given on 25 June 2021 the *Owners Corporations and Other Acts Amendment Act 2021* commenced

with effect from 1 December 2021. *The Owners Corporations and Other Acts Amendment Act 2021* made amendments to s. 34D of the *Subdivision Act 1988*. [...]

12. The Parliament failed to amend ss. 34D(1)(a) and (2) of the *Subdivision Act 1988* to give effect to the decision in *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W* [2021] VSC 373 notwithstanding that the amending Act came into effect after that decision. In amending the *Subdivision Act 1988* the Parliament did not give effect to the decision in *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W* but retained s. 34D(1)(a) and chose not to incorporate into s. 34D(1)(a) the criteria in s. 34D(3) in accordance with the decision of *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W*.
 13. The effect of the *Owners Corporations and Other Acts Amendment Act 2021* was to retain s. 34D(1)(a) as a separate power and without express reference to any criteria including the criteria in s. 34D(3).
 14. These matters indicate a Parliamentary intention not to subject an application under s. 34D(1)(a) to the criteria contained in s. 34D(3). This Parliamentary intention was not known when the decision in *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W* was made.
 15. The *Owners Corporations and Other Acts Amendment Act 2021* had not commenced when the decision in *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W* was made. Accordingly, the enactment of the *Owners Corporations and Other Acts Amendment Act 2021* after the decision in *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W* is a matter the Tribunal can take into account in the determination of this proceeding and in deciding whether it should follow *Conroy* or *Real Estate Victoria Pty Ltd v Owners Corporation No 1 PS332430W*.
 16. Further, the expression of Parliamentary intent that may be derived from the enactment of the *Owners Corporations and Other Acts Amendment Act 2021* is a matter the Tribunal can take into account in its determination.
- 54 However, I am not persuaded that I can draw anything about Parliament's intention as to what it wanted to do with non-consenting minority shareholders, from the amendments that were made in the Amending Act in general, or in particular from those amendments made to s 34D(3)(c).
- 55 In construing an Act, the Explanatory Memorandum and Second Reading Speech may be considered.
- 56 The Explanatory Memorandum to the relevant Bill (the *Owners Corporation and Other Acts Amendment Bill 2019*) states, relevantly:

Clause 91 amends section 34D of the **Subdivision Act 1988**, which concerns applications relating to plans of subdivision. Subclause (1) amends section 34D(1)(a) to insert the words "or authorising" after "requiring". This is a technical amendment to clarify the operation of this paragraph. Subclause (2) substitutes section 34D(3)(c). Section 34D(3) details factors that VCAT must be satisfied of in order to make an order on an application under section 34D(1)(b). Currently, paragraph 34D(3)(c) provides that VCAT must not make an order unless it is satisfied that the member has or members have refused consent to the proposed action and more than half the membership of the owners corporation (having more than half the total lot entitlement of the members of the owners corporation) consent to the proposed action; and the purpose of the action is likely to bring economic or social benefits to the entire subdivision greater than any economic or social disadvantage to those lot owners who did not consent.

New section 34D(3)(c) amends this requirement to provide that VCAT must not make an order unless it is satisfied that, a member or group of members which own more than half the total lot entitlement have refused consent, and all other members of the owners corporation consent to the proposed action, and the purpose for which the action is to be taken action is likely to bring economic or social benefits to the entire subdivision greater than any economic or social disadvantage to the member or group of members who did not consent. This ensures that VCAT is not prevented from hearing an application under section 34(1)(b) where a single lot owner (or group of associated lot owners) refuses consent, provided that all other lot owners consent to the action.

- 57 The applicant says that its application falls within the description in the final sentence in the above extract of the Explanatory Memorandum, saying here the first respondent has refused consent and all others agreed.
- 58 However, at the beginning of the paragraph of the Explanatory Memorandum where that final sentence occurs, reference is made to the new Section 34D(3)(c) and the amended requirement that the Tribunal must not make an order unless the member or group of members refusing consent owns more than half the lot entitlements.
- 59 The Second Reading Speech is brief as to the reasons for the change to s 34D(3), relevantly stating (bold formatting added):
- The ability of a **majority** lot owner to prevent an application to VCAT for changes to these settings will also be removed where all other lot owners have consented to the change.
- 60 I reject the applicant's submission that the effect of the Amendment Act was to retain s 34D(1)(a) as a separate power, and without express reference to any criteria, including the criteria in s 34D(3), and that the amendments indicate a Parliamentary intention not to subject an application under s 34D(1)(a) to the criteria contained in s 34D(3).

- 61 The Tribunal is left with following a Supreme Court decision which has already dealt with the relevant question of statutory construction. Nothing about the amendment to s 34D(3)(c) affects that reasoning.
- 62 Section 75 of the VCAT Act provides that at any time the Tribunal may make an order summarily dismissing or striking out any part of a proceeding that is, in its opinion, frivolous, vexatious, misconceived or lacking in substance.
- 63 In order for that very serious action to be taken, the claim brought must be absolutely hopeless or so clearly untenable that it cannot possibly succeed: *Owners Corporation No. 1 PS537642N v Hickory Group Pty Ltd (Building and Property)* [2015] VCAT 1683 at [8], per President Garde J.
- 64 For the reasons given above I am satisfied that this proceeding is so clearly hopeless it cannot possibly succeed.
- 65 I will strike out the proceeding.
- 66 At the conclusion of the hearing on 12 April 2022, the first respondent indicated it will make a separate application for costs, so costs have been reserved.