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| **From:** | Fulvio Prainito |
| **To:** | Legislation Committee |
| **Subject:** | Legislative Council - Standing Committee on Legislation - Inquiry into Strata Titles Amendment Bill 2018 - Part 12 Termination of strata titles scheme - Submission by Fulvio Prainito |
| **Date:** | Saturday, 22 September 2018 12:01:59 AM |

Dear Dr Talbot,

Thank you for giving me the opportunity to make this submission.

I am making this submission on behalf of dissenting long term strata home owner occupiers that live in existing fit for purpose strata title schemes

**Existing fit for purpose strata schemes** are those strata title schemes registered before this Bill becomes law that are still fit for purpose because they are not unsafe or in need of unaffordable repairs as a result of the strata company not being allowed to have a reserve fund. **Dissenting long term strata home owner occupiers** are those principal home owners that are not considered vulnerable owners but will be forced to sell under this Bill. They have a special psychological attachment to their home and, as a result of the inevitable bullying arising from this Bill will suffer anxiety that may lead to mental health problems. According to the **UNSW report** of December 2015 "Renewing the Compact City: Economically viable & socially sustainable approaches to urban development" the best approach for redeveloping strata schemes is a **developer lead collaborative approach** not a speculative approach.

I urge your Committee to focus on the unintended consequences of this Bill that will cause undue financial and psychological harm to dissenting long term strata home owner occupiers in existing fit for purpose strata title schemes that are controlled by the proponent because these people have not had a lobby group advocating for them. Your Committee needs to question the fact that there are no transitional provisions in this Bill considering that Part 12 retrospectively and adversely affects the rights and liberties of a numerous minority. The Bill's failure to put dissenting long term strata home owner occupiers ahead of strata investors will erode trust in being able to make a home out of a strata property with the associated long term real loss in strata property values.

## 1) MANDATE LIKE FOR LIKE TO BE OFFERED TO DISSENTING LONG TERM STRATA HOME OWNER OCCUPIERS [refer to s183(9)(b), s183(11), s183(12)(e)]

The Bill does not mandate like for like when necessary, so this is not a sufficiently adequate safeguard against speculators or bad developers that will not offer it because they want to maximise profit at all costs. The Minister in Hansard and the UNSW report said that the best way of compensating dissenting long term (26 years in my case) strata home owner occupiers is with a like for like replacement in the new redevelopment on the same land. This is particularly applicable in my case where the uplift in rezoned strata land value (especially of my lot's share of Cottesloe absolute beachfront strata land) from 1.5 storey to 6 storeys above ground + 3 storeys underground, would more than compensate for the depreciation in building value. Property guru Gavin Hegney said publicly that the Seapines units are worth many times more dead than alive. This is a lot easier than trying to explain that fair market value of a residential unit needs to be based on the strata lot's share, in accordance to the relative market price of each lot (unit entitlements), of the rezoned strata land calculated according to highest and best use valuation method rather than the depreciated value of comparable 40 year old units.

At the Seapines where I live the proponent, who has been buying up the units in my fit for purpose strata scheme, said that like for like replacement is not an option. This is because all the new dwellings would be exclusive Cottesloe beachfront apartments for down-sizers and double storey penthouses for foreign buyers despite Local Planning Scheme requirements. She claims that this is what the market demands. Building affordable smaller single person dwellings on the Cottesloe Foreshore Centre beachfront is not as lucrative so no like for like for me.

A strata investor does not need to be mandated a like for like replacement choice because his main motivation is money. Replacing common law real property rights with statute law consumer protection rights as this Bill effectively does is acceptable to strata investors who have only invested money but not for long term strata home owners occupiers who have a special bond to their home land.

I am not holding out as long as possible to get as much money as possible. This Bill is increasing my fear of not being able to afford to buy back my home with the same volume of internal space, similar facilities (swimming pool, secured underground parking, balcony, outdoor courtyard) and similar amenities (aspect and views of sunset over the sea and sunrise over the hill; proximity to iconic beach, restaurants, bars, train station, friends) in the same location and position. This fear is the reason for not wanting to sell. The details of this Bill have only aggravated this fear.

The Bill does not adversely affect, even retrospectively, the rights of strata property investors because they can be financially compensated and they are fairly compensated. In fact dissenting strata investors are more incentivised to hold out longer than strata home owner occupiers. This is because they will be financially compensated much more by the SAT than strata home owner occupiers because the SAT can order that the proponent pays their capital gains tax and, in the case of commercial strata properties, pays their GST too.

The retrospective aspect of this Bill does adversely affect a dissenting long term strata home owner occupier right to housing and liberty of enjoying his home as if it was his castle that dates back to the Magna Carta. Undoubtedly the most important liberty infringed by this Bill is that of choosing the time of when to sell one's own home. Only a like for like replacement, bought off the plan, in the new redevelopment is fair compensation for a dissenting long term strata home owner occupier especially in an existing fit for purpose strata scheme.

s183(12)(e) needs to define the like for like buy back arrangement as follows: 1) dissenting owner agrees on the like for like replacement in the new redevelopment, 2) proponent pays fair compensation to dissenting owner, 3) dissenting owner buys like for like off the plans, 4) dissenting owner settles with proponent after like for like is completed.

**A Transitional Provision is required in this Bill so that for existing strata schemes, especially those that are still fit for purpose, a like for like replacement bought on an off the plan basis should not be just an option for the proponent to make but rather a choice of the dissenting long term strata home owner occupier to have.**

2) LIMIT ABUSE OF POWER BY A PROPONENT THAT CONTROLS A STRATA COMPANY [refer to s174(2), s176(1)(a), s178(2)(b), s181(2), s181(3), 181(4)(c), s189(1)]

A proponent can pass or block all ordinary resolutions when she controls the strata company by virtue of owning more than 50% of lots. In such a case, the proponent can use s174(2)(c) to prevent up to 50% of dissenting owners to apply to the SAT to stop termination proposals being submitted. Also in such case (where the proponent controls the strata company) the proponent can use s174(2)(a) to the disadvantage of up to 50% of dissenting owners by allowing only a termination proposal from the same proponent to be submitted to the exclusion of another termination proposal from say a really competent developer.

In such a case, where the proponent controls the strata company and only her proposals can be considered to the exclusion of all others, an unintended consequence of this Bill is that it is impossible to obtain more than 10% above the state's compulsory acquisition fair market price, as the Minister said should happen, because the market is rigged in favour of the proponent since there are no willing sellers and only 1 willing buyer possible.

In such a case, where the proponent controls the strata company, another unintended consequence of this Bill is that up to 50% of dissenting owners can be forced to vote every 2 months on a termination proposal with a 14 days notice from only the same proponent submitted every 6 months. Singapore has had to increase the interval between termination proposals from 6 months to 2 years because it became a national election issue due to the underestimation of harassment on home owners mental health. The mental health of this legalised bullying should not be underestimated especially since there is no definition of reasonable opportunity in s181(3). The Minister in Hansard said that it will be up to the SAT to determine. I spend 5 months overseas from May to October almost every year which makes dealing with termination proposals disruptive and expensive. A period of 2 to 3 months is needed to understand, seek advise, assess and question a full proposal as well as make arrangements to attend meetings especially if based overseas. If ordinary people are not given enough time to deal with the most difficult financial personal situation of their life (the forced sale of their home) then they will be bullied into voting for something that they do not understand.

**A Transitional Provision is required in this Bill to stop a proponent passing or blocking all Ordinary Resolutions because she controls the strata company by virtue of owning more than 50% of units. Such a Transitional Provision need not be complicated:**
**- s174(2) & s176(1)(a) require only a change from Ordinary (50% for) to Special (50 for, 25% not against) Resolution.**
**- s178(2)(b) requires the addition of "an owner of a lot in the strata title scheme"**
**- s181(2) delete "by ordinary resolution".**
**s181(3) define reasonable opportunity as "3 months".**

3) MANDATE SAT TO ALLOCATE UNIT ENTITLEMENTS TO STRATA TITLE SCHEMES WITHOUT THEM BEFORE A TERMINATION VOTE WHEN STRATA COMPANY IS CONTROLLED BY PROPONENT [refer to s183(12)(b), s195(2)(e), s204(a)]

The advisers provided the Minister with answers that misunderstood the questions when she was repeatedly asked in parliament about this. The fact is that in an old strata titles scheme like mine a beachfront townhouse and the iconic Amberjacks fish & chips restaurant have the same unit entitlement as a derelict 39 square metre laundry underground in a back lane next to rubbish bins despite obviously different relative values.

**A Transitional Provision is required in this Bill to empower the SAT to allocate fair**

**and equitable unit entitlements according to the current relative value of each lot in old strata schemes before a termination vote when the strata company is controlled by a proponent especially if she has bought most of the lots with inferior aspect and views or are otherwise of lower relative value to the dissenting owners'.**

Failure to do so will result in the compulsory acquisition of property with fair overall compensation that is not equitable.

4) REMOVE INCONSISTENCY WITH PRINCIPLES OF NATURAL JUSTICE [refer to s179]

s179 allows the SAT to order the forced sale of a long term home owner occupier that has not been classified as a vulnerable owner, based solely on 1 only termination infrastructure report and 1 only termination valuation report that have been commissioned and paid for by the proponent. This is inconsistent with the principles of natural justice.

There is nothing in this Bill guaranteeing the independence of the registered valuer, structural engineer, building inspector and quantity surveyor that prepared the termination reports. An important decision such as whether or not to force someone (who is not vulnerable) to sell her home because of concrete cancer which applies to all prime coastal redevelopment sites to some degree, must not rely on the professional ethics of someone that depends on the proponent for continued work especially since there is no legislation to guarantee professionalism such as a Professional Engineers Act in Western Australia.

**The Bill needs to empower the SAT to have another set of independent termination infrastructure and valuation reports from professionals that have been chosen, briefed and commissioned by the dissenting owners or by the SAT on their behalf and paid by the proponent in those forced sale cases when there are no vulnerable owners.**

It is important to note that this Bill shifts the burden of legal representation costs against non-vulnerable dissenting long term strata home owner occupiers in fit for purpose strata schemes, who are likely to just represent themselves because each party pays for its own costs with the SAT unlike a traditional court of law where the loser pays. The repeated nature, every 6 months, of termination proposals makes legal representation even more unaffordable. This has the unintended consequence of bias in favour of the proponent because she will always be able to afford the better lawyers.

5) CHANGE TERMINATION THRESHOLD FOR STRATA SCHEMES UNDER 10 YEARS OLD FROM 90% TO 100% [s182(7)]

Providing an incentive to replace strata buildings that are not even 10 years old is not socially and environmentally sustainable. Unless there is evidence (economic modelling) of the need for this incentive then strata title schemes that are not even 10 years old should only be terminated unanimously (100%). If there is a need to replace strata buildings that are not even 10 years old then the government needs to strengthen oversight of the deregulated multi-unit residential building construction and certification processes to foster greater public confidence in the quality of new multi-unit residential buildings as recommended in the UNSW report.

This Bill is not helpful to real developers nor does it increase the reliability of developers.

The SAT needs to be able to question the reliability of such speculators-cum-developers in delivering the proposed project when considering a termination proposal.

There is nothing wrong with profit seeking but Part 12 of the Bill does not distinguish between property flipping, rent seeking speculators from value adding, productivity increasing real developers. The net result will be underachieving renewal projects leading to further undermining of public confidence in the benefits of higher density.

6) USE A TIERED TERMINATION THRESHOLD BASED ON SCHEME SIZE [s182(7)]

Under the Corporations Act, existing shareholders in companies with 20 and over shareholders are better protected from a takeover by speculators because a proponent requires a 75% shareholding before being able to start the "termination by majority" process (not 50% as in this Bill) which can then lead to start the "compulsory acquisition" process at 90% (not 80% as in this Bill). It is discrimination against owners in existing fit for purpose strata schemes not to have the same termination thresholds for a strata company 20 units and over when termination is not a need (due to the building being unsafe or due to owners not able to afford its maintainance) but a want because of profit.

**Implement the recommendation in the UNSW report for a tiered voting threshold based on scheme size starting at a minimum of 80% as follows:**
**- 5 to 9 lots = 80%**
**- 10 to 19 lots = 85%**
**- 20 over lots = 90%.**
as per this graph:

For example only 3 will be forced to sell instead of 6 in a 30 units strata scheme. This tiered system still meets the Minister's intent mentioned in Hansard of ensuring that 1 or 2 or 3 holdouts are not rewarded at the expense of owners who sell before going to the SAT.

7) REMOVE 10% SOLATIUM CAP FOR DISSENTING LONG TERM STRATA HOME OWNER OCCUPIERS IN EXISTING FIT FOR PURPOSE STRATA SCHEMES THAT ARE CONTROLLED BY THE PROPONENT [s183(10)(b)]

s183(10)(b) privatises compulsory acquisition by including a maximum solatium of 10% same as when compulsory acquisition is used by government for a public purpose. In my case this will be used to aid a speculator's private profit not to save public money. The Minister has correctly said that this is to avoid that 1 or 2 or 3 holdouts are rewarded at the expense of owners who sell before going to the SAT but then the termination threshold for an existing fit for purpose strata scheme should match this. In my case an 80% threshold forces 5 owners to sell not 2 as it would be if the 90% threshold is used instead. Either the 10% solatium cap is retained or the 80% termination threshold is retained but not both otherwise the Bill does not provide for the compulsory acquisition of property only with fair compensation.

As mentioned before, in a case where the proponent controls the strata company and only her proposals can be considered to the exclusion of all others, an unintended consequence of this Bill is that that it is impossible to obtain more than the 10% above the state's compulsory acquisition market price, as the Minister said should happen, because the market is rigged in favour of the proponent since there are no willing sellers & only 1 willing buyer possible.

In any case the 10% solatium cap should not apply to dissenting long term strata home owner occupiers in a fit for purpose strata scheme because they do not receive the lucrative extra compensation for capital gains tax and GST like their investor counterparts. If I was

an investor rather than a principal owner then the compensation above market price would be 21% which is far in excess of the maximum 10% solatium allowed. Part 12 of this Bill is biased towards investors against dissenting long term home owner occupiers.

8) DO NOT ENCOURAGE LAND BANKING [s183(17)(d)]

The Bill does not require that a forcefully terminated strata scheme be demolished and replaced with something better or of a higher density. There is no actual requirement to do any redevelopment because there is no obligation on the proponent to complete the termination proposal. There are no provisions in the Bill to prevent dissenting long term strata home owner occupiers in a fit for purpose strata scheme like mine being forced to sell in a depressed market, like now, while actual redevelopment does not occur until the property market is booming. The Lido building next door to the Seapines is much older and, despite its more obvious need of renewal, it has not been redeveloped even though it is entirely owned by a speculator. The redevelopment of the Cottesloe beachfront is not stifled by strata home owner occupiers that do not want to sell, it is stifled by land banking rent seeking speculators.

The Bill as it is encourages speculation and land banking to the considerable disadvantage of owners that did not want to sell but were forced to sell and move out by the SAT. The SAT should be encouraged not to order a dissenting long term strata home owner in a fit for purpose strata scheme to move out of her home until both the total redevelopment project financing agreement and the complete building construction contract are signed. Development Approval is simply not enough to guarantee the public good of renewal as exemplified by the Albany Esplanade Hotel debacle.

**The Bill should require that all necessary preconditions be in place so that redevelopment proceeds immediately after forced sale with bond based penalties for non-compliance or that the strata be maintained fit for purpose until actual demolition and construction starts.**

9) REPLACE OWNER'S FINANCIAL POSITION WITH A SIMPLER "NO WORSE OFF" TEST THAT IS STRICTLY LIMITED TO THE STRATA TITLE PROPERTY [s183(10)(2)]

Owner's financial position is an ambiguous accounting definition because it may refer to the total assets (property, savings, investments) less total liabilities (loans) of an owner including controlled companies and trusts both in Australia and overseas which can be manipulated rather than just the fact that the owner is disadvantaged because the fair market value of the strata property is below the mortgage debt outstanding on it. Consideration must be given to many pre-superannuation self funded retirees or Australian residents that worked overseas who have much of their old age savings in strata properties instead of superannuation because they would be seriously disadvantaged by being forced to sell at a time that is not of their choosing and probably in a depressed real estate market. The SAT must be empowered to prevent forcing early retirees back to work and older retirees on the old age pension for the sake of speculators' profit.

**Owner's financial position should be replaced by a precise "no worse off" test that is clearly limited to the strata title property concerned so that a proponent can calculate the extra cost of termination when the outstanding debt amount in a statement from the registered mortgagee is higher than fair market value in the termination valuation report.**

10) ADD A STATEMENT OF PRINCIPLES FOR PART 12 IMPLEMENTATION TO

ENSURE THAT THERE IS A PUBLIC BENEFIT

In my case the redevelopment of the Seapines will lead to the loss of affordable accommodation in an exclusive area. This is especially true of highly sought after but affordable rental housing on the Cottesloe beachfront.

Without a statement of principle it is doubtful that strata renewal would actually deliver the desired urban planning outcomes. This is of major concern to the Town of Cottesloe. In my case there is no doubt that this Bill will simply facilitate unaffordable high end development (eg a 600 square meters double storey penthouse on the corner of Marine Parade and John Street above where Amberjacks fish & chips shop is positioned) when there is no need of demolition because the building is still fit for purpose.

**Implement the recommendation in the UNSW report to include a statement of principles that reflects the broader policy aims of strata renewal in the Bill (to provide 1. a process to facilitate the renewal of buildings that are no longer fit for purpose; and 2. more housing within the existing urban area not land banking).**

The SAT needs a statement of principles because Part 12 "Termination of strata titles scheme" remains ambiguous without it. The regulations related to it may not be drafted in a sufficiently clear and precise way without it. This is particularly important when it comes to the ontological security of vulnerable owners. The Bill as it is provides no clear guidance to the SAT about when it should withhold approval for termination on hardship grounds. This is a disadvantage to the proponent too because it does not provide a reasonable level of certainty about the likely outcome of a termination proposal. A statement of principles is absolutely necessary in my case because the Bill delegates insufficiently defined draconian administrative powers to the SAT albeit with a judicial member. The Bill does not provide enough guidance on whether a speculator who manages a corporation that owns more than 50% (16 out of 28) of lots carries more weight than 20% (5 lots) dissenting strata owners including a principal home, commercial leaseholder, 1st mortgagees, trust caveator and tenants on short term agreements when the strata building is still fit for purpose.

If the government believes that there no need for this Bill to have such a statement of principles to ensure a public benefit outcome because it believes, rightly, that strata titles are a private matter then it should not interfere in Part 12 by legislating for termination at a threshold other than unanimous (100%) and by applying to a private situation the compulsory acquisition valuation methodology reserved by government to resume land for the public good thus creating a situation where market forces are no longer able to operate.

If there is no statement of principles to ensure a public good outcome to guide the SAT then any non unanimous termination of existing strata title scheme should be prevented by a grandfathering transitional provision.

I have been an owner occupier of Unit 7 at the Seapines on Cottesloe beach for 26 years. The Seapines is a 40 year old resort complex consisting of 28 residential or short stay units, a restaurant and a laundry. The strata owned land has been rezoned from 1.5 storeys to 6 storeys above ground (+ 3 storeys underground) so that the whole of the strata land is worth 2 (based on comparable recent whole block sales evidence eg 120 Marine Parade) to 3 times (based on unit entitlements share of highest and best use of strata land calculated as redevelopment sales less redevelopment costs) more than the sum of the individual strata units.

My beachfront townhouse is in good condition because I have renewed it on a regular basis and looked after the surrounding common property at my own cost. As you can read from the 2017 building inspector's report summary in the Appendix, the rest of the building is in average condition but it is safe with reasonable maintenance costs into the future so that the only reason for termination is speculators profit.

As of now 2 investors associated with the speculator that own 3 units will sell at the right price. 3 more investors that own 4 units will probably give up under the pressure of unrestricted repeated votes and sell to the speculator because they have no other option. There are 4 of us that want to keep our irreplaceable absolute beachfront townhouses and 1 who wants to keep his highly profitable Amberjacks fish & chip shop. Only this Bill will force the 5 of us to sell because there has been only 1 forced sale (even the Minister admitted in Hansard that it was an extreme case) in 52 years of strata law operation in WA. Before this Bill, forcing us to sell was difficult because it was so risky to terminate our strata scheme since the loser in the Supreme Court pays all costs acted as a de-facto safeguard barrier. The SAT will be more easily accessible, cheaper and quicker thus allowing repeated termination attempts; and more predictable and less concerned about setting a precedent undermining long established common law.

Yours faithfully,

Fulvio Prainito BE MBA PCertArb IntPE(Aust)
Registered Practising Engineer (Queensland #10858)

Town of Cottesloe

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Our Ref: AJ: 1-28/94 Marine Parade
Enquiries: Planning Department

17 April 2007

Mr Wayne Reynolds – strata manager
Reynolds Strata Services
PO Box 225
NEDLANDS WA 6009

Dear Mr Reynolds

**94 MARINE PARADE: SEAPINES – ENQUIRY RE ZONING & USE**

I refer to your letter of 10 April 2007 in this regard and can advise as follows:

- The land is zoned Foreshore Centre, which provides for short-stay holiday accommodation and for permanent residential land use, as well as for a range of non-residential uses. Hence a mix of uses as existing or approved in future may occur.
- The land is not zoned "short stay residential" or limited to that use, and your observation of the zone objectives and land use permissibility is correct.
- Our records indicate that the original planning application/approval for Seapines was for holiday units.
- It is apparent that subsequent permanent residential use occurring at Seapines is not prevented by the approval and is supported by the zoning.
- On this basis the views expressed by the syndicate relating to the zoning and use situation appear to be incomplete.
- In terms of the syndicate seeking to acquire the permanent residential units, this is not a planning matter or the business of the Town, but something for the individual owners to deal with.
- It is emphasised that the development intentions of the syndicate are only speculative at this stage, being dependent upon future planning and all necessary approvals at the time.
- We have recently replied along similar lines to the owner of (Unit 7.) ~ me

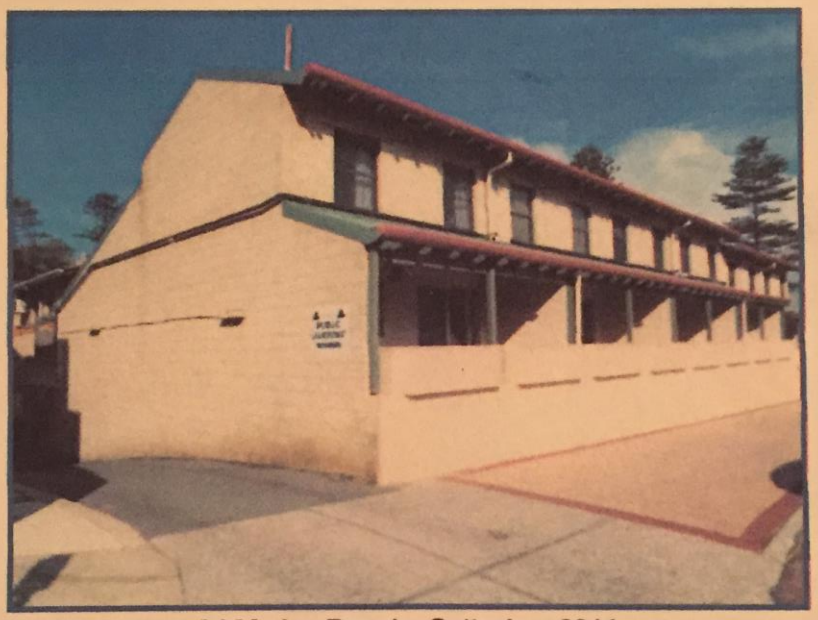
I trust that this advice is of assistance.

Yours sincerely

**Andrew Jackson**
**Manager Development Service**

# BUILDING INSPECTION REPORT

Building & Pest Inspections



94 Marine Parade, Cottesloe, 6011

Inspection prepared for: [redacted]
Date of Inspection: 14/5/2016 Time: 9:30am
Weather: Overcast

Inspector: Niten Chohan
Perth, WA
Phone: 0451025975
Email: niten.c@expressbpi.com.au
www.expressbuildingandpestinspections.com.au

# PROPERTY SUMMARY

## 1. Plumbing Summary

Whilst we are not plumbers, it's always recommended that a licensed plumber be consulted for further details.

## 2. Electrical Summary

Whilst we are not electricians, it's always recommended that a licensed electrician be consulted for further details.

## 3. Structural Summary

Minor defects were noted at the time of inspection, this should be monitored closely, if worsens or deteriorates further then consult a structural engineer for assessment.

## 4. Areas Inspected

• Only structures and fences that were reasonably accessible within 30m of the main building and within the boundaries of the site were inspected.

## 5. Areas Not Inspected

Roof void not inspected. Not required by client. This section of the building is not applicable to this report.

## 6. Areas visually Obstructed

Nill, Reasonable access was gained to all/other areas.

## 7. Areas To Gain Access

Nill, Reasonable access was gained as needed.

## 8. Sub Floor Ventilation

• Adequate, The item described is performing the function it was designed for and it's condition is typical for it's age.

## 9. Site Drainage

Adequate, The site drainage appears adequate at the time of inspection, however this should be monitored during and after rain periods.

## 10. CONCLUSION SUMMARY

• AVERAGE: The overall condition is consistent with dwellings of approximately the same age and construction. There will be areas or items requiring some repair or maintenance.

ATTACHMENT


75% Vote
1 Dissenter
Threshold
80% Vote
1 Dissenter
Threshold
85% Vote
1 Dissenter
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90% Vote
1 Dissenter
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2 Dissenter
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Vote
4 or more
Dissenters
Percentage of all Schemes 4 or more lots in size
18.0%
16.0%
14.0%
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4.0%
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Scheme Size