

My Ref: RM:LF
Your Ref:

12 July 2004

The Tasmanian Law Reform Institute
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Dear Sir

Vendor Disclosure – Issues Paper Number 6

I read the issues paper with some interest.

In principal I support the concept of vendor disclosure.

I support in general the disclosure regime proposed.

I have essentially three general matters to raise. They are as follows:

- 1 The provision of a copy of the certificate issued by the local council pursuant to section 337 of the Local Government Act is of limited benefit, in my view, to the average purchaser. The average purchaser is unable to adequately interpret the document and on their face documents can be misleading or fail to provide sufficient information. Areas of concern in that regard are:
 - 1.1 Zoning issues;
 - 1.2 Building lines;
 - 1.3 Issues relating to certificates of occupancy;
 - 1.4 Issues in relation to certificates of completion;
 - 1.5 Housing Indemnity Act issues, in particular those relating to owner builders;
 - 1.6 Water supply issues;
 - 1.7 Septic tank and sewerage disposal issues.

I am convinced that the average person will not be aware of the importance of some of these issues and others which I have not mentioned and will be unaware of the need to explore those matters prior to signing a contract. The provision of a copy of the certificate would be inadequate and provide limited security to a purchaser. Unless there is a proposal to clarify some of these issues further in the vendor statement then the simple provision of a certificate will not provide very much practical or useful information to the average person prior to signing a contract.

Two examples illustrate some of my concerns:

Example 1:

If a 337 certificate was provided, for example, on a property in the area under the control of the Huon Valley Council and governed by the Esperance Planning Scheme 1999 and if the zoning was shown as "Rural C" then a residence is a discretionary use except where the application is for a house on a lot which existed as a separate title prior to the coming into effect of that scheme or a lot

created by a subsequent boundary adjustment of a lot which existed as a separate title prior to the coming into effect of that scheme. That additional information is not provided and is unlikely to be in any sensible format. Advice that the property was zoned "Rural C" really addresses nothing and provides no certainty that a vacant block of land could be built on.

Example 2:

Question 33 on the 337 certificate refers to a certificate of occupancy. I suspect that the average purchaser would not be aware of what is meant by a certificate of occupancy. The reference to such a certificate is deceptive. It is my understanding of the legal position that a certificate of occupancy cannot be required for a building which was lawfully being used as a residence prior to the commencement of the Local Government (Building and Miscellaneous Provisions) Act 1993. The average purchaser will not be aware of that and is likely to effectively be misled by the answer.

I also note that Council carries out no inspections prior to provision of a certificate and some councils now include on their certificates information to the effect that the certificate has been provided based on their current records and using sources of varying accuracy. They note that they do not carry out inspections and that conditions on the site may vary from those shown on the Council's records. They also provide no guarantee that the information provided is free of errors, defects or omissions and that Council accepts no liability for any loss or damage if a party relies on the information provided in the form. I query whether for the certificate to be useful some inspection should be carried out by Council and, if necessary, the law changed so that there is no question that a purchaser can rely on the answers given.

- 2 My second concern relates to the exceptions. If the information should be provided it is my view that it should be provided in all cases and the excepted situations should in fact be subject to the same requirements as all others.
- 3 A third issue is the information to be provided in the vendor statement. I believe that as part of this process some effort should be made to have some additional matters included on property titles so that the obligation is on the authority asserting the rights to record details of those alleged rights. This should remove from a vendor the obligation to give advice and would give certainty to purchasers. I particularly refer to issues under the Historic Cultural Heritage Act, the National Estate or the Natural Heritage List and whether Transend Networks Pty Ltd has any easements over property. It is my view that these matters ought be able to be recorded appropriately on property titles and that each vendor and/or purchaser should be able to rely on the information on the title rather than having to do a separate search.

I look forward with some interest to the Institute's final position and would be pleased to receive a copy of same.

Yours faithfully


ROBERT MENZIE