

Navigating Strata Urban Renewal: Commercial Gain – vs – Home Ownership

One of the most important reforms effected by the act is the urban renewal mechanism contained in Part 10, which may permit collective sale redevelopment of strata schemes, without unanimous agreement of lot owners being required. We are already encountering developers and lot owners pushing forward with proposals, with a view to moving quickly when the act comes into force.

The process is fairly involved, but broadly involves:

1. The making of a strata development proposal to the scheme. The proposal can be made by anyone, but will typically be made by developer or a lot owner or group of lot owners.
2. Consideration of the proposal by the scheme's strata committee. One can expect "big picture" scrutiny at this point, i.e. a decision whether the proposal is a waste of time or worth further consideration.
3. Constitution of a strata renewal committee.
4. Consideration of the proposal by the strata renewal committee, with a view to formulation of a strata renewal plan. This is likely to be the most complex and time-consuming part of the process, involving ongoing meetings and liaison with third party consultants, resolving the issues presented by the proposal. That will be particularly true with proposal involves redevelopment, rather than collective sale.
5. Submission of a strata renewal plan to the owners corporation by the strata renewal committee. The owners corporation can accept or reject the plan or it can send it back to the committee in relation to specific issues.
6. Acceptance of the plan by the scheme requires a special resolution, i.e. a resolution passed at a general meeting, with the approval of 75% of lot owners, by unit entitlement. The resolution would normally also provide for submission of the plan to lot owners for approval.
7. This is followed by something comparable to an election. The scheme appoints a returning officer and lot owners in favour of the plan lodge support notices with the returning officer. The required level of support is 75% of lot owners, by number of lots. They must do this not earlier than two months after receiving the plan, but before the plan lapses. There are a number of circumstances in which a plan can lapse, but the most likely in this context would be that the required level of support is not obtained within three months after issuing the plan to lot owners.

8. If the required level of support is achieved, the returning officer must notify the scheme's secretary, who must in turn notify the Registrar General and each owner. Notification of the Registrar General will result in a notification being recorded on title to the scheme, to the effect that the scheme is the subject of a strata renewal plan. This will have obvious consequences for sale or other dealings with lots in the scheme.
9. If the required level of support is achieved, the secretary must also convene a meeting of the scheme for the purpose of deciding whether to apply to the Land and Environment Court for orders giving effect to the plan. The scheme is not required to apply and can decide not to do so and must not do so, unless it is satisfied that the plan meets specified requirements. If the scheme does decide to apply, the secretary must notify tenants of whom notice has been given to the scheme.
10. The next step is to apply to the court for orders giving effect to the plan. The court must make those orders if satisfied that the plan meets specified requirements, but otherwise must not do so. In addition to requirements in relation to monetary compensation, there is an overriding requirement that the plan be "just and equitable in all the circumstances". Given the lack of criteria in the legislation, the lack of decided cases in relation to the issue and that schemes' circumstances will differ widely, it is unclear what precisely needs to be demonstrated to satisfy the court that a plan is just and equitable. However, given that these matters will be heard in the Court's Class 3 jurisdiction, which has historically dealt primarily with compensation and valuation disputes, it is likely that the primary issue will be in relation to the appropriateness of the price/compensation. Clearly, this will be one of the most important milestones in the process and parties supporting or opposing plans will need to be well prepared and supported by evidence.
11. The next step(s) will depend on the nature of the plan and no two will be the same. It could involve termination of the scheme, sale of the site and distribution of the proceeds of sale. Alternatively, it could involve engagement of builders and contractors to carry out redevelopment works.

This will be a long and complicated process. It is very important that it be pursued correctly, as failure to comply with the requirements and timeframes imposed by the legislation could cause a plan to lapse or fail. However, if pursued correctly, it could prove very rewarding for the participants.

Conversely, for lot owners opposed to or concerned about a strata renewal plan, it is very important that they take prompt and effective action to challenge the plan or have their concerns addressed.

We are already acting for developers and lot owners in relation to such plans and would be pleased to assist you if you require any assistance in relation to these issues.

Prepared by Bannermans Lawyers
12 September 2016



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA