Predicting the Unpredictable: Strata Renewal in the Courts

Developers proposing projects involving strata renewal plans face a crystal ball gazing exercise. They need to predict the requirements and attitudes of the Court considering an application for orders implementing a strata renewal plan. The difficulty is the novelty of these applications, with little judicial guidance at this stage.

The Land and Environment Court has provided some guidance, including:

- The Court's published practice note - Strata Schemes Development Proceedings (Practice Note).

- A small number of cases providing guidance with certain interlocutory and procedural matters, including:
  - SP49574 v Scorpio Holdings
  - SP6877 v 2-4 Lachlan Avenue Pty Limited
  - SP6666 v Kahu Holdings Pty Limited
  - The Owners - Strata Plan 6877 v 2-4 Lachlan Avenue Pty Ltd; The Owners - Strata Plan 6666 v Kahu Holdings Pty Ltd Respondent (No 2)

  These suggest that:

  - Owners supporting or opposing a strata renewal plan, i.e. supporting or dissident owners may, but need not be, joined as parties to the proceedings as respondents, the Court having given some guidance as to when and how this will occur.
  - A dissident owner who has become a respondent in proceedings must comply with the Court's practice requirements relating to provision of information relating to the respondent's compensation claim.
  - Security for costs will not usually be awarded against the owners corporation in favour of supporting owners.
  - Security for costs may be awarded against the owners corporation in favour of dissident owners, especially if the owners corporation's capacity to satisfy a costs order is in doubt, unless (as is likely) the need for this is displaced by the owners corporation entering into a deed with the proponent of the strata renewal plan, providing an indemnity with respect to costs payable to dissenting owners (and probably also the owners corporation's own costs).

A number of big questions in respect of which we still await guidance from the Court include:

BANNERMANS LAWYERS

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

- Whether the requirements, in Part 10 of the Strata Schemes Development Act 2015 ("SSDA") that, in relation to a collective sale:

    - each owner receive "compensation value" for the lot, representing "market value" and generally additional amounts, including "relocation costs"; and
    - that the price payable for all lots be apportioned among lot owners in proportion to unit entitlements;

    means that all lot owners receive the same relocation costs and additional amounts, whether or not they are appropriate.

- How market value is to be determined for a lot, i.e. whether any premium value derived from selling all lots in the scheme to a developer is to be taken into account.
- Further, whether any additional premium value derived from adjoining sites being held by or available to the developer is to be taken into account.
- What "just and equitable in all the circumstances" means in various scenarios, the Court needing to be satisfied that certain terms of the plan meet this requirement.
- Further, whether the Court will look to what is "just and equitable" for owners supporting the plan or accept that the SSDA does not require this for supporting owners, who had the option of not supporting the plan.

There is still uncertainty in this area, which needs to be followed closely and needs further clarification from the Courts.

Prepared by Bannermans Lawyers
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P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA