Collective Sale – Windfalls When Neighbours Work Together

Strong pressure on Sydney property prices and an acute shortage of suitable development sites has made it possible for neighbours acting together to achieve excellent prices for properties which in aggregate represent a suitable development site. This is illustrated by the recent sale of nine St Leonards houses, which were sold for more than $66 million to a Hong Kong based investor.

Except perhaps for the price, this is not a unique situation, as there have been a number of collective sales across Sydney in recent years. The strongest pressure is for development sites close to the city and the harbour, but there is pressure across Sydney, as demand for higher density accommodation increases, with investment property purchasers and first-time buyers pursuing the limited available supply. Owners able to work together can take advantage of this, as have owners in St Leonards, Castle Hill, Guildford and a number of other Sydney suburbs in recent years.

For strata buildings, new legislation now makes it possible even where some owners don't want to sell. The new legislation makes it possible for a 75% majority to drive through collective sale, provided that certain procedural and compensation requirements are satisfied. This is already proving controversial and will clearly have some significant downsides, but gives owners much more flexibility to sell or redevelop a dilapidated building where maintenance costs have become prohibitive or to take advantage of the commercial opportunity presented by a developer keen to purchase and redevelop the building as a whole.

Where all owners are in agreement, including for strata properties, the process is reasonably straightforward. The main steps would be:

- Confirm that your property is suitable for development and determine what other properties need to be included for the site to be attractive to a developer.
- Negotiate arrangements with other owners, which would usually lead to a collective sale agreement, committing all owners to the process and addressing matters such as allocation of sale costs and distribution of the sale price.
- Engagement of the selling agent and conduct of the marketing campaign. Particular expertise and ideally contacts with developers would be required. The agent's commission would be a hot negotiation point, given the substantial amount likely to be requested and the limited potential for comparison to other sales.
- Where necessary, engagement of other appropriate consultants, such as planning consultants and surveyors. This will usually be unnecessary and attended to by the purchasing developer, but may on occasion be necessary to determine or demonstrate suitability or to address any issues which may make the site unattractive to developers.

BANNERMANS LAWYERS

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

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- Entry into a sale contract with the purchaser and conduct of the sale process. This will usually be reasonably straightforward, given that the developer will usually have little interest in the existing structures on the property, but the various sales will need to be coordinated and the settlement period may be extended to meet developer planning approval and other requirements.

For strata buildings under the new legislation with a dissenting minority less than 25%, collective sale may still be possible, but things get a bit more complicated. The main steps are:

- Development of a proposal.
- Compliance with various procedures leading to the development of a plan.
- Application to the Court for orders giving effect to the plan.
- Action to market and sell the property, as described above. Normally, a lot of this action would be taken in parallel with development of the plan and the likelihood is that the developer will already own a number of lots in the building and be actively involved in development of the plan.

Where the owner of a necessary property does not agree or for strata buildings more than 25% of owners don't agree, the options are very limited. There is no compulsory acquisition mechanism in these circumstances, so the only possible solution is commercial, i.e. finding a way to persuade enough dissenting owners to change their position.

We have considerable expertise with property development, strata and non strata, acting for developers, property owners and strata managing agents and can assist with all of these issues. In particular, we can assist you with the following:

- Identifying suitable sites and any issues which may need to be addressed to make the site attractive to a developer.
- Negotiations and agreements with other owners.
- Engagement of appropriate consultants.
- Negotiations and sale contract with developer.
- For strata buildings with a dissenting minority, guidance through the requirements of the strata legislation.

Key takeaways

- Collective sales can yield excellent prices for properties when owners work together.
- New legislation allows for a 75% majority to facilitate collective sales in strata buildings.
- The process for collective sales involves several key steps, including property suitability assessment and negotiation among owners.
- Dissenting owners can complicate the collective sale process, but options remain for those with less than 25% dissent.
- Engaging the right professionals, including selling agents and consultants, is crucial for a successful sale.

Bannermans Lawyers is a NSW strata law firm advising owners corporations, strata managers and lot owners.

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Prepared by Bannermans Lawyers
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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

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