Balancing strict compliance with a pragmatic approach in the Strata Renewal Process

Part 10 in the *Strata Schemes Development Act 2015* (NSW) (**SSDA**) regulates the process through which a strata renewal plan may be affected with a list of detailed and technical requirements.

It is usually the case that, when it comes to Part 10 proceedings, the court tends to strictly scrutinise compliance with the requirements in the SSDA. This is usually because of the extensive and intrusive power the court has to deprive dissenting owners of their proprietary rights.

However, the recent decision in *The Owners – Strata Plan No 38065 v Xi Zhang; Yan Shi; Bertram Residential Pty Ltd atf the Bertram Residential Trust; Bertram Commercial Pty Ltd atf the Bertram Commercial Trust* [2026] NSWLEC 83 (9 July 2026) (**Zhang**) suggests that this will be balanced by a commonsense approach to certain non-compliances taking into account the legislative purpose of the relevant requirement.

In Zhang, the subject strata scheme consists of 14 lots, and the strata renewal plan (**Plan**) was prepared and thirteen of the 14 lot owners provided their support notices in favour of the Plan, while Lot 7 did not do so (**Dissenting Lot**).

Before the final hearing, the Dissenting Lot filed a notice of motion seeking the following relief:

1. Dismissal of the whole proceedings on the basis that the Plan had lapsed, as 12 of 13 lot owners' support notices were provided earlier than the prescribed time period.

2. An order for a preliminary determination whether the Plan is for a collective sale or a redevelopment and, if it was determined to be a collective sale, the dismissal of the whole proceedings.

On 9 July 2026, the Court dismissed the notice of motion and refused to grant the relief the Dissenting Lot was seeking.

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Dismissal on the basis of support notices

The main point of contention was section 174(1) of the SSDA which provides:

"An owner may, *at least 60 days after* receiving a copy of the strata renewal plan *but before the plan lapses*, give the returning officer for the plan a notice in the approved form (a ***support notice***)…"

The Plan was distributed to the lot owners of the Scheme on 3 October 2025 and the solicitor acting for one of the lots, as well as being a solicitor employed by the solicitors who act for the owners corporation delivered 12 support notices to the returning officer on 3 December 2025.

The Dissenting Lot argued that, based on a strict interpretation of section 174(1) - which provides "*at least 60 days after* receiving a copy of the strata renewal plan but before the plan lapses" - the earliest that support notices could have been provided was *60 days **following** the provision* of the Plan on 3 October 2025.

This meant that support notices could only validly be received by the returning officer after 3 December 2025. Therefore, the 12 support notices provided to the returning officer on 3 December 2025 were not valid. Thereby, the Plan had lapsed under section 177(1)(b) of the SSDA, as the required level of support had not been reached within the prescribed time period.

The Court dismissed this argument on the basis that no strict literal interpretation of the section was necessary. In doing so the Court:

a. Gave effect to the spirit/legislative intention of Part 10 in the SSDA by expressly referring to section 153(2), which it provides:

   The purpose of this Part (i.e. Part 10 – Strata Renewal process) is to facilitate the collective sale or redevelopment of freehold strata schemes in accordance with the process set out in this Part.

b. Held that the adoption of the word "may" in s 174(1) indicates that the 60-day period is not always required.

c. Found that, pursuant to section 174(4) of the SSDA, a support notice has effect as a support notice on the day it is given to a returning officer; there is no requirement that it will only be effective if it was given after the 60-day period.

d. Formed the view that the purpose of the 60-day requirement is to safeguard lot owner's independent decision-making, allowing them, at least, 60 days to consider a strata renewal plan, minimising pressure from other stakeholders. It follows that not all owners are required to wait for this 60-day timeframe to submit their notice.

In fact, the Court was of the view that the relevant support notices were given at least 60 days after the date the lot owners received the Plan, noting that 60 days from 3 October 2025 is 2 December 2025.

The Court also considered that this kind of defect or irregularity would be addressed by section 182(4A), which would be a matter for the Court's consideration at the final hearing.

Dismissal on the basis of misclassification

The SSDA prescribes different requirements for a plan depending on whether it is for a collective sale or redevelopment, and the Court at the final hearing will need to be satisfied in relation to different matters depending on whether the plan is a collective sale pursuant to section 184 of SSDA or a redevelopment pursuant to s 185 of SSDA.

In this respect, the Dissenting Lot sought the Court's preliminary determination whether the Plan was for a 'collective sale' or a 'redevelopment' and if it is found to be a collective sale, that the proceedings be dismissed. The Dissenting Lot argued that, in the event there was misclassification, the Court at the final hearing would not be able to reach the required satisfaction under sections 182(1)(b) and (d) of the SSDA.

The Court refused to grant this relief on the basis that it was not satisfied that this issue was something appropriate to be determined at this (interlocutory) stage.

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The primary reason was that the Court at the final hearing will make orders giving effect to the strata renewal plan that is *before it*; the issue of misclassification is a matter the Court will take into account, among other factors outlined in section 182 of SSDA at the *final* hearing.

In reaching this decision, the Court took a pragmatic and costs effective approach, as the misclassification issue involves intertwined questions of fact and law to be determined. Determining the misclassification now would likely cost more time and money than it would save.

Please note:

1. This hearing was interlocutory in nature, not a final hearing at which all matters are determined. In this context, the Court dismissed the notice of motion, and it appears that the substantive reasoning was that it was not pragmatic to determine these issues now, and that the Court will eventually take them into account at the final hearing.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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