COURT GIVES EFFECT TO STRATA RENEWAL PLAN

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WHAT HAS HAPPENED?

The NSW Land & Environment Court (Court) has handed down the first decision to give effect to a strata renewal plan (SRP) for the collective sale of a strata scheme under the strata renewal provisions of the *Strata Schemes Development Act 2015* (NSW) (the Act).

WHAT DOES IT MEAN?

Under the Act, the Court can make an order giving effect to a SRP for the collective sale of a strata scheme, subject to prior processes having been followed by the strata scheme, including obtaining the approval of at least 75% of a building's lot owners (not including utility lots). While there have been successful collective sales of strata schemes since the reforms regarding the collective sale and SRP's were passed in 2016, these were achieved without the necessity for court orders as the strata lot owners unanimously combined to agree to sell their lots in one line, not via a SRP.

In this case, *Application by the Owners – Strata Plan No 61299*, the Owners Corporation (OC) successfully sought orders giving effect to a SRP for the collective sale of the strata scheme for the building known as Seasons Harbour Plaza, located at 252 Sussex Street Sydney (Building). The Building is a 25-level 159 strata lot development, consisting of 119 residential serviced apartments, a retail lot (café), hotel reception and lobby, office, gymnasium, storage room and 34 basement car spaces.

The proposed sale of the Building to the purchaser was the result of a marketing campaign led by Colliers International. The parties entered into a Deed of Agreement for the sale of the Building, subject to approval of the collective sale from the Court. Approval of the Court was required as the OC followed the SRP provisions under the Act, not via an unanimous collective sale. It is notable that none of the dissenting lot owners or their respective mortgagees sought to appear in the proceedings and object to the OC's seeking of the Court order to give effect to the SRP.

Despite the fact that there was no other party to the proceedings, the case has provided an insight into the nature and extent of the criteria that the Court will take into account in assessing compliance with the Act. In particular, the Court's decision focused on compliance with the procedural requirements under the Act.

The key outcomes in this case are:

The Court's focus on process and procedure: The Court paid very close attention to the OC's compliance with the requirements for a court order that are set out in the Act. Particular attention was paid to the satisfaction of each requirement in section 182 of the Act, and this suggests that all parties involved in the strata renewal

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process (ie strata committee, strata renewal committee, the OC and each of their representatives and advisors) must be extremely thorough when preparing, serving and submitting documents.

Service of notices: This case highlighted the difficulty involved in ensuring that notices were served on each of the lot owners and tenants in accordance with both the Act, and the rules of court. As a number of lot owners were based overseas, a significant amount of time and money was spent to ensure that all relevant parties were served correctly.

Compensation requirements: This case also shed light on the conflict between the two compensation requirements under the Act. If a SRP relates to a collective sale, then:

- the amount paid for the sale of the lots and common property must be shared amongst the lot owners in proportion to lot owner's unit entitlement (s 171(1)); and
- each lot owner must not receive less than the compensation value for their lot and the terms of the settlement under the plan must be just and equitable (s 182(d)).

In this case, some retail lots were potentially disadvantaged due to the relatively low unit entitlement held by those lots. The Court used the powers granted to it under the Act (enabling it to make ancillary orders it considered appropriate or necessary to give effect to the SRP) and reallocated the unit entitlement for all lots to ensure that the proceeds of sale to be received by each lot under the SRP was not less than the compensation value of each lot.

Tenancy requirements: There are mechanisms under the Act regarding the termination of leases of lots where vacant possession is required under a SRP. However, in this case, the SRP did not provide for vacant possession of the leased premises. As the building was sold on a going concern basis and subject to existing tenancies, the Court did not have to consider this issue.

Termination of the previous strata scheme: In its orders, the Court determined that upon termination of the strata scheme:

- the assets of the former OC would be distributed amongst the former lot owners in shares proportional to their unit entitlements; and
- the balance of the administrative fund would be distributed in accordance with each lot owner's proportional ownership of the assets.

This case is confirmation that strata renewal, via a court order giving effect to a SRP, is possible, however the strata scheme is required to strictly observe and comply with the procedural requirements of the Act.

The Court also has the power to approve a SRP that gives effect to the redevelopment of a strata scheme. This scenario is yet to be considered by the Court.

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