



Précis Paper

Navigating Strata Urban Renewal: Commercial Gain Versus Home Ownership

Introduction

In this edition of BenchTV, David Bannerman, Solicitor and Carlos Mobellan, Barrister, conduct an engaging discussion on the topic of urban renewal in the context of the new Strata Schemes Development Act 2015 (NSW).

Key areas of presenters' discussion

- 1.** The meaning of 'urban renewal' in the context of the Strata Schemes Development Act 2015 (NSW) and reforms to the Act.
- 2.** Requirements for practitioners practicing in the area of urban renewal.
- 3.** The duration and costs of applicable processes including commercial negotiation and in the Land and Environment Court
- 4.** Whether a proposal is overall 'just and equitable'
- 5.** The relevance of the size of a strata plan

The meaning of 'urban renewal' in the context of the Strata Schemes Development Act 2015 (NSW) and reforms to the Act.

Urban renewal is described by reference to the process of turning old infrastructure into new infrastructure. In the context of the Strata Scheme Development Act 2015 (NSW) (NSW) urban renewal is characterized as

constituting a shift of power from the minority to the majority, to force the minority to sell. That is, if you've got 75% or over of owners and 75% of unit entitlements (excluding utility lots), you can make dissenting owners sell.

Two processes of urban renewal are described: these are firstly the 'collective sale', where property is sold to a completely different entity, and a process which does not involve selling, which is the redevelopment process.

Several trending methods of urban renewal are referred to. These are the Government's acquisition of strata properties, lot owners collaboratively getting together to go to market, and the situation where there are 75% or more of lot owners or unit entitlements (excluding utility lots). In the latter situation, lot owners may be ordered to sell their property by an order from the Land and Environment Court.

Commercial drivers in urban renewal are noted to be tax-related, particularly capital gains tax, stamp duty, GST and the 'owner's block'.

In relation to reforms to the Act, it is noted that the government has been seeking to create more property transactions, and more revenue through stamp duty; an economic drive tied in with an economic drive for Sydney. The government wants to centralise services and to do that it needs to be able to redevelop existing sites already have structures them. The reforms are the pathway to developing those existing sites: legislation used to require a unanimous resolution of all owners. Now there is a 75% requirement

Protections for dissenting owners are discussed. For example the approach of the Office of Fair Trading was to make the process difficult and complicated so people didn't rush into it. In addition, it is noted that if a lease is terminated and a damages claim by a tenant against an owner, then there is a requirement for payment to be made by the owners corporation. Safety measures on price are noted, as is the

hotline set up by the Officer of Fair Trading which refers vulnerable people to legal services. It is noted that valuation reports provide expert independent views on what should be paid and that a plan must be just and equitable in the circumstances.

Requirements for practitioners practicing in the area of urban renewal.

It is noted that there are several required sets of expertise for practice in the area of urban renewal. These are:

1. A litigation background
2. Tax expertise
3. Knowledge as to what parties need to be involved, for example a person who understands the strata process
4. Expertise in understanding valuation

The costs and duration of applicable processes including commercial negotiation and in the Land and Environment Court

It is noted that commercial negotiations might take 6 months, the Land and Environment Court might take 6 months, and that it might take a couple of months to effect orders obtained in the Land and Environment Court. Some remarks are made concerning costs of the process, including that such costs, if the process is undertaken correctly, are insignificant in relation to amounts spent on acquiring sites.

Whether a proposal is overall 'just and equitable'

There is some discussion of the requirement that a proposal be overall just and equitable. In this context it is noted that the Court will take into account objections of individual lot owners. One scenario is discussed in which a lot owner might

contend that what had been structured as a collective sale should have been structured as a redevelopment, and if it was structured as a redevelopment, the lot owner would have received more money.

The relevance of the size of a strata plan

It is noted that for the process to occur there have to be at least 4 lots, because you need 75% of lot owners and unit entitlements to proceed.

Bibliography

Strata Schemes Development Act 2015 (NSW)

Presenters' Biographies:

David Bannerman is the principal of Bannermans Lawyers providing specialized legal services for the Strata Industry, the Development Industry, the Construction Industry and the Insurance Industry. David is an accredited Property Law Specialist with the Law Society of New South Wales and has over 15 years extensive experience in all aspects of property law and building litigation. Additionally, David is a Director of Strata Community Australia (NSW) and Chairman of the code of conduct committee.

Carlos Mobellan is a Barrister at 3 St James Hall Chambers and specializes in building cases with an emphasis on matters arising under the Home Building Act 1989 (NSW). The Building and Construction Industry Security of Payment Act 1999 (NSW) and the Strata Schemes Management Act 2015 (NSW). Carlos was admitted as a solicitor in 1997 and was called to the Bar in 2004 where he was awarded the Bar Practice Course prize. Carlos has appeared for and against home owners,

Owners Corporations, builders, government agencies, and property development companies