

Strata renewal provisions which allow for the collective sale or redevelopment of a strata scheme are set out in Part 10 of the *Strata Schemes Development Act 2015* (the 'Act') and Part 6 of the *Strata Schemes Development Regulation 2016* (the 'Regulation'). The legislation can be accessed at the NSW legislation website www.legislation.nsw.gov.au

To ensure fairness and transparency in the strata renewal process, the legislation requires a number of important stages to be followed before a Strata Renewal Plan (a 'Plan') for the collective sale or redevelopment of an eligible freehold strata scheme can be put into effect.

The preparation of a Plan by a Strata Renewal Committee (the 'Committee') is a necessary step in the strata renewal process.

It is essential that the requirements of the Act and the Regulation which set out the relevant provisions are followed. Failure to do so may affect the ability of the Land and Environment Court ('the Court') to give approval to the Plan.

This Guide has been developed to assist a Strata Renewal Committee in its preparation of a Plan. It does not constitute legal advice and does not replace professional, legal or business advice or try to explain every aspect of the law. Please review the Act and the Regulation for all the requirements to be met when preparing a Plan.

Introduction

Role of Strata Renewal Committee in preparing a Strata Renewal Plan

A Strata Renewal Plan is prepared when an owners corporation, having received a Strata Renewal Proposal (a 'Proposal') for the collective sale or redevelopment of their scheme, decides that the Proposal should be further investigated. The owners corporation must first, by resolution (a simple majority of votes), establish the Committee and elect its members. The Committee is composed of owners in the scheme.

The function of the Committee is to prepare and develop the Plan based on the Proposal. The Committee must not spend more than the amount that the owners corporation has approved from time to time in preparing the Plan. If the owners corporation has delegated to the Committee the authority to do so, the Committee may engage professionals, including valuers, lawyers, and tax experts to assist with preparing the Plan so it may be given to the owners for consideration.

The Committee may at any time ask that a general meeting of the owners corporation be called to approve amounts that may be spent in preparing the Plan or for other matters about the operation or function of the Committee.

The legislation sets the procedures for the conduct of the Committee. These include voting, the keeping of minutes and the recording of decisions, declaring and dealing with conflicts of interest and meetings with the owners corporation to discuss ideas and seek guidance.

Need for comprehensive and detailed information

The Plan is a comprehensive document. The legislation (section 170 of the Act and clause 33 of the Regulation) lists the matters which must be covered in the Plan so that it is transparent and fully describes all aspects of the proposed arrangements. This will allow for informed decisions to be made and for a proper assessment by:

- the owners corporation - when first presented with the Plan and deciding whether it should be given to the lot owners for their consideration.
- the lot owners - deciding whether to support the Plan.
- the Court - where an application is made for an order to give effect to the Plan.

Content of the Strata Renewal Plan

The legislation provides that information on each of the following matters must be separately and comprehensively addressed (copies of any relevant reports/diagrams/plans should be included where appropriate).

1. General Overview of the strata renewal proposal.

Provide details of whether the proposal relates to the collective sale or redevelopment of the strata scheme and a general summary of the proposal.

2. Full and frank statement by the purchaser or developer of their intended use of the strata parcel.

This statement will be prepared by the proposed purchaser (where one is known) in the case of a proposal for a collective sale, or, the proposed developer in the case of a redevelopment. The statement should be comprehensive and should include any plans/diagrams where appropriate.

3. Particulars of estates and interests (whether registered or unregistered), or any caveats or priority notices, that affect a lot or common property in the scheme to which the Plan relates.

These should be listed separately for the common property and for each individual lot in the strata scheme. The date the list was compiled should be specified,

4. Details of all current unit entitlements.

This information may be obtained from the common property folio.

5. Where the Plan is for a collective sale of the scheme, each of the following matters must also be addressed:

- (i) the name of the purchaser, if known. If there is no known purchaser, the Plan must set out the proposal to market the parcel for sale (by public auction or tender), and
- (ii) the sale price (if known), or a minimum reserve price for the sale or details of the way in which a minimum reserve price for the sale is to be set, and
- (iii) the proposed completion day for the sale, and

- (iv) the proposed day on which owners of the lots are to provide vacant possession of their lots, and
- (v) the details, prescribed by the Regulation, about costs and expenses to be deducted from the sale price, and

(Clause 32 of the Regulation requires that the Plan must include the exact amount of all costs and expenses to be deducted from the sale price, or, if the exact amount of a cost or expense is not known, an estimate of the amount and a detailed explanation as to how that estimate has been determined)

- (vi) any other terms and conditions of the proposed sale that the Committee considers are significant.

6. Where the Plan is for a redevelopment of the scheme, each of the following matters must also be addressed:

- (i) the name of the proposed developer, and
- (ii) details of any planning approvals, or other authorisations under an Act or otherwise, required before the development can start, and
- (iii) an estimate of the period from the start to completion of the redevelopment, and
- (iv) details of any periods during which the owners of lots will be required to provide vacant possession because of the redevelopment, and
- (v) details of arrangements for financing the redevelopment, and
- (vi) details of the terms of settlement and the amounts to be paid to each dissenting owner for the purchase of the owner's lot, and
- (vii) details of the terms of settlement for each supporting owner including the amount and timing of any payments to be made to the owner and, if the owner has a right to buy back into any future scheme, details of that right, and
- (viii) details of the proposed completion day for the purchase of the of each dissenting owner's lot and, if it is proposed that a dissenting owner will receive a payment for the lot on a day other than the completion day, the proposed day on which any such payment is proposed to be made.

7. A report of an independent valuer that includes details of the market value of the whole building and its site (at its highest and best use) and details of the compensation value of each lot.

- *An 'independent valuer' is defined in section 154 of the Act.*
- *The valuation must be determined no more than 45 days before the day on which the general meeting of the owners corporation is held to consider the Plan.*
- *In determining market value of the building and its site (at its highest and best use) and the compensation value of each lot, reference should be made to clauses 26 - 28 of the Regulation.*
- *The compensation value of each lot is determined using the principles of 'just terms compensation' in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 as modified by clause 27 of the Regulation.*

8. Requirements relating to the sale and purchase of each lot:

- (i) If the Plan is for a collective sale:
 - the Plan must provide for the purchase of each owner's lot **at not less than the compensation value for the lot.**
 - the amount paid for the sale of the lots and common property in the scheme must be apportioned among the owners of the lots in the same proportions as the unit entitlements of the owners' lots.
- (ii) If the plan is for a development of the scheme
 - the Plan must provide for each dissenting owner's lot to be purchased **at not less than the compensation value for the lot.**

The report of an independent valuer discussed at Item 7 above will assist in this aspect

9. Other matters

The legislation does not limit the matters that may be included in the Plan. This provides an opportunity for the Plan to address other relevant matters.