



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Property:JEgl1043550

19 August 2015

Strata and Community Title Law Review
Fair Trading Policy
P.O. Box 972
PARRAMATTA NSW 2124

By email: policy@services.nsw.gov.au

Dear Sir/Madam,

Strata Schemes Development Bill 2015

The Law Society of New South Wales appreciates the opportunity to review the Strata Schemes Development Bill 2015 ("Bill"). The Property Law Committee ("Committee") has reviewed the Bill, focusing on Part 10 Strata renewal process for freehold strata schemes, given its significance.

The Committee has made comments and noted specific issues for further consideration in relation to Part 10 in the attached table. The Committee also makes some general comments as to the approach taken.

In the Committee's view the procedures outlined in Part 10 could be further improved by giving consideration to the following:

- (1) The inclusion of a flow chart or decision tree outlining the strata renewal process.
- (2) The provisions do not make sufficiently clear which entity is responsible for verifying ownership and the validity of documentation in relation to consents given, particularly in reaching the required 75% of unit entitlement support.
- (3) The Committee suggests there needs to be a cost efficient arbitrator to review non-compliance with the procedure set up by Part 10 in the early stages of the renewal process. The Committee suggests that interested persons should be able to approach the NSW Civil and Administrative Tribunal to seek redress for non-compliance with Part 10 procedures in the initial stages of the process. (This is to be distinguished from the later proceedings which may be taken, appropriately in the Committee's view, in the Land and Environment Court for the approval of the strata renewal plan).

In the Committee's view, providing a mechanism for review in the early stages of the renewal process is important as it may stop the owners corporation from spending significant sums of money in relation to the renewal, only to have its application to give effect to the strata renewal plan rejected due to non-compliance with Part 10.

- (4) There does not appear to be sufficient consideration of changes of ownership and other significant changes that may occur during the renewal plan process and its impact upon that process, for example a new mortgagee.

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- (5) Further clarity is needed regarding the interaction of provisions which specify a minimum payment of compensation value to lot owners and provisions under which the net price is shared amongst lot owners in accordance with the schedule of unit entitlement. For example, if the sum to be paid to one lot owner is to be increased to reach compensation value, will the sum paid to all other lot owners also be increased in accordance with the schedule of unit entitlement?
- (6) The Committee also notes that Part 10 does not contain any provisions which specify the consequences and remedies for not following a strata renewal plan once in force.
- (7) The Committee notes that under Schedule 2, Part 2, clause 8, an owners corporation will need to resolve that Part 10 is to apply to it where the freehold strata scheme was in existence immediately before the commencement of the Part. Given the nature of Part 10, and the likelihood that Part 10 will be used largely for freehold strata schemes in existence before its commencement, the Committee suggests that the better way to proceed may be to specify that Part 10 applies to all freehold strata schemes, irrespective of whether a scheme was in existence before or after the commencement of Part 10.

The Committee has not reviewed Schedule 9 of the Strata Schemes Development Bill 2015 in detail but considers that the vendor disclosure and warranty provisions of the *Conveyancing (Sale of Land) Regulation 2010* will need to be reviewed in relation to the appropriate level of disclosure to a prospective purchaser about a renewal process being on foot. The Committee also notes that the vendor of a lot in a scheme that is undergoing a renewal process will have difficulty selling during the operational period.

The Committee notes that with the change to a threshold of 75% support being required for a termination, some owners will be required to leave their home against their wishes. The Committee notes that NSW Fair Trading intends to establish a Strata Renewal Advice and Advocacy Program, which will provide services for certain vulnerable lot owners, including advice and assistance with alternative housing choices. The Committee supports the proposed program and suggests it is imperative that the program be adequately resourced. Additionally the work and results of the program should be closely monitored.

The Committee would welcome further opportunities to discuss the Strata Scheme Development Bill 2015 and the regulations to be made generally. Should you have any queries about this letter, please contact Gabrielle Lea, Policy Lawyer for the Committee on 02 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours faithfully,


John F Eades
President

Exposure Draft Strata Schemes Development Bill 2015,

Part 10 Strata renewal process for freehold strata schemes

Detailed submission of the Property Law Committee, Law Society of New South Wales

Section	Content	Comments
s 154	Definitions	<ul style="list-style-type: none"> • In the Committee’s view the definition of “required level of support” requires amendment to refer to 75% of the value of votes by reference to unit entitlement of the lots in the scheme, consistent with the approach taken in relation to the definition of special resolution in the exposure draft Strata Schemes Management Bill 2015. • The Committee notes that the definition of “compensation value” leaves open the significant possibility of the regulations modifying or prescribing a different method of determining value than by reference to s 55 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i>.
s 156	Submission of strata renewal proposal	<ul style="list-style-type: none"> • The Committee assumes that the person making the proposal is not required to be a member of the owners corporation and, if so, this should be clarified. • The Committee notes that the information to be contained in the strata renewal proposal will be prescribed by the regulations and it will be interested to review this once the draft regulations issue. The Committee notes that the information in the strata renewal proposal is likely to overlap to some extent with the content of the strata renewal plan specified in s 170.
s 157	Strata committee to consider proposal	<ul style="list-style-type: none"> • The Committee supports imposing a timeframe of no later than 30 days for the strata committee to meet and consider the strata renewal proposal, and the circulation of the detailed minutes of that meeting to all lot owners within 14 days of the meeting. • The Committee prefers the word “resolve” instead of “decide” in s 157(3), and similar provisions throughout the Bill, to better reflect the appropriate procedural steps to be taken. • The Committee suggests that the notice of decision should also be given to the party who made the proposal, though it is probably not appropriate to share the detailed minutes of the strata committee meeting.

Section	Content	Comments
s 158	Convening general meeting to consider proposal	<ul style="list-style-type: none"> The Committee supports imposing a timeframe of no later than 30 days for the convening of a general meeting to consider the strata renewal proposal, once the strata committee has determined it warrants further consideration. In the Committee's view, the notice should also be given to the party who provided the strata renewal proposal.
s 159	Lapsing of proposal	<ul style="list-style-type: none"> The Committee supports the effect of s 159(1)(a) which allows the owners corporation an opportunity to consider a strata proposal where the strata committee has effectively resolved not to pursue it. The Committee reiterates that the term "decides" should be replaced with the term "resolves" in s159(1)(a) and s 159(1)(b). The word "decision" in s 159(2) should similarly be replaced with the word "resolution".
s 161	Election of members	The Committee suggests that the section should make it clear as to whether or not the members must be lot owners.
s 162	Notice of decision to establish committee	In the Committee's view, the party who provided the strata renewal proposal should be included as a party who receives a notice.
s 164	Function and operation of committee	In relation to s 164(2), the Committee is concerned that flexibility needs to be provided for the owners corporation to increase from time to time the amount approved for expenditure in preparing the strata renewal plan.
s 165	Conflicts of interest	The Committee supports the approach to conflicts of interest in the Bill and notes that following disclosure, the owners corporation must consider whether the members of the strata renewal committee who made the disclosure should remain on the strata renewal committee, and if so, their voting rights in relation to the member's interest.

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s 167	Dissolution of committee	<ul style="list-style-type: none"> • The Committee suggests that the word “special” be inserted before “resolution” in this subsection. • Consideration should also be given to specifying whether a resolution is ordinary or special wherever a reference to a resolution is made in Part 10.
s 170	Content of strata renewal plan	<ul style="list-style-type: none"> • In the Committee’s view, the following information should also be included in the strata renewal plan: <ul style="list-style-type: none"> ○ right for owners to buy back in and on what terms ○ timing of payment to owners ○ timing of termination. • The intent of s 170(4)(b) is not clear to the Committee.
s 171	Requirements relating to sale of lots	<ul style="list-style-type: none"> • The Committee supports the apparent intent of s 171(1) under which the net price paid in a collective sale is apportioned to lot owners in accordance with their unit entitlement. However the Committee is concerned that the phrase “net price” may be open to different interpretations, and would benefit from further definition (this may be more appropriately done by regulation, as will be the case for further definition of “market value”.) • The Committee has concerns in relation to s 171(2) as it believes that the renewals process should not provide an incentive for an owner to be a dissenting owner, such as the ability to be paid a higher compensation sum.
s 173	Copy of plan to be given to owners	<ul style="list-style-type: none"> • In the Committee’s view the word “decides” in s 173(1), should be replaced by “resolves by special resolution”. • A timeframe for providing a copy of the plan to each owner should be specified, such as within 14 days.
s 174	Notice of owner’s decision to support plan	In the Committee’s view the section should make it clear that where there is more than one owner of a lot, all owners must sign the support notice.

Section	Content	Comments
s 175	Withdrawal of support notice	The section should again make it clear that where there is more than one owner of a lot, all owners must sign the withdrawal of a support notice.
s 176	Notice if required level of support obtained	<ul style="list-style-type: none"> • The “required level of support” should be based on unit entitlement as mentioned in the Committee’s earlier comments in relation to s 154. • The Committee suggests that in s 176(1), the words “but no later than 14 days” be inserted after the words “as soon as practicable”. • The Committee notes the effect of s 176(2) and queries whether the owners corporation should be under a further obligation to notify the Registrar-General if a strata renewal plan lapses such that the recording made by the Registrar-General on the folio of the common property for the scheme is then removed.
s 177	Lapsing of plan	In the Committee’s view a timeframe for making application to the Court is needed, if a failure by the owners corporation to apply to the Court is to result in the automatic lapsing of the renewal plan.
s 178	Decision to apply for order	The Committee suggests that s 178(1)(a) be amended to oblige the secretary to call the meeting and if the secretary fails to do so within a nominated time, then any member of the strata renewal committee should have the right to do so.
s 179	Application for order	<ul style="list-style-type: none"> • The Committee suggests that the requirement specified in s 179 (1)(e) should be replaced with a requirement that the owners corporation provide evidence of the steps in preparing the strata renewal plan, obtaining the required level of support and other steps taken under the Part. The question of compliance with the Part is a matter for the court to determine. • Each of s 179(1)(e)(ii) and s 179(1)(f)(iii) contemplate a valuation report. Consideration should be given to specifying who pays for these reports. • The Committee suggests that the proposer of the strata renewal plan should receive a copy of the notice referred to in s 179(2).

Section	Content	Comments
s 182	Decision of court	<ul style="list-style-type: none"> • The Committee has concerns in relation to s 182(1)(c) and how it interacts with s 171(1). • The Committee has concerns in relation to s 182(1)(d) and is unsure as to how a dissenting owner will not “participate in any way in the redevelopment”. This provision also potentially provides an incentive to an owner to dissent, which the Committee considers inconsistent with the intent of the Part.
s 184	Effect of order relating to collective sale	The Committee notes that the strata renewal plan might be varied by the court. For completeness s 184(2) should refer to not only the plan and the order, but also to any variation of the plan. A similar amendment should be made to s 185(2).
s 186	Ancillary orders	The Committee considers that the court may need to be expressly empowered to sign a Real Property Act Transfer or other document in order to give effect to its orders in the event of non-compliance with an order of the court by a dissenting owner (in similar terms to Section 106A of the <i>Family Law Act 1975</i> (Cth)).
s 188	Costs	The Committee queries whether the owners corporation should also be prevented from paying the costs from the regular periodic levies to the capital works fund (formerly the sinking fund) or administrative fund and whether the costs should be covered by a special levy payable only by those who have agreed to the plan. If so, this would be a strong disincentive for owners to agree to the plan.