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# STRATA RENEWAL REFORMS

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## STRATA RENEWAL REFORMS

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### INTRODUCTION

Part 10 of the *Strata Schemes Development Bill 2015* sets out a procedure for termination and renewal of strata schemes. It applies to all strata schemes except those which are subject to a development contract or the *Retirement Villages Act 1999*.

By making provision for both collective sale and renewal plans the legislation adopts a wide and flexible approach to the problem of urban renewal. By ensuring that the proposed sale or plan is comprehensively formulated before the owners corporation adopts it and by providing for compulsory court approval after adoption, the legislation sets out to balance and protect the legitimate interests of all owners.

To do this the legislation creates a lengthy and complex process from first proposal to final termination. This paper sets out the steps involved in that process, reproduces the relevant parts of the legislation and provides commentary.



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## STRATA RENEWAL PROCESS

Strata Renewal Proposal



### *Section 156*

- (1) Any person (whether or not the person is the owner of a lot) may give a written proposal for the collective sale or redevelopment of a strata scheme (a **strata renewal proposal**) to the owners corporation of the scheme.*
- (2) A strata renewal proposal must include the information or other matters prescribed by the regulations.*

**Note.** *Under section 190, particular strata renewal proposals cannot be given to an owners corporation.*

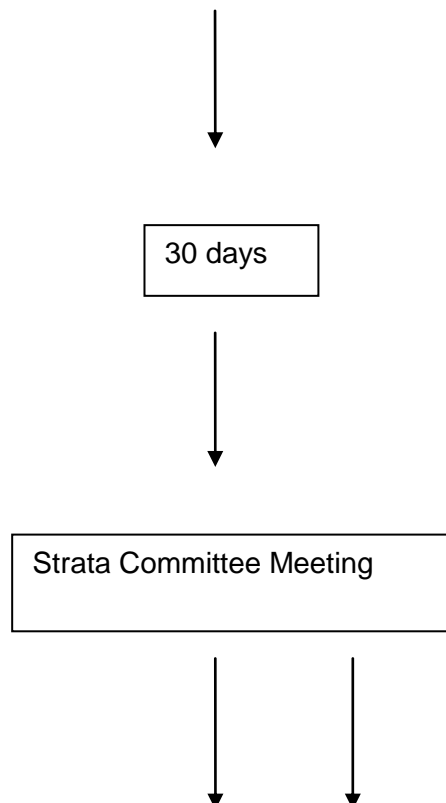
### Commentary

A strata renewal proposal may be given to an owners corporation by any person and, subject to the compulsory inclusion of information prescribed by the Regulations (not yet available), may be in the broadest possible terms. The developer may be internal and own a lot or lots within the scheme or external and own no lots in the scheme. It is likely that many proposals will be developed jointly between external and internal parties either by internal parties seeking an external developer or an external developer formulating a proposal in consultation with owners. Internal parties might select an external developer by direct approach or by tender.

If a strata renewal proposal lapses the developer is prohibited from giving another strata renewal proposal in substantially similar terms for a period of 12 months from the lapsing (s190).



Under s262 of the *Strata Schemes Management Bill 2015* a strata renewal proposal may be given to an owners corporation by leaving it with the chairperson or secretary or a member of the strata committee or in the letterbox of the owners corporation or by posting it by pre-paid mail to the owners corporation at its address recorded on the common property folio or by sending it by electronic transmission to an address or location nominated by the chairperson or secretary of the owners corporation or a member of the strata committee as an address or location to which correspondence can be sent.



*Section 157*

- (1) *As soon as practicable (but no later than 30 days) after the owners corporation receives a strata renewal proposal, the strata committee of the owners corporation must consider it at a meeting of the committee.*



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- (2) *The secretary of the owners corporation, or any other member of the strata committee, may convene the meeting.*
- (3) *The purpose of the meeting is to decide whether or not the strata committee considers the strata renewal proposal warrants further consideration by the owners corporation.*
- (4) *The minutes of the meeting must include:*
- (a) *a complete copy of the strata renewal proposal, and*
  - (b) *detailed reasons for the decision.*
- (5) *The strata committee must give each owner of a lot in the strata scheme a copy of the minutes within 14 days after the meeting.*
- (6)

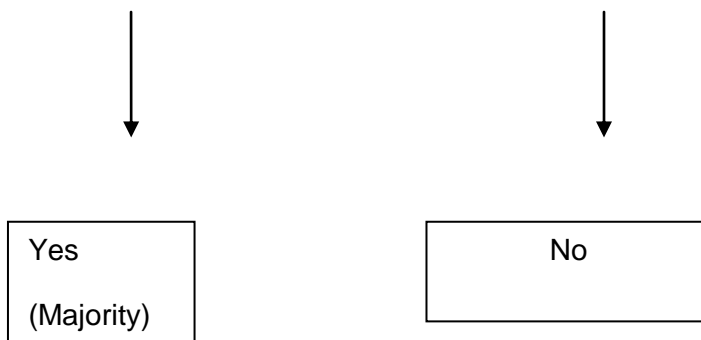
Commentary

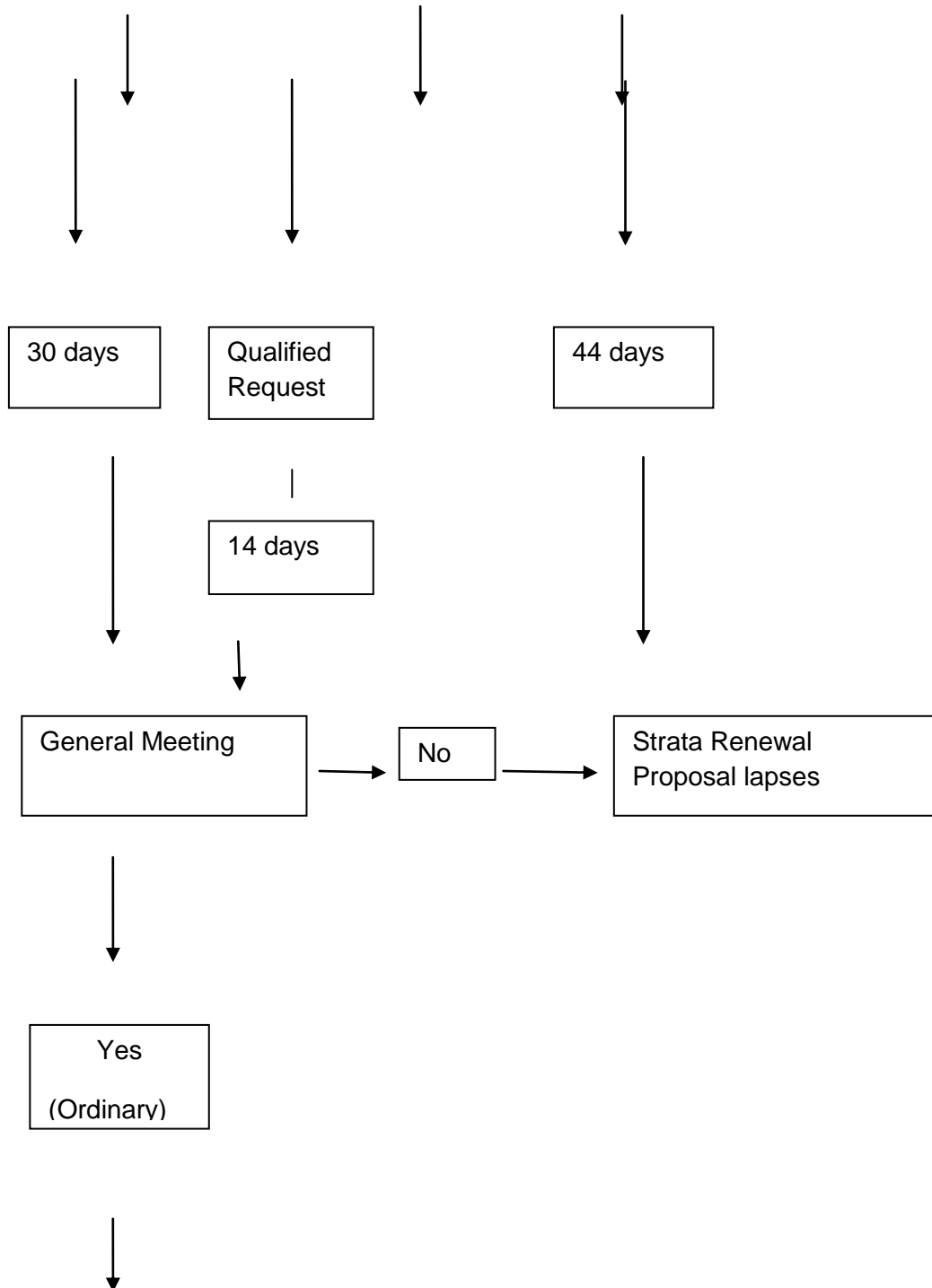
Not less than 30 days after receipt of the strata renewal proposal the secretary or any other member of the strata committee must convene a strata committee (formerly the executive committee) meeting to decide whether the strata renewal proposal warrants further consideration by the owners corporation.

A decision to give the strata renewal proposal further consideration must be made by a majority of the members of the strata committee at a meeting attended by not less than half the members of the strata committee.

The number of members will vary from scheme to scheme. A strata committee must comprise no more than 9 members. Large schemes, comprising more than 100 lots, must have a minimum of 3 members, 2 lot schemes will comprise an owner from each lot and all other schemes may have a minimum of 1 member.

The minutes of the meeting must contain detailed reasons for the decision as well as a complete copy of the strata renewal proposal and be given to each owner within 14 days of the meeting.





**Section 158**

- (1) *If the strata committee decides that the strata renewal proposal warrants further consideration by the owners corporation, it must, as soon as practicable (but no later than 30 days) after making the decision, convene a general meeting of the owners corporation to further consider the proposal.*
- (2) *Also, a general meeting of the owners corporation may be convened to consider the strata renewal proposal on a qualified request, whether or not the strata committee has considered the proposal or decided it warrants further consideration.*
- (3) *The purpose of the general meeting is to decide whether or not the owners corporation considers the strata renewal proposal warrants investigation by a strata renewal committee.*
- (4) *Notice of the general meeting must:*
  - (a) *comply with clause 1 of Schedule 7, and*
  - (b) *be given to each owner at least 14 days before the meeting.*

**Section 160**

- (1) *If the owners corporation passes a motion that the strata renewal proposal warrants investigation by a strata renewal committee, the owners corporation must, by resolution at a meeting:*
  - (a) *establish a strata renewal committee to prepare a strata renewal plan for the strata scheme, and*
  - (b) *elect its members.*
- (2) *A person who has a financial interest in more than 25% of the lots (other than utility lots) in the strata scheme must not vote in a resolution to establish a strata renewal committee or be elected as a member of the committee unless the person has disclosed that fact to the owners corporation.*
- (3) *The strata renewal committee must consist of a chairperson and the number of other members, not more than 8, determined by the owners corporation.*
- (4) *A strata renewal committee is taken to be established on the day its members are first elected under this Division.*



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- (5) *A motion for the resolution to establish a strata renewal committee may include forms of motion for the matters the owners corporation considers appropriate, including the matters referred to in clause 2 of Schedule 7.*

**Section 161**

- (1) *The owners corporation may elect, as members of the strata renewal committee, persons who are eligible for appointment or election to the strata committee of the owners corporation.*
- (2) *Before election under subsection (1), a person must disclose to the owners corporation any pecuniary or other interest the person may have relating to the strata renewal proposal that could conflict with the proper performance of the strata renewal committee's function.*
- (3) *A person may be a member of both the strata committee and the strata renewal committee.*
- (4) *Nomination for election as a member of a strata renewal committee may be made before or at the meeting at which it is established.*

**Schedule 7 Clause 1**

- (1) *A notice of a general meeting of an owners corporation to consider whether a strata renewal proposal warrants investigation by a strata renewal committee must:*
- (a) *clearly indicate that the purpose of the meeting is to consider a strata renewal proposal, and*
  - (b) *identify the proposed purchaser, if known, or proposed developer under the strata renewal proposal, and*
  - (c) *disclose the nature of any interest a proposed purchaser or proposed developer may have in the strata scheme, and*
  - (d) *include a brief summary of the strata renewal proposal, and*
  - (e) *include a form of motion that the owners corporation decide whether the strata renewal proposal warrants investigation by a strata renewal committee, and*
  - (f) *be accompanied by a complete copy of the strata renewal proposal.*

**Schedule 7 Clause 2**

*For the purposes of section 160 (5), the matters are:*





- (a) *determining the number of members of the strata renewal committee, and electing its members, and*
- (b) *a budget for, or limitations on amounts to be spent on, preparing a strata renewal plan, and*
- (c) *considering whether to delegate to the committee the authority to engage persons to help it prepare a strata renewal plan.*

#### Commentary

If the strata committee decides that the strata renewal proposal warrants further consideration it must convene a general meeting of the owners corporation to consider the proposal no later than 30 days after its resolution to do so.

If the strata committee decides the strata renewal proposal does not warrant further consideration by the owners corporation owners having a total unit entitlement of at least  $\frac{1}{4}$  of the aggregate unit entitlement may make a qualified request to the secretary pursuant to s19 of the *Strata Schemes Management Bill 2015* for the calling of a meeting to consider the strata renewal proposal and the secretary must call that meeting not later than 14 days after receiving the qualified request. A qualified request may be made to consider a strata renewal proposal whether or not the strata committee has considered the proposal or made a decision as to whether it warrants further consideration. Internal proponents may use this method to accelerate the calling of a general meeting to consider a strata renewal proposal. It is of particular use if the proposal is opposed by the strata committee members but may appeal to the owners at large.

The notice of the general meeting must conform with Schedule 7 Clause 1 and contain the motion set out in Schedule 7 Clause 1(e) to determine if the proposal warrants investigation by a strata renewal committee. A motion for the establishment of a strata renewal committee may also include forms of motions for such other matters as the owners corporation considers appropriate including the matters in Schedule 7 Clauses 2(a) – (c) to determine membership, the budget of the committee and the delegation of authority to engage persons to assist in the investigation.

As a general rule it would be prudent to give authority to engage appropriate experts to assist in the investigation, such as lawyers, valuers, engineers, and builders. Where an external developer is



involved it is likely that the developer will offer to pay for that assistance up to specified limits of expenditure.

The motions are to be passed by an ordinary resolution which is determined on a simple majority. If a person has a financial interest in more than 25% of the lots within the scheme or a pecuniary interest which may conflict with proper performance of strata renewal committee duties that person can not vote or stand for election to the strata renewal committee unless disclosure of that fact is made to the owners corporation.

The strata renewal committee must comprise a chairman plus the number of other members determined by the owners corporation, not exceeding 9. There is nothing to prevent the establishment of a strata renewal committee comprising only a chairman.

Persons must be eligible for election to the strata committee in order to be elected to strata renewal committee. Persons eligible for election to the strata committee are:

- an individual who is a sole owner of a lot in the scheme,
- the company nominee of a corporation that is a sole owner of a lot in the scheme,
- an individual who is a co-owner of a lot in the scheme nominated by an owner who is not a co-owner of that lot or by a co-owner who is not a candidate for election to the committee,
- a company nominee of a corporation that is a co-owner of a lot in the scheme nominated by an owner who is not a co-owner of that lot or by a co-owner who is not a candidate for election to the committee, or
- an individual who is not an owner of a lot in the scheme who is nominated by an owner who is not seeking election as a member of the committee.

If the general meeting does not consider that the strata renewal proposal warrants further consideration the proposal lapses.

If the strata committee decides that the strata renewal proposal does not warrant further consideration and no qualified request to convene a general meeting to consider the strata renewal proposal is received within 44 days of that decision, the strata renewal proposal lapses.





Strata Renewal  
Committee.



*Section 162*

- (1) If a strata renewal committee is established for a strata scheme, the secretary of the owners corporation must, within 14 days after it is established, give written notice of the decision to the owner of each lot in the scheme.*
- (2) The notice must include the information prescribed by the regulations.*

*Section 163*

- (1) A person vacates office as a member of the strata renewal committee if the person:*
  - (a) is no longer eligible for appointment or election to the strata committee of the owners corporation, or*
  - (b) was not an owner when elected as a member, or was a company nominee, and the individual who nominated the person for election, or the corporation for which the person is a company nominee, ceases to be an owner or notifies the owners corporation in writing that the person's office is vacated, or*
  - (c) resigns office by written notice given to the owners corporation, or*
  - (d) is removed from office by special resolution of the owners corporation.*
- (2) The owners corporation may elect a person who is eligible to be a member of the strata renewal committee to fill a vacancy in the office of a member of the committee.*





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Section 164

- (1) *The function of the strata renewal committee is to prepare a strata renewal plan, relating to the strata renewal proposal for the strata scheme, for consideration by the owners corporation and the owners in accordance with this Part.*
- (2) *In exercising its function, the strata renewal committee:*
  - (a) *must not spend more than the amount that the committee has, by resolution of the owners corporation made from time to time, approval to spend in preparing the strata renewal plan, and*
  - (b) *may engage persons to help it prepare the strata renewal plan (for example, a person who gave the strata renewal proposal to the owners corporation), if the owners corporation has delegated to the committee the authority to do so.*
- (3) *The strata renewal committee may at any time ask the secretary of the owners corporation to convene a general meeting to approve:*
  - (a) *amounts that may be spent by the committee in preparing a strata renewal plan, or*
  - (b) *any other matter relating to the operation of the committee or the exercise of its function.*
- (4) *If, when an act or proceeding of the strata renewal committee was done, taken or commenced, there was:*
  - (a) *a vacancy in the office of a member of the committee, or*
  - (b) *any defect in the election of a member,**any act or proceeding of the committee done in good faith is as valid as if the vacancy or defect did not exist and the committee were fully and properly constituted.*

Section 165

- (1) *If:*
  - (a) *a member of a strata renewal committee has a pecuniary or other interest in the proposed collective sale or redevelopment under a strata renewal proposal, and*
  - (b) *the interest may raise a conflict with the proper performance of the committee's function,**the member must, as soon as practicable after becoming aware of the potential conflict, disclose the nature of the interest to a meeting of the strata committee.*



- (2) *On being informed of a matter under subsection (1), the strata committee must refer the matter to a meeting of the owners corporation for a decision by the owners corporation (having regard to the nature of the interest):*
- (a) *to remove the member from office, or*
  - (b) *to allow the member to remain in the office and to require the member to abstain from voting at, or participating in, a meeting of the strata renewal committee on a matter relating to the member's interest, or*
  - (c) *to take no further action in relation to the matter and to allow the member to remain in the office.*
- (3) *A member of a strata renewal committee must comply with any requirement made under subsection (2) (b).*

#### **Section 166**

*Unless the strata renewal committee is earlier dissolved, the committee may exercise its function:*

- (a) *for 1 year after the day it is established, or*
- (b) *if the owners corporation, by special resolution made before the end of the period referred to in paragraph (a), extends that period—for the extended period.*

#### **Section 167**

*A strata renewal committee is dissolved on the earliest of the following days:*

- (a) *the day the owners corporation, by resolution, dissolves the committee,*
- (b) *the day the strata renewal plan prepared by the committee lapses under this Part,*
- (c) *the day the operational period of the committee ends, unless the required level of support for the strata renewal plan prepared by the committee has been obtained before that day,*
- (d) *the day the owners corporation decides to apply to the court for an order to give effect to the strata renewal plan prepared by the committee.*



*Section 168*

- (1) A strata renewal committee may hold its meetings at the times and in the way it decides.*
- (2) The quorum for a meeting of a strata renewal committee is a majority of its members.*
- (3) A decision supported by a majority of votes cast at a meeting of a strata renewal committee at which a quorum is present is the decision of the committee.*

*Section 169*

- (1) A strata renewal committee must keep minutes of its meetings and a record of its decisions.*
- (2) Within 14 days after a meeting of the strata renewal committee, the chairperson of the committee must:*
  - (a) give a copy of the minutes of the meeting to the secretary of the owners corporation and to each member of the committee, and*
  - (b) if the owners corporation has a notice board, place a copy of the minutes of the meeting on that notice board.*
- (3) If asked by an owner of a lot in the strata scheme, the secretary of the owners corporation must give the owner a copy of the minutes of a meeting within 14 days after the request is made.*
- (4) Nothing in this section requires the chairperson to give a copy of the minutes to himself or herself.*

Commentary

Notification of the establishment of the strata renewal committee must be given to each owner within 14 days.

The purpose of the strata renewal committee is to prepare a strata renewal plan relating to the strata renewal proposal for consideration by the owners corporation in general meeting.

The strata renewal committee is limited by its approved budget and to engaging persons to assist it as are authorised by the general meeting. The strata renewal committee may request the secretary to convene a general meeting to vary these restrictions.

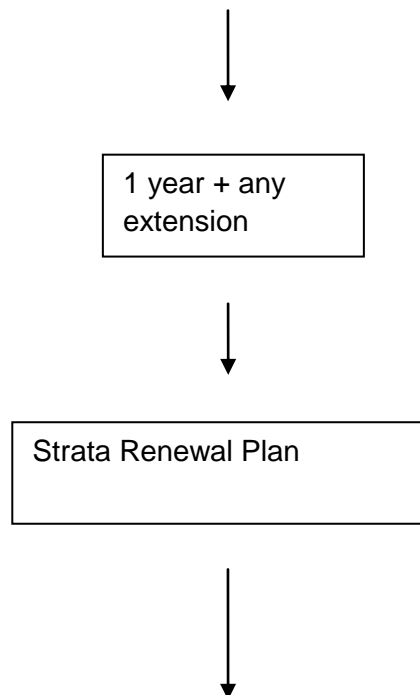


If any interest, including a pecuniary interest, arises which may raise a conflict for a member, that member must advise the strata committee who must then convene a meeting of the owners corporation to consider the position of that member on the committee.

The strata renewal committee may set its own processes. Its decisions are made by a majority of votes at a meeting at which a majority of members are present. It must keep minutes of its meeting and provide copies to the secretary and each member of the strata committee within 14 days and, if there is a noticeboard, place a copy of the minutes on the noticeboard.

The strata renewal committee must prepare the strata renewal plan within 1 year from the day it is established or such longer period as extended by special resolution of the owners corporation in general meeting, otherwise the strata renewal committee is dissolved

The legislation is silent as to the consequences of a failure by the strata renewal committee to deliver a strata renewal plan within its operational period. While the strata renewal committee will be dissolved, it does not appear that the strata renewal proposal lapses in that circumstance.





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Section 170

- (1) *A strata renewal plan for a strata scheme must include the following information:*
- (a) *a general overview of the strata renewal proposal to which it relates,*
  - (b) *a full and frank statement by the proposed purchaser or developer of their intended use of the strata parcel,*
  - (c) *if the plan is for a collective sale of the scheme:*
    - (i) *the name of the purchaser, if known, or a proposal for marketing 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 the owners of the lots are to provide vacant possession of their lots, and*
    - (v) *the details, prescribed by the regulations, about costs and expenses to be deducted from the sale price, and*
    - (vi) *any other terms and conditions of the proposed sale that the strata renewal committee considers are significant,*
  - (d) *if the plan is for a redevelopment of the scheme:*
    - (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 redevelopment 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,*
  - (e) *any other information or document about the proposed collective sale or redevelopment prescribed by the regulations.*





- (2) *Subsection (1) does not limit the matters that may be included in a strata renewal plan.*
- (3) *If a strata renewal plan is for a collective sale of a strata scheme, the plan must provide for the purchase of each owner's lot at not less than the compensation value for the lot.*
- (4) *If a strata renewal plan is for a redevelopment of a strata scheme, the plan must provide for each dissenting owner's lot to be purchased at not less than the compensation value for the lot.*

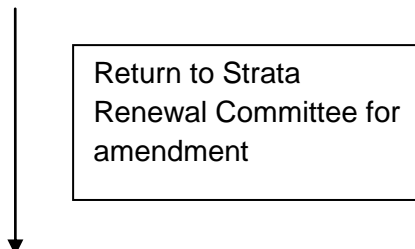
#### Commentary

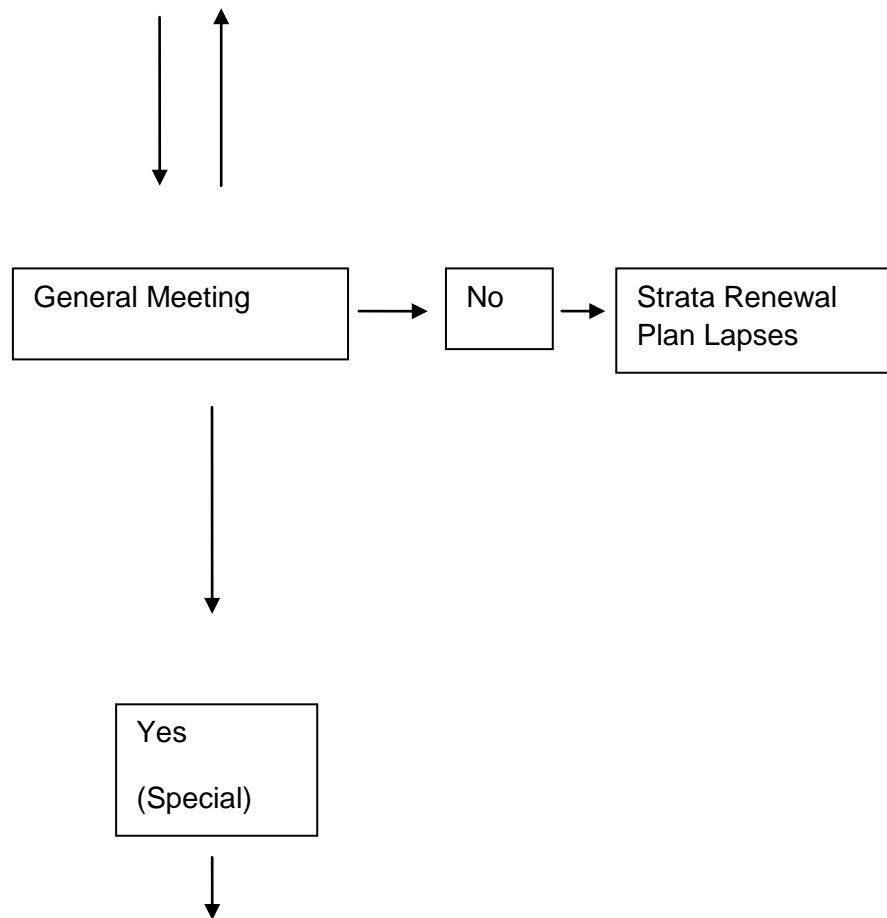
The strata renewal committee must develop a strata renewal plan within the prescribed period of time for either a collective sale of the scheme or a redevelopment of the scheme, whichever is proposed by the strata renewal proposal. Depending on which type of strata renewal is proposed the strata renewal plan must contain the details set out in s170(1)(b) or s170(1)(c) together with such other information as may be prescribed by the Regulations. The content of the strata renewal plan is not limited to the prescribed matters and may include additional information.

In the case of either owners on a collective sale or dissenting owners on a renewal plan, the strata renewal plan must as a minimum provide for compensation in accordance with s55 of the *Land Acquisition (Just Terms Compensation) Act 1991* subject to any modification which may be contained in the Regulations.

A dissenting owner is one who does not provide support for the strata renewal plan by way of notice. In a renewal plan some owners may support the plan on the basis that they are paid out while others may have a prescribed involvement in the redevelopment by, for example, acquiring a lot in the new development and will be participants without receiving just terms compensation.

The selling owners may either receive an agreed sum or the strata renewal plan may provide them with just terms compensation. That is something on which those owners will need to agree. Where the plan is for redevelopment it may be necessary for the developer to consult with a number, if not all, of the owners and this process may be facilitated by the strata renewal committee.





*Section 172*

- (1) *On preparing a strata renewal plan, the strata renewal committee must convene a general meeting of the owners corporation to consider the plan.*
- (2) *Notice of the general meeting must:*
  - (a) *comply with clause 3 of Schedule 7, and*
  - (b) *be given to each owner at least 14 days before the meeting.*
- (3) *The owners corporation may, by resolution, amend the strata renewal plan or decide to return the plan to the strata renewal committee for amendment.*



- (4) *If, under subsection (3), the strata renewal plan is returned to the strata renewal committee for amendment, subsections (1) and (2) apply in relation to the plan on completion of the amendments.*
- (5) *The owners corporation may, by special resolution, decide to give the strata renewal plan, whether or not amended in accordance with this section, to the owners for their consideration.*
- (6) *A motion under this section is not a motion for which a priority vote can be cast under clause 24 of Schedule 1 to the Strata Schemes Management Act 2015.*
- (7) *A strata renewal plan is not given any force or effect merely because of a decision made under subsection (5).*

#### *Schedule 7 Clause 3*

*A notice of a general meeting of an owners corporation to consider a strata renewal plan must:*

- (a) clearly indicate that the purpose of the meeting is to consider a strata renewal plan, and*
- (b) identify the proposed purchaser, if known, or developer under the strata renewal plan, and*
- (c) disclose the nature of any interest a proposed purchaser or developer may have in the strata scheme, and*
- (d) include a brief summary of the strata renewal proposal, and*
- (e) include a form of motion that the owners corporation decide whether the strata renewal plan should be given to the owners for their consideration, and*
- (f) be accompanied by a copy of the strata renewal plan.*

#### Commentary

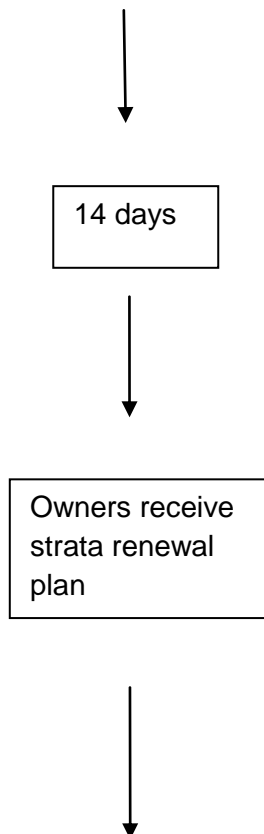
Once the strata renewal plan is prepared the strata renewal committee must convene a general meeting to consider the plan. The notice of the meeting must contain the things set out in Schedule 7 Clause 3 and be given to each owner at least 14 days before the meeting.

The owners corporation may resolve to amend the plan and if it does so it is referred back to the strata renewal committee who must amend the plan and call another meeting.



The owners corporation may by special resolution decide to give the strata renewal plan, whether amended or not, to the owners for consideration.

If the owners corporation decides not to give the strata renewal plan to the owners for their consideration the strata renewal plan lapses (s177(1)(a)).



#### *Section 173*

- (1) *If the owners corporation decides by special resolution under section 172 (5) to give the strata renewal plan to the owners for their consideration, the secretary of the owners corporation must within 14 days give a copy of the plan to each owner.*

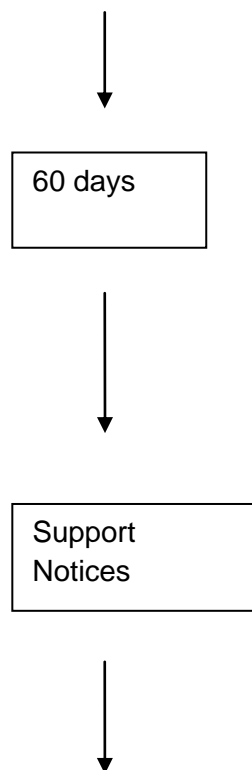


- (2) *The copy of the plan must be accompanied by the information or documents prescribed by the regulations.*

Commentary

When the owners corporation decides to give the strata renewal plan to owners a copy must be sent to each owner within 14 days accompanied by the information prescribed in the Regulations.

The strata renewal committee must also have appointed a returning officer. The method for making that appointment will be prescribed by the Regulations.



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Section 174

- (1) *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**) that:*
  - (a) *states the owner supports the plan, and*
  - (b) *is signed by the owner and each registered mortgagee or covenant chargee of the owner's lot.*
- (2) *If a lot is owned by more than one person, each of those persons must sign the support notice.*
- (3) *The signature of an owner, registered mortgagee or covenant chargee (the **relevant person**) must be witnessed by a person who:*
  - (a) *is at least 18 years of age, and*
  - (b) *is not a party to the proposed collective sale or redevelopment to which the support notice relates.*
- (4) *A notice referred to in subsection (1) has effect as a support notice under this Part in relation to the owner's lot on the day it is given to the returning officer.*
- (5) *In giving a support notice, an owner agrees to participate in the proposed collective sale or redevelopment under the strata renewal plan to which the notice relates.*
- (6) *In signing a support notice, a mortgagee or covenant chargee merely consents to the owner giving the notice in relation to the owner's lot and is not bound in any way by the strata renewal plan.*
- (7) *The returning officer must:*
  - (a) *keep a record showing the number of lots for which a support notice has been given and is in effect, and*
  - (b) *if asked by an owner, advise the owner of the number of lots for which a support notice has been given and is in effect.*

**Note.** *A support notice may be withdrawn under section 175, and ceases to have effect if it is withdrawn.*

Section 175

- (1) *An owner who has given a support notice for a strata renewal plan may, by notice in the approved form given to the returning officer for the plan, withdraw the support notice.*

- (2) *However, an owner cannot withdraw a support notice after the day a notice has been given under section 176 (2).*
- (3) *If a support notice is withdrawn, it ceases to have effect as a support notice under this Part in relation to the owner's lot on the day the notice of the withdrawal is given to the owners corporation.*

#### Commentary

At least 60 days after receiving a strata renewal plan, but before the plan lapses, any owner may provide a notice, in yet to be prescribed form, to the returning officer supporting the strata renewal proposal. This is called a support notice. A support notice must be signed by each owner, each registered mortgagee or covenant chargee of the lot and witnessed by a person over 18 who is not a party to the renewal.

A support notice indicates the owner's agreement to participate in the proposed collective sale or redevelopment. Mortgagees and covenant chargees are not bound by a support notice which merely indicates their consent to the owner being bound.

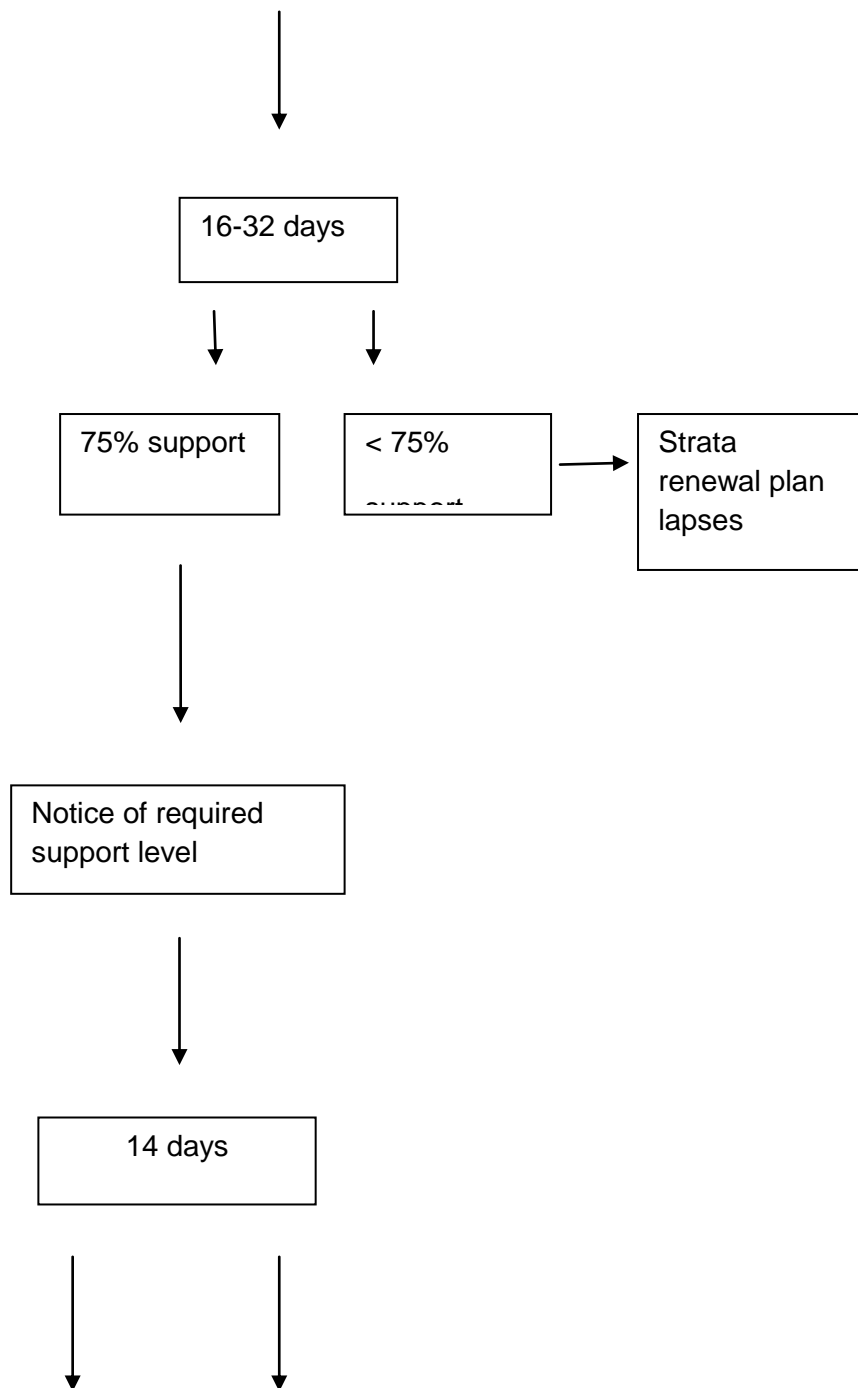
An owner may withdraw a support notice at any time prior to notification being given of receipt of support notices from the owners of at least 75% of the lots in the scheme, excluding utility lots.

If the required level of support is not received within 3 months after the day the owners corporation decide to give the plan to the owners for their consideration a strata renewal plan lapses.

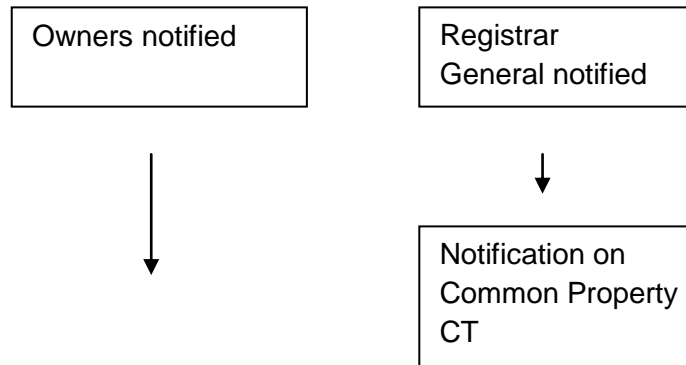
The window of opportunity for providing a returning officer with a support notice is small. The secretary has 14 days from the date of the owners corporation's decision to give notification to owners. An owner must wait at least 60 days after receiving a copy of the strata renewal plan before giving a support notice, a period from 60 to 74 days. The strata renewal plan will lapse three months after the decision of the owners corporation to give it to owners, a period of 90-92 days, depending on the date on which the decision was made. This may provide a window as narrow as 16 days within which support notices from 75% of owners must be given to the returning officer. If that does not occur the plan lapses (s177(1)(b)) and may not be brought on similar terms for a period of at least 12 months.



It is likely that the 60 day period will be devoted by proponents of the plan to harvesting support notices and acquiring mortgagee and covenant chargee support.







*Section 176*

- (1) If the required level of support for a strata renewal plan is obtained before the plan lapses the returning officer for the plan must give written notice of that fact to the secretary of the owners corporation.*
- (2) The secretary must, within 14 days after receiving the notice give written notice that the required level of support for the strata renewal plan has been obtained to:*
  - (a) each owner of a lot in the strata scheme, and*
  - (b) the Registrar-General.*
- (3) On receiving the notice, the Registrar-General must make appropriate recordings in the folio for the common property in the strata scheme to show that the scheme is the subject of a strata renewal plan.*
- (4) If requested by the Registrar-General, the owners corporation must give the Registrar-General the information about the strata renewal plan the Registrar-General requires to make the recordings referred to in subsection (3).*
- (5) On and from the making of the recordings referred to in subsection (3), a support notice that is in effect for the strata renewal plan is taken to have been given under this Part by any subsequent owner, registered mortgagee or covenant chargee of the lot in relation to which the support notice was given.*



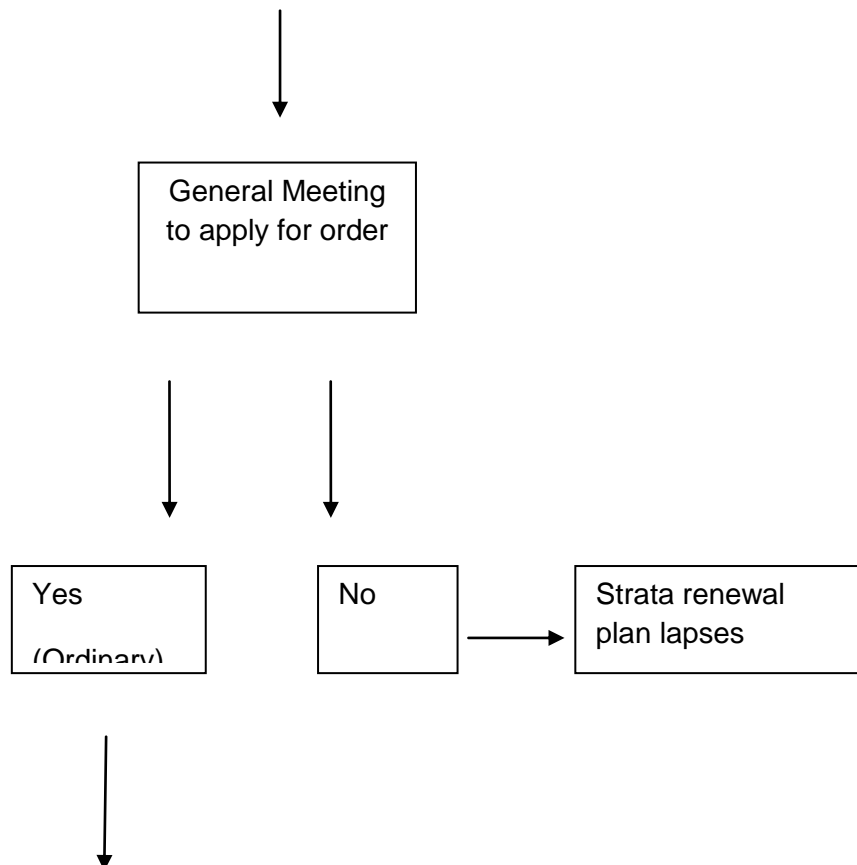
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Commentary

If support notices from 75% of owners are received by the returning officer before the plan lapses, the returning officer must, within 14 days of that date, give written notice to each owner and the Registrar General.

The required level of 75% is calculated based on the number of lots and not the unit entitlement of the lots.

The Registrar General will then record in the folio of the common property the fact that the scheme is subject to a strata renewal plan. Support notices will bind subsequent registered owners, mortgagees and covenant chargees.



### Section 178

- (1) *If the required level of support for a strata renewal plan for a strata scheme is obtained:*
  - (a) *the secretary of the owners corporation, or a member of the strata renewal committee, must convene a general meeting of the owners corporation for the purpose of deciding whether to apply to the court for an order to give effect to the plan, and*
  - (b) *the owners corporation may, by resolution, decide to apply to the court for the order.*
- (2) *To remove doubt, an application for an order may be made by the owners corporation even if an owner of a lot in the strata scheme at the time the application is made is not an owner who gave a support notice for the strata renewal plan.*

**Note.** Under section 176 (5), a subsequent owner of a lot may be taken to have given a support notice under this Part.

- (3) *However, the owners corporation must not apply for an order unless it is satisfied that the strata renewal plan complies with section 170.*
- (4) *The secretary of the owners corporation must, within 14 days after a decision is made to apply for an order, give written notice of the decision to each tenant of a lot in the strata scheme whose name has been notified to the owners corporation as a tenant of the lot in accordance with the Strata Schemes Management Act 2015.*

### Commentary

If support notices from 75% of owners are received before the strata renewal plan lapses, the secretary must convene a general meeting of the owners corporation to decide whether to apply to the Land and Environment Court for an order giving effect to the strata renewal plan. An ordinary resolution is required to apply to the court.

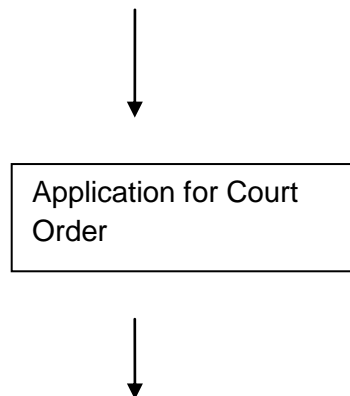
An application for an order may be made by the owners corporation even if an owner giving a support notice is no longer an owner.

The owners corporation must satisfy itself that the strata renewal plan complies with s170 before applying for an order.

If the owners corporation resolves to apply for an order it must give each tenant notified to the owners corporation pursuant to the *Strata Schemes Management Bill 2015* written notification of the decision.



If the owners corporation resolves not to make an application for a court order the strata renewal plan lapses (s177(1)(c)).



#### Section 179

- (1) (1) An application for an order to give effect to the strata renewal plan must be accompanied by the following:
- (a) a copy of the plan,
  - (b) a copy of each support notice that is in effect under this Part for the plan,
  - (c) the names of each dissenting owner and each registered mortgagee and covenant chargee of a dissenting owner's lot,
  - (d) a declaration given by the owners corporation identifying the steps taken in preparing the plan and obtaining the required level of support in accordance with this Part,
  - (e) if the plan is for a collective sale of a strata scheme:
    - (i) a declaration given by the purchaser, if known, disclosing the nature of any relationship, whether personal or commercial, the purchaser may have with the owner of any lot in the scheme, and





- (ii) *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,*
- (f) *if the plan is for a redevelopment of a strata scheme:*
  - (i) *a declaration given by the developer disclosing the nature of any relationship, whether personal or commercial, the developer may have with an owner of any lot in the scheme, and*
  - (ii) *a document specifying the amount to be paid to each dissenting owner for the owner's lot, and*
  - (iii) *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 dissenting owner's lot, and*
  - (iv) *a document detailing enough financial information to show there is a secure source of finance for the carrying out of the proposed redevelopment under the plan,*
- (g) *any other information or document about the proposed collective sale or redevelopment prescribed by the regulations.*
- (2) *Notice of the application must be served, in accordance with rules of court, on:*
  - (a) *each owner of a lot in the strata scheme, and*
  - (b) *each registered mortgagee or covenant chargee of a dissenting owner's lot, and*
  - (c) *if the strata renewal plan is for a collective sale of a strata scheme—the proposed purchaser (if known), and*
  - (d) *if the strata renewal plan is for a redevelopment of a strata scheme—the local council and the proposed developer (if known), and*
  - (e) *any other person directed by the court.*

#### Commentary

An application for an order of the Land and Environment Court must be accompanied by the material set out in s179(1) and served on each owner, each registered mortgagee or covenant chargee, the collective purchaser or, if the strata renewal plan is for redevelopment, the local council and proposed developer, if known. The court may also direct that other parties be served. Any dissenting owner or person served with a notice may lodge an objection to the application within 21 days of being served.





Conciliation or  
mediation



90 + days



*Section 181*

(1) .....

- (2) *If the court orders mediation or arranges a conciliation conference in relation to the application:*
- (a) *the court may terminate the mediation or conference at any time and hear, or continue to hear, the proceedings, or*
  - (b) *any party to the mediation or conference may, at least 90 days after the day the first mediation or conference session starts, ask the court to terminate the mediation or conference and hear, or continue to hear, the proceedings, or*
  - (c) *if the parties reach an agreement at mediation or the conciliation conference and the strata renewal plan is varied under the agreement—the court may hear, or continue to hear, the proceedings in relation to the varied plan.*



- (3) .....
- (4) *If a strata renewal plan is varied at mediation or a conciliation conference, the varied plan is taken to be the strata renewal plan under this Act.*
- (5) *However, the court must not make an order in relation to a strata renewal plan that is varied at mediation or a conciliation conference unless:*
- (a) *written agreement to the variation has been given by the owner of each lot in relation to which a support notice has been given for the plan, and*
  - (b) *written notice of the variation has been served by the owners corporation on the following (unless otherwise directed by the court):*
    - (i) *each dissenting owner,*
    - (ii) *each person on whom notice of the application must be served under section 179 (2) (b)–(e).*
- (6) .....
- (7) *In this section:*

**conciliation conference** means a conciliation conference under section 34 of the *Land and Environment Court Act 1979*.

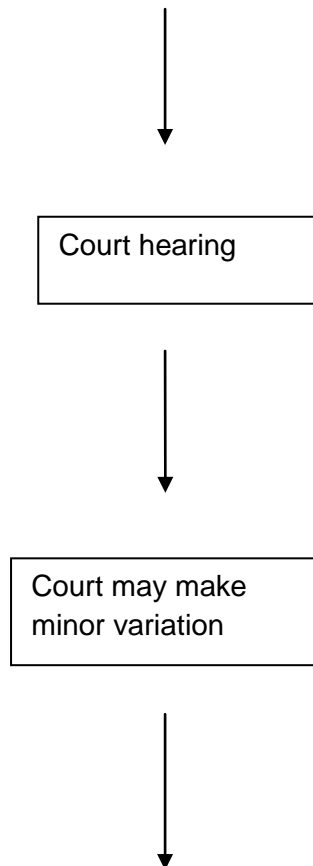
#### Commentary

The court may order a mediation or conciliation conference with respect to the application. Any party to that mediation or conciliation may ask the court to terminate the mediation or conciliation and proceed to a hearing 90 days or more after the first session.

Any agreement reached between the parties at the mediation or conciliation will affect a variation to the strata renewal plan in the terms of the agreement and the Court will proceed to hear the matter based on the amended plan.

Any variation which is agreed at mediation or conciliation must be signed by the owner of each lot that gave a support notice and notice of the variation must be served on each dissenting owner and each person served with notice of the application.





*Section 181*

- (1) *The court must hear and dispose of an application for an order in proceedings before the court.*
- (2) *.....*
- (3) *The court must hear, or continue to hear, the proceedings whether or not the parties reach an agreement at mediation or a conciliation conference.*
- (4) *.....*
- (5) *.....*
- (6) *Any of the following persons may be joined as a party to the proceedings:*
  - (a) *a person who has filed an objection to the application and applies to be a party to the proceedings,*







*(b) a person directed by the court to be joined.*

*(7) .....*

**Section 182**

- (1) The court must make an order giving effect to the strata renewal plan if satisfied of the following matters:*
- (a) the relationship, if any, between the owners of lots and the purchaser or a developer has not prevented the plan being prepared in good faith,*
  - (b) the steps taken in preparing the plan and obtaining the required level of support were carried out in accordance with this Act,*
  - (c) all notices required to be served under sections 179 and 181 have been served,*
  - (d) if the plan is for a collective sale—the proposed distribution of the proceeds of sale apportioned to each lot is not less than the compensation value of the lot and the terms of the settlement under the plan are just and equitable in all the circumstances,*
  - (e) if the plan is for a redevelopment—the amount to be paid to a dissenting owner is not less than whichever of the following is greater:*
    - (i) the compensation value of the owner's lot,*
    - (ii) an amount equal to the total consideration that would accrue to the dissenting owner under the plan in relation to the redevelopment and the owner's lot if that owner had given a support notice for the plan,*
  - (f) if the plan is for a redevelopment—the terms of the settlement under the plan, as those terms apply to any dissenting owner, are just and equitable in all the circumstances,*
  - (g) any other matter prescribed by the regulations.*
- (2) The court may, on its own initiative, vary the strata renewal plan and make an order giving effect to the varied plan if satisfied of the matters referred to in subsection (1).*
- (3) However, the court cannot vary a strata renewal plan under subsection (2) unless:*
- (a) the variation is of a minor nature that does not affect the plan in any substantial way, and*
  - (b) written agreement to the variation has been given by the owner of each lot in relation to which a support notice for the plan has been given.*
- (4) The court must not make an order giving effect to the strata renewal plan if the court is not satisfied about the matters referred to in subsection (1).*
- (5) The court must give written reasons for its decision to make, or not to make, an order.*



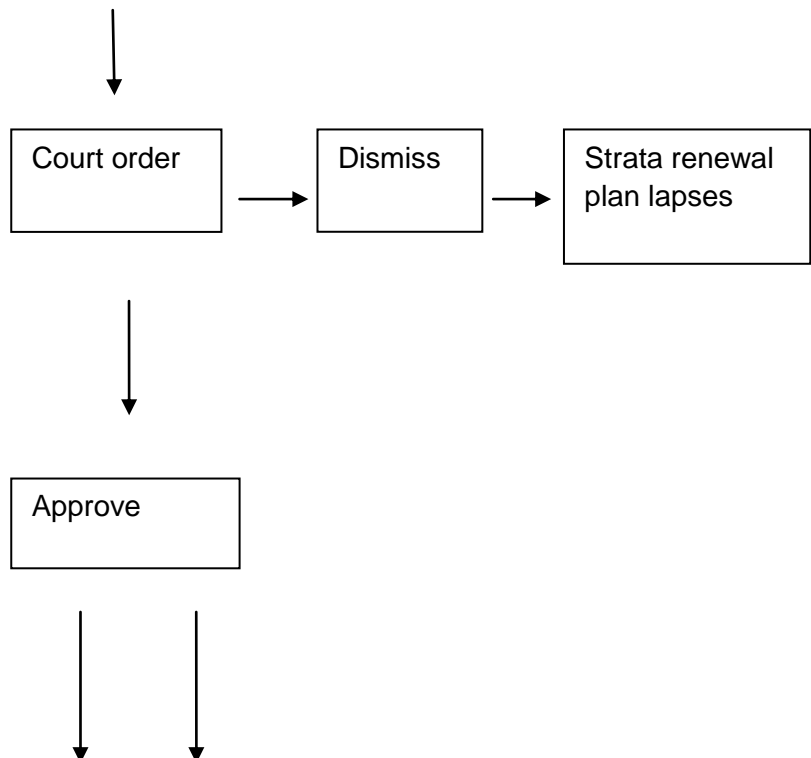
(6) *This section applies subject to section 181 (5).*

Commentary

The court must proceed to make a determination in relation to the strata renewal plan. It must consider the matters set out in s182(1).

The court has the power to vary the strata renewal plan of its own initiative if the variation is minor and does not affect the plan in a substantial way and the owner of each lot in relation to which a support notice was given agrees in writing.

The court must either approve or dismiss the strata renewal plan as submitted or as varied either by the agreement of the parties arising from mediation or conciliation or by it.



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Section 183

- (1) *If the court makes an order giving effect to a strata renewal plan for a strata scheme, the order may include directions about any of the following matters:*
  - (a) *the termination of the scheme, including, for example, the day on which the scheme is to be terminated and the day on which vacant possession of lots and common property in the scheme is to be given,*
  - (b) *the winding up of the owners corporation of the scheme,*
  - (c) *the discharge of the liabilities of the owners corporation,*
  - (d) *the persons liable to contribute amounts required for the discharge of the liabilities of the owners corporation and the proportionate liability of the persons,*
  - (e) *the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution,*
  - (f) *any other matter prescribed by the regulations.*
- (2) *The owners corporation must lodge the order for registration within 7 days after it is made.*
- (3) *The Registrar-General must record the order on the folio for the common property and for each lot in the strata scheme.*
- (4) *The order has effect under this Part when the Registrar-General makes the record under subsection (3).*

Section 186

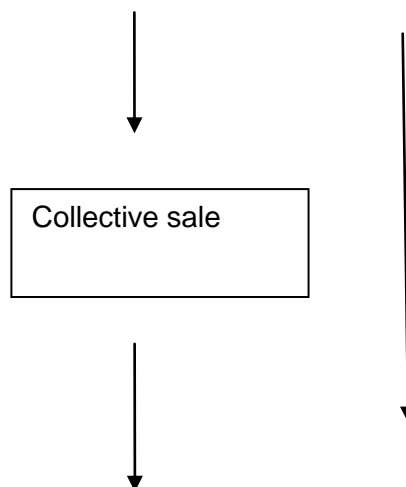
- (1) *The court may make an order to provide for any ancillary or consequential matter (an **ancillary order**) that it considers appropriate or necessary to ensure the effectiveness of the order giving effect to a strata renewal plan.*
- (2) *Without limiting subsection (1), an ancillary order may include directions about the following matters:*
  - (a) *the appointment of a trustee for the sale of an owner's lot,*
  - (b) *the vesting of an owner's lot in the trustee for the purpose of selling the lot and distributing the proceeds of sale to the owner,*
  - (c) *the delivery of an owner's certificate of title for the owner's lot to the trustee,*
  - (d) *the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution,*

- (e) *the reallocation of unit entitlements among the lots that are subject to the strata scheme for a reason set out in section 236 (1) of the Strata Schemes Management Act 2015,*
- (f) *the payment of compensation to a person because of the termination of a lease under section 184 (6) or 185 (7).*
- (3) *An ancillary order may be made when or at any time after the order giving effect to the strata renewal plan is made.*
- (4) *An ancillary order may be made on application by any person with the leave of the court.*

### Commentary

If the court makes an order giving effect to the strata renewal plan it may include directions as set out in s183(1). It may also make orders for such ancillary or consequential matters as it considers appropriate including, but not limited to, those matters set out in s186(2), at any time.

The owners corporation must lodge the order with the Registrar-General for registration within 7 days to be recorded on the folio of the common property and the folio for each lot. The order takes effect when registered.



### *Section 184*

- (1) *This section applies if the court makes an order giving effect to a strata renewal plan for a collective sale of a strata scheme.*
- (2) *The owner of each lot in the strata scheme must sell the owner's lot in accordance with the strata renewal plan and the order.*



- (3) *The strata scheme is terminated on:*
- (a) *the day on which all the dealings effecting the transfer of all lots and common property in the scheme are registered, or*
  - (b) *if the order specifies a later day for that purpose—the later day.*
- (4) *On termination of the strata scheme:*
- (a) *the owners corporation is dissolved, and*
  - (b) *the rights and liabilities of the owners corporation vest in the purchaser, unless the order otherwise provides, and*
  - (c) *any legal proceedings begun by or against the owners corporation may be completed by or against the purchaser, and*
  - (d) *the purchaser must give the Registrar-General notice of the termination in the approved form.*
- (5) *On receiving the notice, the Registrar-General must:*
- (a) *cancel the folios for the lots and common property in the strata scheme, and*
  - (b) *create a folio for the land in the former parcel, and*
  - (c) *record in the Register the matters the Registrar-General considers appropriate to give effect to the order.*
- (6) *A lease of a lot in the strata scheme is terminated on the day stated in the strata renewal plan for giving vacant possession of the lot to the purchaser or on such later day as may be specified in the order.*
- (7) *Subject to this Part, the termination of a lease under this section does not affect a right or remedy a person may have under the lease.*

**Note.** *It is expected that leases would generally be terminated in accordance with the terms of the lease (or under legislation such as Division 2 of Part 5 of the Residential Tenancies Act 2010) and not under this section.*

#### Commentary

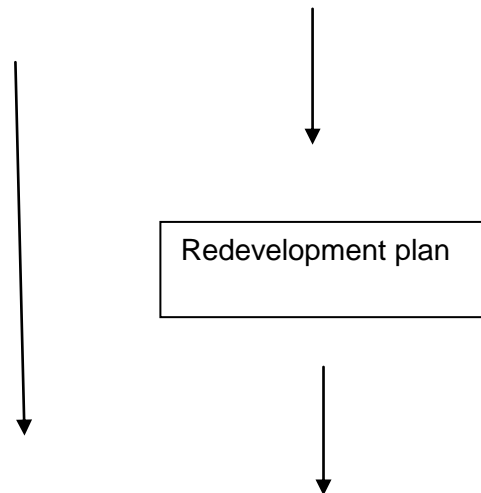
Where the order is for collective sale each owner must sell their lot in accordance with the strata renewal plan and the court order. The scheme is terminated on the day on which the last transfer of a lot or common property is registered or such other day as the court order specifies.

On termination the purchaser and/or such other parties as the court orders takes on the rights and liabilities of the owners corporation.



The Registrar General must create a new folio for the land in the former strata parcel.

Leases terminate on the date on which the purchaser obtains vacant possession of the relevant leased part of the strata parcel under the strata renewal plan or such later date as is specified in the court order. The termination of the lease does not affect the rights of the lessee under that lease. It is anticipated that landlords will negotiate the conditions of termination directly with the tenant.



#### *Section 185*

- (1) This section applies if the court makes an order giving effect to a strata renewal plan for a redevelopment of a strata scheme.*
- (2) Each dissenting owner of a lot in the strata scheme must sell the owner's lot in accordance with the strata renewal plan and the order.*
- (3) The strata scheme is terminated on the day stated in the order for that purpose.*
- (4) On termination of the strata scheme:*
  - (a) the owners corporation is dissolved, and*
  - (b) the rights and liabilities of the owners corporation vest in the developer or the former owners in accordance with the strata renewal plan and the order, and*
  - (c) land in the former parcel vests in the former owners as tenants in common in shares proportional to the unit entitlement of their former lots, unless the strata renewal plan otherwise provides, and*



- (d) *any legal proceedings begun by or against the owners corporation may be completed by or against the developer, and*
  - (e) *the developer must give the Registrar-General notice of the termination in the approved form.*
- (5) *On receiving the notice, the Registrar-General must:*
  - (a) *cancel the folios for the lots and common property in the strata scheme, and*
  - (b) *create a folio for the land in the former parcel, and*
  - (c) *record in the Register the matters the Registrar-General considers appropriate to give effect to the order.*
- (6) *The order does not permit development to be carried out in contravention of this Act or any other Act or law.*
- (7) *A lease of a lot in the strata scheme is terminated on the day stated in the strata renewal plan for giving vacant possession of the lot to the developer or on such later day as may be specified in the order.*
- (8) *Subject to this Part, the termination of a lease under this section does not affect a right or remedy a person may have under the lease.*

**Note.** *It is expected that leases would generally be terminated in accordance with the terms of the lease (or under legislation such as Division 2 of Part 5 of the Residential Tenancies Act 2010) and not under this section.*

- (9) *In this section:*

**former owner** *does not include a dissenting owner.*

#### Commentary

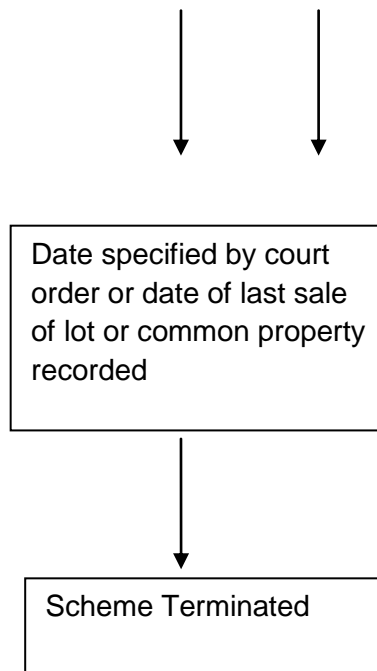
Each owner who did not provide a support notice must sell their lot to the developer in accordance with the strata renewal plan or the court order. The strata scheme is terminated on the date stated in the order whereafter the owners corporation is dissolved and the rights and liabilities of the owners corporation vest in the developer or former owners in accordance with the strata renewal plan. The land will vest in the former owners, excluding dissenting owners, as tenants in common in shares proportional to the unit entitlement of their lots unless the strata renewal plan provides otherwise.

On receiving notification of the termination the Registrar General must cancel the folios for the lots and common property and create a folio for the former parcel.



The order for termination does not provide any form of development consent and all appropriate consents must be obtained from council or any other appropriate authority before redevelopment commences.

Leases terminate on the date on which the purchaser obtains vacant possession of the relevant leased part of the strata parcel under the strata renewal plan or such later date as is specified in the court order. The termination does not affect the rights of the lessee under that lease.







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JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for almost 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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