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# FIRST COLLECTIVE SALE CASES HIT THE LAND & ENVIRONMENT COURT

**Adrian Mueller**
Partner **I** Senior Lawyer
B.Com LLB FACCAL
Email I LinkedIn

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# FIRST COLLECTIVE SALE CASES HIT THE LAND & ENVIRONMENT COURT

The Land & Environment Court has issued preliminary decisions in the first two collective sale cases to reach the Court. What lessons can be learned from these preliminary decisions?

## Introduction

The new strata laws commenced on 30 November 2016. There was considerable media attention devoted to the new laws concerning the collective sale or redevelopment of strata schemes. These new laws are contained in Part 10 of the *Strata Schemes Development Act 2015*. The new laws allow a strata scheme to be sold or redeveloped with the agreement of 75% of the owners and an order made by the Land & Environment Court. Not surprisingly, however, up until recently there have been no reported cases where the Land & Environment Court has dealt with an application to permit the collective sale or redevelopment of a strata scheme under the new laws. That changed on 19 February 2018 when the Land & Environment Court issued preliminary decisions in two cases involving proposals for the collective sale of two strata schemes in Macquarie Park, Sydney.

## The Cases

On 20 December 2017, the owners corporations of two strata schemes located at 2-4 Lachlan Avenue and 1-3 Cottonwood Crescent in Macquarie Park, Sydney applied to the Land & Environment Court for orders to give effect to strata renewal plans given by developers for the collective sale of all of the lots in their strata schemes: see *The Owners – Strata Plan 6877 -v- 2-4 Lachlan Avenue Pty. Ltd.* [2018] NSWLEC 18 and *The Owners – Strata Plan 6666 -v- Kahu Holdings Pty. Ltd.* [2018] NSWLEC 15. In both cases, a lot owner who disagrees with the proposal to sell all of the lots in their strata scheme in accordance with the strata renewal plan lodged objections with the Land & Environment Court. The Court had to decide whether or not the dissenting lot owner, and developer, in each case should be permitted to be joined as parties to the case and participate in the Court proceedings.

## The Decisions

The Court concluded that, in each case, the dissenting lot owner had a sufficient interest in the outcome of the case to be joined as a respondent to the case and participate in the Court proceedings. Therefore, in both cases, the Court ordered that the dissenting owner be joined as a respondent to the proceedings. This will allow the dissenting owner to play an active role in each case and present submissions to the Court to explain in detail why the Court should not permit the collective sale or redevelopment of all of the

lots in their strata scheme to proceed in accordance with the strata renewal plan proposed by the developer or at all.

In both cases, the developer asked the Court to make an order permitting the developer to be joined as an applicant in each case in addition to each owners corporation. The Court concluded that the strata legislation only allows an owners corporation to apply to the Court for an order to permit the collective sale or redevelopment of a strata scheme in accordance with a strata renewal plan. For that reason, the Court refused to allow the developer to take on the role of a co-applicant in either case. However, the Court was satisfied that in each case, the developer had a sufficient interest in the outcome of the case, because the developer would be the ultimate purchaser or redeveloper of each strata scheme, to participate in the case. For that reason, the Court made an order permitting the developer to be joined as a respondent in each case. This will allow the developer to play a more active role in the legal proceedings and to support the applications that have been made by both owners corporations for the Court to permit the collective sale or redevelopment of their strata schemes in accordance with the strata renewal plan proposed by the developer in each case.

Anything else?

The Court dealt with two further issues in each case.

First, the Court concluded that the owners corporation should pay the costs of the dissenting owner for applying to the Court to be joined as a respondent to the proceedings. The Court reached this conclusion because the strata legislation provides that ordinarily the owners corporation should pay the costs of any dissenting owner. In each case, the Court ordered that those costs be payable by the owners corporation if it is ultimately successful.

Secondly, the Court confirmed that even if the parties are able to resolve their dispute at a conciliation conference or mediation, the strata legislation requires the Court to hear each case and make a final decision rather than just make orders to give effect to any agreement reached by the parties. This conclusion emphasizes the safeguards contained in the strata legislation that ensure that the Court must hear and determine on its merits any application that is made by an owners corporation for orders to permit the collective sale or redevelopment of all of the lots in its strata scheme pursuant to a strata renewal plan rather than merely allowing the parties to reach their own agreement to resolve their differences and making orders to give effect to that agreement.

Conclusion

The decision of the Court in each case is undoubtedly correct and will serve to clarify the ability of developers and dissenting owners to participate in applications made by owners corporations for orders by the Court to permit the collective sale or redevelopment of their strata schemes. These cases are expected to be the first of many that work their way through the Court as owners corporations and developers take advantage of the new strata laws that permit strata buildings to be sold or redeveloped with the agreement of at least 75% of owners and Court orders.

**Adrian Mueller**
Partner I BCOM LLB FACCAL
adrianmueller@muellers.com.au

**About JS Mueller & Co**

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for over 30 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.

02 9562 1266
enquiries@muellers.com.au
www.muellers.com.au