

Birds of a feather: The benefits of collective sales in strata schemes

The increasing demand for housing has seen a rise in the redevelopment of small strata schemes into larger-scale developments. Developers will often approach strata lot owners individually with offers to buy their respective lots with a view to buying all lots within the strata scheme and re-developing the site.

Lot owners who band together and sell their lots collectively (known as a collective sale) are often able to obtain a higher price and can negotiate more favourable terms than owners who are picked off individually. A collective sale is also often more efficient for a developer than trying to negotiate separate agreements with individual lot owners.

The agreements for potential sale of lots in a strata scheme usually take the form of a “Put and Call” or “Call” Option Agreement, by which the developer may opt to purchase the lots over a period of time. This period of time, known as the “option period,” allows the developer to seek and obtain development and other approvals for the site before exercising the option.

Here are a few key things to keep in mind if you are considering selling your lot as part of a collective sale in your strata scheme:

What are the benefits to lot owners?

There are a number of benefits for lot owners who wish to enter into a collective sale agreement with a developer to sell their lots, including:

- A potential purchase price that is higher than market value (this is often offered due to the potential acquisition of the whole site and in consideration of the site’s development potential);
- The ability to continue to reside at and/or lease the lot for a longer period than under a standard contract for sale; and
- Negotiation of terms which are favourable to the lot owners, such as enabling the payment of fees which are unconditionally released to lot owners in instalments over the term of the agreement and payment of the lot owners’ costs (including legal costs) by the developer.

What is a co-owners agreement and why is it useful?

If you and the other lot owners in your strata scheme decide to sell your lots to a developer, a co-owners agreement is essential.

A co-owners agreement is a written agreement between the lot owners in the strata scheme which sets out the broadly agreed terms of the sale, including but not limited to a minimum sale price, division of the sale price between the various lot owners, obligations relating to estate-planning and any other relevant considerations.

This agreement is a useful tool, not only to establish the basic terms which are acceptable to all lot owners regarding the sale price, timeframe for the sale and the process in circumstances where an owner passes away, but also to evidence to a developer that the owners have agreed to the collective sale in principle, prior to the negotiation of further, more detailed terms and a form of collective sale agreement.

What is a Put and Call or Call Option Agreement?

A collective sale agreement is often in the form of a “Put and Call” or “Call” Option Agreement. This is an agreement between a lot owner and a developer which gives the developer the option to purchase the lot by a specified date. The developer usually pays a substantial option fee to the lot owners for the grant of the option. If the developer exercises the option in time, the parties enter into a contract to sell the lot. If the developer does not exercise the option in time, the option lapses, and the owners keep the option fee. A put and call option agreement provides that if the developer does not exercise the call option, the lot owners can “put” the lot to the developer, so that the developer is legally obliged to enter into the contract to purchase the lot.

The option agreement will usually have a longer term than a standard sale contract. This provides the developer with time to make a development application prior to entering into the contracts to purchase the lots. If the development application is not approved, the developer will almost certainly decide not to exercise the option to purchase. The option fee will then be forfeited to the lot owners.

It is often the case in a collective sale of a strata scheme that each agreement will be interdependent with the agreements relating to the other lots. This means that if a party breaches one agreement which allows the other party to terminate the agreement, the remaining agreements may also be terminated on this basis. It is essential for all lot owners to engage in clear and regular communication, seek legal advice at the negotiation stage and consider a written agreement between themselves to ensure that any agreement with a developer has the best chance of proceeding to settlement.

What if some lot owners do not want to sell?

In New South Wales, part 10 of the *Strata Schemes Development Act 2015* (NSW) provides for the New South Wales Land & Environment Court to make orders for a collective sale of all the lots in a strata scheme if at least 75% of lot owners and their mortgagees agree to the collective sale. This is a complex legal and procedural process known as a strata renewal.

There are a number of key steps that must be taken before court orders can be sought including the forming of a strata renewal committee, preparation of strata renewal plan and obtaining expert valuation reports.

Please contact our strata team if you would like more detailed advice on the strata renewal process.

How can an agent help?

An agent with specialist knowledge of the collective sale process and demonstrated experience in tendering strata scheme sites to developers can assist where a group of owners in a strata scheme would like to approach a developer to collectively sell their lots.

Conclusion

If you and/or other lot owners in your strata scheme have been approached by a developer or if you consider your strata scheme may be located on land which has significant redevelopment potential, it is worth considering and discussing the possibility of a collective sale.

Our property and strata teams at Speirs Ryan are uniquely skilled and have significant experience in transactions of this nature and are well-placed to provide legal advice to strata lot owners considering options for the collective sale of their lots.

Speirs Ryan is a boutique property law firm with national coverage. The firm is uniquely placed with specialist teams in both property transactions and strata law.

Disclaimer: This article is a general summary with focus on issues of interest to the authors. It is not intended to be used as legal advice.