

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

Listen to this podcast episode [here](#).

Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. Leisha de Aboitiz is a partner at Massons, a boutique law firm specialising in commercial property law. Leisha practices in all aspects of commercial property law but has a particular specialisation in complex titling including long-term leasehold arrangements, strata subdivisions and strata management and compliance.

Leisha acts for clients from various sectors including property and investment funds, government departments, receivers and liquidators, banks and real estate developers.

Leisha sits on the REI New South Wales Strata Chapter Committee and regularly contributes articles to the REI New South Wales Journal and Strata Chapter Newsletter. She's also a column contributor for Domain Chinese. Today, I am delighted to welcome, Leisha de Aboitiz. Welcome, Leisha.

Leisha de Aboitiz: Thank you.

Amanda Farmer: Pleasure to have you here today, Leisha and I think we were probably last chat in person at the Women in Real Estate Conference and we are each having a chat about this new Part 10 of the Strata Schemes Development Act here in New South Wales started on the 30th of November 2016. And this is that section that is about the collective sale or collective redevelopment of strata buildings and I know that you have been going around town delivering some seminars and some workshops with a particular focus on this part of the new law.

So I thought let's get you on the show, let's have a bit of an in-depth discussion about how that new law works. We have had a chat before to Dr Hazel Easthope from the University of New South Wales just with an overview of that law and I'm hoping today we can dig down a little bit deeper into it.

So thank you so much for giving us your time today and your expertise. I want to start by asking you to tell us why these new provisions about the collective sale or redevelopment of a building; of a strata building are so critical?

Leisha de Aboitiz: Okay, well thanks, Amanda and obviously it's a pleasure to be here. It's interesting that you've mentioned Dr Hazel Easthope because I do think basically one of her recent studies in 2014 and the statistics that come from that are actually indicative of why it's so critical.

So I mean coming out of that some of the stuff since you'll be well aware of; we're looking at 75,000 registered strata schemes in New South Wales, we're looking at nearly 2 million people living in strata and we're also I think it got to be conscious that there's nearly a 3rd of residents living in apartments, in units in New South Wales where very much of that is strata.

So these are laws and this are changes that are necessary and critical in that and affect quite a large number of people not just residential either, commercial as well. Certainly, we are seeing that in our practice; a lot of impact on commercial strata schemes.

Amanda Farmer: Yes.

Leisha de Aboitiz: So I think the reason they are quite critical is the fact that historically it was impossible to terminate a strata scheme with unanimous consent. So that's a problem. It's hard to get unanimous consent when you've got 3 people in the room when you've got a 1,000 people in a scheme or 500 or 300.



Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

Leisha de Aboitiz: It's a struggle and there's a struggle not just to people being disinterested, apathy plays a big part. In terms of getting 100% of people across the line to terminate a scheme even when it's best for everyone.

When it's a dilapidated scheme where levies are making it impossible and special levies to repair a complete roof or fix concrete cancer, where that's making it prohibited to occupy strata scheme that you cannot terminate. You are actually finding that there's a lot of people stuck in those schemes or forced to sell out if not the best possible value, not optimal value for their schemes.

So I think the reason these changes are critical and a lot of the reason for the change behind them is the concept not only of the urban redevelopment which is a big push and important, but also about dealing with that difficulty in reaching that unanimous consent where it's not necessarily everybody's preferred position but where it makes sense for the greater majority.

Leisha de Aboitiz: So look I think the way they've done it is they tried to recognise that there is this minority that may not want to move and I think it's clear that the legislation put a lot of time into creating protections and checks and balances for that minority.

Not everyone's happy about it obviously but there's a lot of people that are. They say it's a great way as a great way forward and frankly, I see it's something that needed to be introduced, there needed to be another option.

Amanda Farmer: Yes, I do agree with you and I'm certainly one of those people in your camp that say I think it is the best solution that we have. We needed it and I think it's clear that a lot of time, energy research, has gone into finding a better way.

And I think we do have a better way and it's really fascinating for us as lawyers and stakeholders in the sector working with owners every day and I work more so with residential I know you with commercial seeing how this plays out.

So can we get into what the process actually is under this new law? What are the steps that owners corporations are going to take if they want to get involved in a collective sale or redevelopment?

Leisha de Aboitiz: Yes. absolutely. Look, as you know it's a quite a large of chunk of legislation- Part 10 and it's very complex in terms of the different steps you got to jump through that's intentional because it's about protecting this minority so that's fine. But it's not a very simple part of the legislation to navigate and it's highly compliance driven.

So we think here in Massons that the easiest way to navigate that is to break it into 3 key stages. So the first stage that we think you need to look at is: someone needs to bring a proposal. They need to bring a strata proposal into the scheme whether it's a redevelopment or a collective sale.

That proposal can be brought from within the scheme or external so a developer can bring it. To be frank, I'm not seeing a lot of developers willing to bring it separately. They seemed to be engaged in with particular owners and asking the owners to do that.

But proposals need to be brought and the proposal needs to be brought to the strata committee first and then considered by the owners corporation and if approved, it gets the green light. Then you move into to the 2nd stage of the process.

Amanda Farmer: Can I just stop you there, Leisha to move into the 2nd stage is that a resolution in a general meeting to go to the 2nd stage?

Leisha de Aboitiz: Ultimately, yes.

Amanda Farmer: Right.

Leisha de Aboitiz: If it's a majority vote but first of all it needs to go to strata committee. Then at the strata committee, they consider and decide whether to take it to the owners corporation for consideration.

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

But then if it goes passed the strata committee it then ends up with the owners corporation where it's passed by ordinary resolution whether or not to proceed with the proposal and also at that time we decide things like are we going to engage other experts, what are our budgets in proceeding with this.

Leisha de Aboitiz: In general, kind of housekeeping matters about how it should run. A lot of people have said to me because the 2nd stage is preparation of the strata renewal plan and I get a lot of queries 'gosh, we've got to prepare a proposal' and the legislation is descriptive about what goes into the proposal, why do we then need to prepare a plan.

And I think the easiest way to look at it is that a proposal is a bit like a pitch document. It's a bit like going to corporation whether your and if comes from within. It's like a shareholder going to the corporation saying here's my pitch. I think it's going to be great for everyone to make a lot of money. This is the timeframe, I've done a bit of research.

But then the plan is the actual detailed execution and actually seeing whether that pitch stacks up which is then brought to the owners corporation and then ultimately take it into accord.

But the 2nd stage in the process is: the preparation of the plan. So if you get through stage 1 you'll be creating a committee which is the strata renewal committee to prepare the plan.

And in that 2nd stage, the plan is prepared and the committee will do so in accordance with its delegated authority and its budgets, engaging experts. I think there you get a lot of evaluation of the problem.

Amanda Farmer: Yes.

Leisha de Aboitiz: Now they will prepare the plan and when they are ready they will bring that back to the owners corporation for review. And then that goes to a general meeting and this is at the general meeting need to be supported by a special resolution.

So it may need that you bring it to the general meeting and they say 'look, we've liked what you've done there. But I think you need to go back and fix Part A or we are not really sure about the timing or the value you propose'. So you go back to the drawing boards or it could just get rejected there or it could be shut down if special resolution fails or if there's a special resolution not to proceed.

But once you get a green light there then you got out and you request the support notices which is what the media hype is about. That's for 75% of lot owners opting in.

So you need people to positively say yes, like apathy will be a no and there are a lot of steps in that process which are complex that need to be explored and dealt with properly.

Because the 3rd stage is if you we're fortunate enough to collect your support notices and get your requisite support you then need to go to the court stage, so the land and environment court at which you need to obtain an order.

But I think the simplest most basic way to look at that is that the court is there to review and check that the process is being properly complied with. So it's there as a protection for that minority. But everybody's done everything by the book and it will then give effect to that decision to proceed with the renewal process.

Amanda Farmer: Okay, so just a quick summary of those 3 stages if you like. 1. The proposal or the pitch. I really like that way of looking at it. The pitch to the owners to say hey, is this something that you're interested in? That's your step one.

Leisha de Aboitiz: Yes.

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

Amanda Farmer: Your next stage is preparing the strata renewal plan and you will have by then had a general meeting ordinary resolution saying let's go ahead and prepare that strata renewal plan, get the strata renewal committee together.

And you're going to put that strata renewal plan to the general meeting and it achieve a special resolution so that's going to be at least 75% based on the unit entitlement count voting in favour of the strata renewal plan.

And then there's a separate process where owners actually have to sign forms and opt-in to say, yes we support this strata renewal plan. And that's the calculation we've been hearing about in the media which is 75% of lot owners must give their support to the strata renewal plan.

Leisha de Aboitiz: That's right.

Amanda Farmer: So that sort of that middle stage?

Leisha de Aboitiz: Yes. I guess it's important to flag that lot owners is non-utility lots.

Amanda Farmer: Yes.

Leisha de Aboitiz: So yes. It's 75% of occupational lots.

Amanda Farmer: Yes.

Leisha de Aboitiz: voting in and positively opting in.

Amanda Farmer: Yes. So where you are a lot owner and you have a separate lot for your parking space or separate lot for your storage room those lots don't count. It's your lot that you're residing in or running your business from.

Leisha de Aboitiz: Correct.

Amanda Farmer: Okay and then that final stage is we are off to land and environment court to get it all approved by the court. The court checks the process and make sure that it is all it is just an inequitable the terms that they are using in that legislation?

Leisha de Aboitiz: Yes, I think that's right. Yes and the different things of the court can do that they can refer you to mediation, they can make minor amendments to the strata renewal. But they need the consent of the parties involved so it is quite restrictive but it's possible for it to all fall apart there.

And I think that's why you need to be really careful that you're not cutting any corners in that those first 2 stages. Because the worst thing that can happen is that you incur a huge amount of expense and it goes on for a quite of long time and gets unravelled in that last stage.

Amanda Farmer: Yes. Definitely. Yes, that's something that I want to get into in a moment the time that this takes and the commitment that the developers or owners if they are doing a collectively have to make to this process. Something that you mentioned in there, Leisha as part of that 2nd stage. There's got to be a lot of work on getting valuations and working with valuers.

Leisha de Aboitiz: Yes.

Amanda Farmer: Can you tell us a little bit about why that's important?

Leisha de Aboitiz: Yes. Look, valuers are I think are really critical role in the process. That's 2 points in time when you need

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

independent valuations. So you need an independent valuation prior to issuing and circulating that strata renewal plan to the owners for their consent.

And you also need an independent valuation to be done again. A fresh one and not a I guess a stale one it's got to be less than 45 days old when you use it in court application to the land and environment court and I suspect they need to be independent but I think you will also need to I think it will be helpful to have valuers on board in terms of a feasibility sense, very early in the process.

Amanda Farmer: Yes.

Leisha de Aboitiz: In the pitch stage and the proposal stage. So they will be non-independent they will be telling you what they think in terms of progressing your proposal. So I think there's a lot of roles for the valuer to play here and I think what I've seen since the policy movement is that's where I think there will be a lot of focus on is are you receiving fair value.

Because it's link to compensation value that you will receive under Section 55 of the Just Terms Compensation Act. So it's very similar in a way it operates. In that, they treating it like a compulsory acquisition.

So the intention is to make sure that people receive not just a fair value but almost a fair value plus costs.

Amanda Farmer: Yes.

Leisha de Aboitiz: And that also there's a risk there you can see in terms of having 2 different independent valuations and the court would access those in terms of movement between when you make the decision to go ahead and when you actually go and get the court order.

So I would be cautioning moving very quickly between making the decision to approve and seeking the court order. So the risk of the difference between those valuations is minimal.

Amanda Farmer: Yes and that leads us into this topic of time and how long this is all going to take. I know that when I'm talking to the owners, a few developers and some real estate agents about embarking on this process that is the question that is always asked 'Amanda, how long this process is going to take? I've read the legislation that is also very long and drawn out'.

And I've been telling them look, I can't see you doing this anymore quickly than 1 year and it would probably depending on what the court's like when you get there, whose objecting, how many objections you have. 2 years, what do you think?

Leisha de Aboitiz: Look, I think what it comes down to your point that it depends on whose objecting and how are ardently they're objecting that's going to be the critical factor. I think you'll find a lot of people and I think you find it as a lot of people looking to use this process as a means of leverage as supposed to ever intending to complete it.

So they're using it where people hold already 80% and they are basically saying to the lot owner 'we are serious. We've got the proposal together, we are going to move on it'. So they are hoping to actually resolve it before it ever completes. So in that sense, you might find that it's very good process because you just need to start it.

You also might find that if everybody has ducks in a row and they are aligned in their thoughts, in their views particularly for commercial strata schemes when they are doing this and maybe apathy is a bigger driver rather than absolute contesting of the proposal that will actually move quite quickly because you might have you know a lot of people on board and moving quickly and actually supportive of it.

Leisha de Aboitiz: In which case I think if they are prepared and they've done a lot of homework. I think a year is probably a fair estimate. But I think if you have everyone on board and there's no one really dissenting.

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

Leisha de Aboitiz: But it's just a matter of getting everyone together in fighting that apathy.

Amanda Farmer: Yes.

Leisha de Aboitiz: We might do it in less.

Amanda Farmer: Yes, sure.

Leisha de Aboitiz: Whereas but I think in terms of a court order process certainly in discussions with barristers you know scooping for fees which have not yet ever been tested.

That's the biggest factor.

Amanda Farmer: Yes.

Leisha de Aboitiz: It could be short, sweet and quick because it could be just compliance driven and you could have 2 valuations that are identical. You have nobody suggesting that there's really an issue because it's just apathy that's driving it.

Leisha de Aboitiz: It could be just neat, clean and wrap up very quickly. But I think the minute that you get somebody dissenting and objecting in the middle of those court proceedings then how long is this piece of string.

Amanda Farmer: Exactly. What do you think will be some of the common problems with the process and how do you think those problems can be overcome?

Leisha de Aboitiz: Look, I reckon I think timing will be one of the-

Amanda Farmer: Yes.

Leisha de Aboitiz: biggest issues particularly concern about time frames that has been allowed around the return of the support notices and the lapsing timeframe that kicks in that after the owners corporation makes a decision to issue support notices. The plan will lapse within 3 months after that date. But you are not allowed to start collecting them for 60 days.

Amanda Farmer: When you say support notices, this are the notices that at least 75% of lots need to sign in approval of the strata renewal plan.

Leisha de Aboitiz: Correct. Yes. So once you get to that point in time I think the intentions were good in terms of they wanted to draft in that way they will prevent lot owners from being harassed during the first 60 days of consideration so if there was a developer in the background they wouldn't be harassed to return their support notices.

But they left they are such a tiny window for return of them and then the plan lapses and whilst yes, it's potential you can re-inline it, who wants to go that trouble and expense to go back at the beginning of the process or reconsider it as an owners corporation and have to look at whether or not you realigned it properly once it's lapsed. So, I think that's got to be a big problem. We looked at a case in Singapore and timing over there was a massive drama in 12 months.

Amanda Farmer: Is our legislation modelled on what's been happening in Singapore?

Leisha de Aboitiz: I think it's modelled collectively on various other structures. I think principally, New Zealand.

Amanda Farmer: Okay.

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

Leisha de Aboitiz: Has a very similar stricture. But New Zealand is much younger.

Amanda Farmer: Yes.

Leisha de Aboitiz: So in terms of current case law it needs to be a lot of information about that. There's a lot of information about the Singaporean system and the issues that went wrong with it.

Amanda Farmer: Yes.

Leisha de Aboitiz: Things like reserved prices is a very real problem there.

Amanda Farmer: Okay.

Leisha de Aboitiz: So people setting reserved prices too high in their proposals. They were not able to meet them and therefore not having an approved renewal process but not being able to execute it because they couldn't get passed the reserved price that they've set.

So back to your original question, I think timing is a big problem particularly that section. I think that's a really tight time frame, and I think people are going to run into issues there.

I also think that proper compliance. So I think people skipping a step or thinking they've done steps appropriately without actually properly complying is going to be a way for dissenting owners to try and unravel things.

Amanda Farmer: Yes.

Leisha de Aboitiz: at the pointy end when it get to the land and environment courts. So I think that needs to be taken very seriously.

Amanda Farmer: Yes.

Leisha de Aboitiz: And things need to be done per the letter of the law. I do think that value like sort of reserved price issues that I was talking about may come to it. It's an issue but to me, the main thing are going to be proper compliance and timing.

And I think the fact that the legislation put that real emphasis on proper compliance that it's the intention of the section that is properly complied with and that's the right of review which very much hinges off that proper compliance and I think that's got to be the sticking point that people don't get that just now.

Amanda Farmer: I agree. Thank you for that insight. We probably have some listeners may be some owners, some developers who I know out there. I know there's some eager real estate agents who are chatting to their owners and trying to understand this legislation and understand whether it's a good fit for them to embark on this process. If they want to start engaging with the process what would be the first thing that you will recommend they do?

Leisha de Aboitiz: So I think the thing that we've been talking as you mentioned we've been talking to people for the last few months and been presenting if there's one thing I say to people if you can take something away, take away the magic numbers. Because that's how you decide whether to trigger the process that's why you decide whether to go a green light or red flag on it.

So I think in terms of getting the green light you want to make sure that you count your number first. So the 2 magic numbers are 75 and 25 basically in this process that kind of determines everything.

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

If you have 75 by 75 I mean 75% of lot owners on board and that as we discussed earlier that excludes utility lots. So 75% of lot owners in your camp and the lot owners need to be actually positively supporting it. They are not people that are you are not counting not more than 25% that are aggressively opposed. You got to count apathy a no as well.

Amanda Farmer: Yes. Good point.

Leisha de Aboitiz: 75 yeses and we also got to have 75% of unit entitlements across the line. So whilst you need 75% of unit entitlement to pass a special resolution as we know you need to have more than 25% vote against to lose a special resolution. If I have 75% of unit entitlements in that scheme in my camp I'll be comfortable to say, right green light.

But if I knew there was 25% or more of lot owners I'm sorry greater than 25% of lot owners or unit entitlements that were in opposition or completely apathetic. So by apathy I mean you can't track them down.

Amanda Farmer: Yes.

Leisha de Aboitiz: nobody has a contact number for them. They are lost to you and that often happens in strata schemes. You just have overseas owners who don't care or don't engage. That's where I'll be going right 'we've got a red flag on this let's investigate this further before we spent time and money pushing for the process'.

Amanda Farmer: Yes. Good point. I agree with you that should be the first port of call and that's what I'm seeing in number of buildings looking at now. Okay, Leisha, personal question what books have had the greatest impact on you and why?

Leisha de Aboitiz: Yes, I was thinking about this actually and with a 5-year-old and 8-year-old son my recent literature is based around Roald Dahl and Pokemon Chapter books. I would say the biggest impact on my life would be Jane Austen's, Emma.

Amanda Farmer: Oh, beautiful.

Leisha de Aboitiz: And that's because it's my favourite book and my husband my now husband on our 2nd date told me it was his favourite book.

Amanda Farmer: Oh, wow.

Leisha de Aboitiz: Yes but I'm not certain. I never seen any picture of Austen novelty, but anyway had an impact we are married now so yes it had an impact.

Amanda Farmer: I love that. Excellent and did you find time to read much fiction for yourself?

Leisha de Aboitiz: Look, I do. I read the entire Game of Thrones series actually.

Amanda Farmer: Good on you. It's one of those things we all have watched and enjoy it. I know there's books I should read the books but I have met a few people who actually go that far.

Leisha de Aboitiz: No, I love the books. I devour them when I find the time I do but it is a hard busy life at the moment.

Amanda Farmer: Yes.

Leisha de Aboitiz: to find a lot of time.

Amanda Farmer: So hard. Alright, well as a busy woman I am very on it that you have been take the time out today to speak with us. How do our listeners find out more about you and is there anything you'd like to add before we say goodbye?

Publication Date: 21 February 2017
YSP Podcast Transcript: Episode 049. Collective Sale and Renewal with Leisha de Aboitiz (references to NSW law)

Leisha de Aboitiz: Firstly, thank you for having me. It's been pleasure and in terms of finding out more about me you can visit our website which is www.massons.com or you can email me or call me. My contact details are on the website. So please feel free to engage. In terms of anything else, I think all I want to say is be alive to your options on strata renewal.

Whether you've got a small investment or a large investment it's something that you should be considering. And you know a lot of strata schemes whilst, often tough that you have such a large number of people involved. The flipside is that can be a blessing you can have people who are talented. You might have planners and architects and valuers and lawyers sitting within your own strata scheme. So tap into that. See whether it's a prospect for your scheme and work out whether or not that's something that's worth pursuing and if it's not then enjoy your unit as it is and if it is, well stack it up see if you've got the magic numbers.

Leisha de Aboitiz: Fabulous. All very good advice. Thank you so much, Leisha.

Thank you very much, Amanda.

Outro: Thank you for listening to Your Strata Property. The podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode by the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comment section which Amanda will answer in her upcoming episodes. How can Amanda help you today?