
Judicial interpretation of sections 51 and 51A of the *Strata Titles Act*: a warning to Proprietors

Park Legal Solutions, February 2017

Recent decisions of the District Court of WA highlight that sections 51 and 51A of the *Strata Titles Act 1985 (WA) (STA)* will not be interpreted to effectively “freeze Strata Schemes in time”.

The decisions serve as a warning to Proprietors who are considering opposing or objecting to proposals for alterations or amendments to Strata Schemes.

Such Proprietors must carefully consider and assess the interests of all Proprietors affected by the proposed amendments to their Strata Scheme before refusing to approve such proposed amendments at any General Meeting or objecting to them in any subsequent District Court action.

The recent District Court decisions involved various applications for approval of unsuccessful Strata Resolutions, including: for re-subdivision of Lots in a Strata Scheme, a By-law granting Exclusive Use of nominated parking bays to some of the Proprietors and an application to convert a 2 Lot Strata Scheme to a Survey-Strata Scheme.

The STA provides guidelines for determining such applications. They include considerations about whether the objecting Proprietor has acted unreasonably by not agreeing to the resolution, and whether it is in the best interests of all Proprietors that the proposed amendment to the Scheme is made.

In each of the above referred to recent judgments, the Court considered a non-exhaustive list of 4 factors, established in earlier Court decisions, to determine whether the proposed applications should be allowed.

The 4 factors are:

- (a) *the extent of the Proprietors in favour of the resolution;*
- (b) *the benefit to the Proprietors occasioned by the resolution;*
- (c) *the detriment to the Proprietors, both immediately and prospectively, occasioned by the resolution; and*
- (d) *any detriment flowing to any Proprietor, particularly to any Proprietor opposing the resolution, and whether the resolution will impinge upon that Proprietor to the extent that it could be said to derogate from the Proprietory rights which were in that Proprietor's contemplation at the time that Proprietor purchased the Lot.*

The discretion to allow such applications is broad and unconfined. The trial judges in recent proceedings applied each of the above 4 factors broadly, and considered additional factors unique to the particular matter to determine what was “reasonable” in all of the circumstances.

Of importance to Proprietors from each of these cases is the process the Court took to reach its conclusions, and not (except presumably to the Proprietors involved in each case) the decisions themselves because each new matter will turn on their own facts.

The judgments demonstrate that the Court will not interpret sections 51 and 51A to give a prohibitive effect.

Instead, the Court will apply a test of reasonableness recognising the strength of common living, and that a community will be subject to change and, therefore, require adaptations over a period of time.

The key question is whether or not the implementation of the proposed change is reasonable with respect not only to the impact on the Proprietor/s objecting to the proposed change, but the Proprietors and Scheme as a whole.

Conclusion: Proprietors who are considering objecting, or who have objected, to proposed changes to a Strata Scheme, should consider the other Proprietor's interests, in addition to their own, as objectively and equally as possible.

If Lot Proprietors do not make such considerations, they will expose themselves to a real risk of being involved in ill-fated proceedings at a cost to themselves and the Strata Company of which they are a part, with the added risk of years of conflict with their “neighbours” for essentially no purpose (or gain).

It is likely that applications about the effect of sections 7 and 7A of the STA will be similarly dealt with by the Court, particularly if there is no clear common theme within the Strata Scheme.

Take advice.

If you require legal advice on any Strata matter, please contact us at Park Legal Solutions on (08) 9221 6611 or at admin@parklegalsolutions.com.au