

# Need for Strata Company signature on Development Applications

By Craig Slarke

From time to time local governments receive applications for development approval involving works on, or use of, common property in a strata scheme. Typically a local government would in those cases require the strata company to sign, or at least endorse, the application, before progressing it. But a recent decision in the SAT strongly suggests that a strata company does not need to give owner's consent to a development application for works on, or use of, common property.

In ***Coleman and The Owners of Peace Street Community (Survey-Strata Scheme 65005)*** [2020] WASAT 105, the Tribunal dealt with a dispute concerning an exclusive use by-law, which gave certain rights with respect to a common property lot in the strata scheme. The details of the dispute do not matter for our purposes, but one issue which arose in the course of the proceeding was whether a development application to change the use of common property – which in this case was subject to the exclusive use of a strata owner – had to be given 'owners' consent' by the strata company.

The starting point is clause 62(1)(b) of the deemed provisions, which provides that an application for development approval must be signed by the owner of the land on which the proposed development is to be located.

The applicant argued that the exclusive use by-law effectively meant the strata company had given owners' consent or, alternatively, the applicant as the co-owner of the common property could give herself owners' consent by signing the application form

To understand the second argument we need to look to both the deemed provisions and the *Strata Titles Act*.

Clause 62(2)(a) of the deemed provisions provides that for the purposes of clause 62(1)(b) that 'A person ... may sign an application for development approval as the owner of freehold land if the person is ... a person referred to in the definition of owner in respect of freehold land in clause 1 of the deemed provisions'.

The definition of the term 'owner' in relation to freehold land includes a person whose name is registered as a proprietor of the land. The applicant argued that the deemed provisions allow a proprietor (that is, any proprietor) of land to sign an application for development approval in relation to that land, and that as she was a proprietor of the common property she was able to sign the application for development approval.

The owner was a proprietor of the common property because, pursuant to section 13(7) of the *Strata Titles Act*, common property in a freehold strata scheme is held by the proprietors of the freehold strata scheme as tenants in common in shares proportional to the unit entitlements of their respective lots.

The strata company has a statutory responsibility to control and manage the common property for the benefit of all of the proprietors (section 91(1) *Strata Titles Act*) but the strata company is not the registered proprietor of the common property.

The Tribunal rejected the applicant's argument that the exclusive use by-law in effect constituted owners' consent by the strata company. However, the Tribunal said that 'there is considerable strength in the applicant's submission that as a co-owner of the common property in the strata scheme she has effectively signed the development application as the owner of the common property lot and has thereby given herself owners' consent to its lodgement under clause 62(1)(b) of the deemed provisions'.

The Tribunal discussed a relatively recent decision of the Tribunal<sup>[1]</sup> in which a Senior Member had expressed concern that development approval had been granted for works on common property without being signed by all of the strata scheme owners. In that case, the Tribunal had referred to a New South Wales decision which rejected an argument that an application relating to the common property could be made by just one proprietor. However, the Tribunal noted that the statutory position in WA is different to New South Wales.

Notwithstanding the strength of the applicant's argument that she signed the development application as the owner for the purposes of the deemed provisions, the Tribunal expressly did not make a conclusive determination in relation to that issue. It did not do so for a number of reasons. One reason was that it wasn't necessary to do so in order to decide the dispute. Another reason was that the Tribunal recognised that the question of whether any proprietor of a lot in a strata scheme can sign an application for development approval in relation to common property is a matter of wide significance in relation to planning and development in WA and it was therefore appropriate that before the Tribunal expresses a concluded view on the issue it should give notice to the Attorney General and the Minister for Planning so that they each can consider whether to intervene under section 37 of the *SAT Act* in order to address the Tribunal. It remains to be seen what the State government response will be to this interesting question.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information, please contact Craig Clarke by email to [cclarke@mcleods.com.au](mailto:cclarke@mcleods.com.au).

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#### **Footnotes**

**[1] *Paterson and The Owners of 27 Purdom Road Wembley Downs Survey-Strata Plan 20555* [2019] WASAT 40.**