

# Nobbys Outlook termination order makes body corporate history

*On 20 November 2013, the District Court at Brisbane made an order terminating the Body Corporate for Nobbys Outlook CTS 14822 pursuant to section 78(2) of the Body Corporate and Community Management Act 1997. The Termination Order is unique, such an order never having been made before in Queensland or in any other State under like legislation. Partner, Warren Jiear and Senior Associate, Mario Esera, acted for the Body Corporate; here, they look at the case and its likely implications.*

*Body Corporate for Nobbys Outlook v Lawes [2013] QDC 301 (13/1957) Brisb Kingham DCJ*

## Background

High-rise, strata titled body corporate buildings are an increasingly common fact of life. Body Corporates in Queensland and across the country will soon have to face up to the prospect of buildings that lasted longer than their design life which need redevelopment or massive repairs.

If owners want to fully redevelop their Body Corporate with external investment, then it may be necessary to explore termination of a Scheme and creation of a new scheme. One such Body Corporate, Nobbys Outlook (Body Corporate) is located at 122 – 130 Marine Parade, Miami, Queensland (Nobbys Outlook) and consists of 46 lots across four separate buildings (Buildings). Whilst Nobbys Outlook boasts a fantastic location and ocean views, the Buildings were constructed in 1967 and require extensive repairs estimated to cost in excess of A\$3.8m (Repair Costs) to bring them to a reasonable standard.

The Body Corporate identified the difficulties it faced and, since September 1998, has sought to re-develop Nobbys Outlook with the assistance of property developers. In January 2010, the Body Corporate received a development proposal that they wished to pursue (Development Proposal). A condition precedent of the Development Proposal was that Nobbys Outlook be terminated. Likewise, any major redevelopment will likely require termination of the old scheme and creation of a new one.

The Act provides two methods by which a community titles scheme (Scheme) may be terminated – namely:

- Carrying a motion without dissent at a general meeting that approves termination.
- Acquiring an order from District Court upon the basis that it is “just and equitable” for the Scheme to be terminated.

Last year, the Body Corporate convened a general meeting with the objective of carrying a motion without dissent to terminate Nobbys Outlook (Motion). Of the 45 votes cast, 44 were in favour of the Motion and one was opposed. Due to the one dissenting vote, the Motion failed, meaning that the only alternative for the Body Corporate was to apply to the District Court for a Termination Order.

This year, the Body Corporate applied to the District Court at Brisbane for a Termination Order (Application). The dissenting voter was the Respondent to the Application. On 20 November 2013, Her Honour Judge Kingham made the Termination Order.

## Comments

This was the first time a Court had considered the provisions for termination of a Scheme under the Act. The Act requires that any termination order is “just and equitable”. Understandably Her Honour took a very cautious approach to the Application and, in particular, whether she considered it was “just and equitable” to make the Termination Order. Regrettably, the Act provides no guidance as to what constitutes “just and equitable” or what criteria the Court should consider when deciding whether it is “just and equitable” to terminate a Scheme.

Ultimately, Her Honour did not make a finding on whether it was “just and equitable” to make the Termination Order upon the basis that the Respondent consented to the Termination Order being made.

However, the Termination Order provided a detailed process for resolving any final issues and, in default of a final redevelopment proposal, would allow for the appointment of statutory trustees to give effect to a sale of the land and property that constitutes Nobbys Outlook.

The issues covered were very detailed and, arguably, demonstrate that the Court may take a very wide view as to what constitutes “just and equitable” for the purpose of terminating a Scheme – including but not limited to:

- The informed wishes of lot owners – including all probable scenarios that may flow from termination (e.g. redevelopment of Scheme land, the sale of the Scheme etc.).
- Expert evidence as to the condition and financial circumstances of the Scheme – including levies that may need to be raised should the Scheme not be terminated.
- If necessary, the provisional appointment of statutory trustees to manage the sale of the Scheme and Scheme assets.

## Lessons for future application

The Application made by the Body Corporate was extremely rare and, as mentioned above, the Termination Order itself is the first of its kind.

It is not unreasonable, however, to expect that other Schemes comprised of aging common property may seek to avail themselves of Termination Orders, particularly given how hard it may be to carry a motion without dissent at a general meeting approving termination. As found in this case, all it takes is one lot owner opposed to termination to veto that option.

For future applications, Body Corporates should consider from the outset the scope and form of their Termination Order – with the more detailed and comprehensive the Termination Order sought, the more likely that it will be agreed or granted by the District Court.

This may also have a significant bearing on the costs of the application. In this case, the Body Corporate was required to pay the Respondent’s costs of and incidental to the Application on the standard basis as Her Honour considered the orders sought when the Application was filed were materially different to the Termination Order made and that the involvement of the dissenter was of benefit to all owners.

If you, your Body Corporate, or a Scheme you are associated with would like to explore options for dealing with the ageing of buildings or acquiring a Termination Order, please contact Warren Jiear or Mario Esera.



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