

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : STRATA TITLES ACT 1985 (WA)

CITATION : THE OWNERS OF CLAUSEBROOK HEIGHTS
STRATA PLAN 11880 and THOMPSON [2020]
WASAT 125

MEMBER : DR B MCGIVERN, MEMBER

HEARD : 8 OCTOBER 2020

DELIVERED : 15 OCTOBER 2020

FILE NO/S : CC 632 of 2020

BETWEEN : THE OWNERS OF CLAUSEBROOK HEIGHTS
STRATA PLAN 11880
Applicant

AND

DENISE THOMPSON
Respondent

Catchwords:

Amendment of unit entitlements - Whether, if allocated at the time of the application, the schedule of unit entitlements would require amendment - Whether unit entitlements proportionate to the value of each lot relative to the sum of the value of all the lots in the strata titles scheme - Valuation - Turns on own facts

Legislation:

Strata Titles (General) Regulations 2019 (WA), Pt 7, reg 54

Strata Titles Act 1985 (WA), s 3, s 37(2), s 37(3), s 37(4), s 38, s 38(5)
Valuation of Land Act 1978 (WA), s 4(1)

Result:

Application successful

Category: B

Representation:

Counsel:

Applicant : Mr P Monaco

Respondent : In Person

Solicitors:

Applicant : GV Lawyers

Respondent : N/A

Case(s) referred to in decision(s):

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

(The application was heard on 8 October 2020. An oral decision was delivered on 15 October 2020. The following reasons comprise the reasons that were delivered orally, subject only to minor editing).

Introduction

1 The property on Strata Plan 11880 (**Strata Plan**), known as Claisebrook Heights, at 22 Nile St in East Perth is a strata complex comprising 61 lots (**Scheme**). By application dated 4 June 2020, The Owners of Claisebrook Heights (**applicant**) applied to the Tribunal under s 38(5) of the *Strata Titles Act 1985* (WA) for authority to amend the schedule of unit entitlements for the Scheme.

2 The orders sought by the applicant are contained in a document attached to the application, described as Annexure A, the substance of which comprises a proposed amended schedule of unit entitlements (**Proposed Schedule**) (Exhibit 1, pages 123-4).

3 The respondent is the proprietor of Lot 61 in the Scheme. She does not oppose the application.

4 A final hearing of the application was conducted on 8 October 2020 (**Hearing**).

Evidence

5 On 2 October 2020, the Tribunal compiled a hearing book comprising the orders of the Tribunal and any documents filed with the Tribunal by that date (principally comprising the applicant's bundle of documents filed with the application on 4 June 2020, and a valuation report prepared by Don Eftos filed 29 September 2020). That hearing book was taken into evidence as Exhibit 1 (**Exhibit 1**).

6 On 7 October 2020, the applicant filed an amended valuation report prepared by Don Eftos, of Pember Wilson & Eftos, Licensed Valuer No 426 in WA (**Valuation Report**), which was taken into evidence as Exhibit 2.

7 Additionally, Mr Eftos was called to give oral evidence at the Hearing.

8 On 9 October 2020, being the day after the Hearing, the applicant filed with the Tribunal a notification from Landgate concerning the Scheme (**Notification**). The Tribunal accepted and has had regard to that document.

9 The respondent, and Mr Paul O'Connor of the applicant, both attended the Hearing but did not give evidence.

The regulatory framework

Strata Titles Act 1985 (WA)

10 In these reasons, any reference to a legislative provision or to 'the Act' is, unless otherwise specified, a reference to the *Strata Titles Act 1985* (WA), as amended by the *Strata Titles Amendment Act 2018* (WA) (which commenced on 1 May 2020).

11 Section 38 relevantly provides:

- (1) An amendment of a schedule of unit entitlements may only be registered —
 - (a) in conjunction with an amendment of the scheme plan to give effect to a subdivision; or
 - (b) if the amendment is authorised by resolution without dissent of the strata company; or
 - (c) if the amendment is authorised by order of the Tribunal.

...

- (5) The Tribunal may, on the application of a strata company or the owner or registered mortgagee of a lot in a strata titles scheme, authorise the amendment of the schedule of unit entitlements for the scheme if satisfied that, if unit entitlements were to be allocated at the time of the application, the schedule of unit entitlements would require amendment for compliance with section 37(2).
- (6) If the Tribunal makes an order under this section, the applicant for the order must lodge a copy of the order certified by the Tribunal with the Registrar of Titles for registration of the amendment of the schedule of unit entitlements.

12 Section 37 relevantly provides:

...

- (2) When allocated, the proportion that a unit entitlement of a lot bears to the sum of the unit entitlements of all the lots in the strata titles scheme must not be greater than 5% more, or 5% less, than the proportion that the value of the lot bears to the sum of the value of all the lots in the strata titles scheme.
- (3) The value of a lot is -
 - (a) in a strata scheme - the capital value; and
 - (b) in a survey-strata scheme - the site value.
- (4) Without limitation, the regulations may prescribe matters relating to the determination of the value of a lot[.]

Strata Titles (General) Regulations 2019 (WA)

13 Part 7 of the *Strata Titles (General) Regulations 2019 (WA) (Regulations)* deals with schedules of unit entitlements, and relevantly includes:

54. Determining capital value of a lot

- (1) For the purposes of section 37(4), a determination of the capital value of a lot in a strata scheme that is made for the purposes of registering a schedule of unit entitlements, or an amendment of a schedule of unit entitlements, must be made in accordance with this regulation.
- (2) A licensed valuer must determine the capital value of a lot as if it had the standard level of internal fit out and finishes for that lot.
- (3) The standard level of internal fit out and finishes for a lot is the level of fit out and finishes that the licensed valuer determines to be a reasonable representation of the average expected level of fit out and finishes for lots in the strata scheme of that property type and of commensurate age.
- (4) The standard level of internal fit out and finishes for a lot must be determined by the licensed valuer after -
 - (a) conducting a physical inspection of the parcel of land the subject of the strata scheme; and
 - (b) conducting an internal inspection of as many lots in the strata scheme as is reasonably practicable to enable the licensed valuer to

make a reasonable assessment of the average expected level of fit out and finishes for lots of the same property type and of commensurate age; and

- (c) taking into account any relevant information obtained from the strata company or on the strata plan.
- (5) A licensed valuer must include in the capital value of a lot any buildings within the lot that have planning approval or approval under any other written law, whether or not shown on the strata plan.

Capital value

14 'Capital value' is defined in s 3 as having the meaning given in the *Valuation of Land Act 1978* (WA) s 4(1), as follows:

... the capital amount which an estate of fee simple in the land might reasonably be expected to realize upon sale - provided that where the capital value of land cannot reasonably be determined on such basis, the capital value of such land shall be the sum of, first, the unimproved value of the land, and, secondly, the estimated replacement cost of improvements to the land after making such allowance for obsolescence, physical depreciation, and such other factors as are appropriate in the circumstances[.]

Issue for determination

15 The principal issue to be determined is whether, if unit entitlements for the Scheme were to be allocated today, the schedule of strata entitlements currently on the Strata Plan (**Current Schedule**) would require amendment (by reference to the requirements of s 37(2)).

16 That in turn requires consideration of whether the Tribunal has sufficient evidence (by reference to the Regulations) to determine:

- (a) whether, within a 5% tolerance, the unit entitlements in the Current Schedule are proportionate to the capital value of each of the lots relative to the whole of the Scheme; and if not then
- (b) whether, within a 5% tolerance, the unit entitlements in the Proposed Schedule are proportionate to the capital value of each of the lots relative to the whole of the Scheme.

Material facts

17 The following material facts appear from the evidence before
the Tribunal.

History of the Scheme/Lot 61

18 The Scheme was created by registration of the Strata Plan on
19 July 1984 (Exhibit 1, pages 18-25), which described the Scheme as:

A BRICK & IRON COMPLEX CONSISTING OF 61 UNITS
SITUATED ON LOT 2 OF SWAN LOC A1 & PERTH SUB LOT 30
ON DIA 65126

19 At the time of registration of the Scheme, all 61 lots were
allocated a unit entitlement of 1, with an aggregate of 61 (Exhibit 1,
page 19).

20 The floor plan on the Strata Plan shows Lot 61 as comprising
354m² and being situated on the third floor of the building complex.
It is the only lot wholly situated on the third floor, and is substantially
larger than the other lots in the Scheme

21 By instruments lodged with Landgate on 1 July 2004 (Exhibit 1,
pages 9-13) a re-subdivision of Lot 61 of the Scheme was sought to be
effected (**Proposed Subdivision**), in accordance with which Lot 61 was
to be removed from the Strata Plan and the area comprising Lot 61 to
be subdivided as follows (Exhibit 1, page 13):

- (a) a small area of 55m² (being a the lift well space on the
third floor) to be common property; and
- (b) the remaining area comprising 339m² to comprise a
new lot, Lot 62.

22 Sheet 1 of the Proposed Subdivision (Exhibit 1, page 9) shows an
amendment to the certificate of title for Lot 61 (changing from Volume
2006 of Folio 217 to Volume 1688 of Folio 415).

23 As part of the Proposed Subdivision, a revised schedule of unit
entitlements (Form 3), certified by a licensed valuer on 29 June 2004,
was also lodged (Exhibit 1, page 14) (**Revised Schedule**). The Revised
Schedule shows unit entitlements for lots 1 to 60 ranging from 190
(Lot 59) to 275 (Lots 37-45), and a unit entitlement of 1,000 for Lot 62,
producing an aggregate of 15,510. There is no unit entitlement

recorded against Lot 61; instead there is an annotation 'Now Subdivided'.

24 A certificate of title (CT) with register number 61/SP11880, issued on 14/1/14 (Exhibit 1, page 122), records the respondent as being the registered proprietor of Lot 61 on Strata Plan 11880. That CT:

- (a) is identified as being Volume 1688 of Folio 415; and
- (b) contains, under 'Statements', reference to the 'previous title' being 1671-462, with two 'Notes', as follows:

NOTE 1: O346138 RE-SUBDIVISION OF STRATA PLAN 11880 LODGED

NOTE 2: CORRECTION MADE ON ORIGINAL CERTIFICATE OF TITLE - BUT NOT SHOWN ON CURRENT EDITION OF THE DUPLICATE

25 As appears from the above, the reissued CT for the respondent's lot:

- (a) bears the amended volume and folio reference corresponding with that shown on Sheet 1 of the Proposed Subdivision (see [22] above); but
- (b) continues to identify the respondent's lot as being Lot 61 of Strata Plan 11880 (not Lot 62); and
- (c) records the Proposed Subdivision as having been lodged (but does not record it as having been registered).

26 Landgate records (specifically, the Notification) record against the Strata Plan that the Proposed Subdivision is 'pending' and shows its status as being 'in order for dealings'. Further, counsel for the applicant informed the Tribunal that, on enquiry, Landgate has advised that the Revised Schedule has lapsed.

27 The Tribunal is satisfied that:

- (a) while lodged, the Proposed Subdivision has not been registered and the Revised Schedule has not taken effect; and

- (b) accordingly, as at the date of the Hearing, the Current Schedule is the schedule of unit entitlements shown at page 19 of Exhibit 1, with each lot having a unit entitlement of 1 and the Scheme aggregate being 61.

28 The application is directed to amending the Current Schedule. Minutes of an extraordinary meeting of the council of owners of the Scheme (**Council**) held on 25 March 2020 (Exhibit 1, pages 6-8) record that the Council (including the respondent) voted in support of such an application being made and, to that end, commissioning the Valuation Report.

Valuation evidence

29 The Valuation Report, filed in support of the application:

- (a) gives the date of inspection and valuation as being 25 May 2020;
- (b) states (at para 1.1) the Valuation Report as being directed to assessing the 'current market value of the individual strata lots' in the Scheme for the purpose of reassessing unit entitlements;
- (c) describes (at para 4.1) the property as a 'circa 1980's residential apartment complex comprising 61 units, stating:

The units vary in size and shape ranging from 1 bedroom 49 m² units to two bedroom units of 62 m² and 63m² in area. There is also a large 339m² unit known as Lot 61 on the Third Floor which has three bedrooms [;]

- (d) notes that the units are fitted out to varying standards with individual owners having carried out renovations and modifications throughout the years; and
- (e) states (at para 5.5) that the valuation analysis is based on a direct comparison approach, and outlines the market evidence (in the form of comparable sales in the area) relied upon for that purpose.

30 The resulting valuation of, and corresponding assessment of unit entitlements for, the various lots in the Scheme are set out at para 5.6 of the Valuation Report, as follows:

Schedule of Unit Entitlements

Floor	Lot no	Value	%	UE	Floor	Lot no	Area	Value	%	UE
grd	1	333250	0.0139	215	2nd fl	36	62	387500	0.0161	250
	2	333250	0.0139	215		37	92	426250	0.0177	275
	3	333250	0.0139	215		38	92	426250	0.0177	275
	4	333250	0.0139	215		39	92	426250	0.0177	275
	5	364250	0.0152	235		40	92	426250	0.0177	275
	6	364250	0.0152	235		41	92	426250	0.0177	275
	7	364250	0.0152	235		42	92	426250	0.0177	275
	8	356500	0.0148	230		43	92	426250	0.0177	275
	9	356500	0.0148	230		44	92	426250	0.0177	275
	10	356500	0.0148	230		45	95	426250	0.0177	275
	11	356500	0.0148	230		46	62	348750	0.0145	225
	12	356500	0.0148	230		47	62	356500	0.0148	230
1st fl	13	372000	0.0155	240		48	62	356500	0.0148	230
	14	372000	0.0155	240		49	62	356500	0.0148	230
	15	372000	0.0155	240		50	62	356500	0.0148	230
	16	372000	0.0155	240		51	63	403000	0.0168	260
	17	372000	0.0155	240		52	63	403000	0.0168	260
	18	372000	0.0155	240		53	63	403000	0.0168	260
	19	372000	0.0155	240		54	63	403000	0.0168	260
	20	372000	0.0155	240		55	62	387500	0.0161	250
	21	372000	0.0155	240		56	62	387500	0.0161	250
	22	372000	0.0155	240		57	62	387500	0.0161	250
	23	348750	0.0145	225		58	62	387500	0.0161	250
	24	348750	0.0145	225	grd	59	49	294500	0.0123	190
	25	348750	0.0145	225	grd	60	63	356500	0.0148	230
	26	348750	0.0145	225		61	339	1550000	0.0645	1000
	27	348750	0.0145	225						
	28	395250	0.0164	255		Aggregate		12679000	1.0000	15510
	29	348750	0.0145	225						
	30	348750	0.0145	225						
	31	395250	0.0164	255						
	32	379750	0.0158	245						
	33	379750	0.0158	245						
	34	379750	0.0158	245						
	35	379750	0.0158	245						

31 The Tribunal notes that the unit entitlements contained in the Valuation Report:

- (a) other than allocating a unit entitlement of 1,000 to Lot 61 (rather than to Lot 62), correspond with those in the Revised Schedule (see [23] above); and

(b) are reflected in the Proposed Schedule.

32 Mr Eftos gave evidence at the Hearing that he has been a licensed valuer since 1984 and is experienced in undertaking valuations for the purposes of assessing unit entitlements and that, in preparing the Valuation Report:

(a) he undertook a physical inspection of the Scheme property;

(b) he took account of the fact that the Proposed Subdivision had not been effected; and

(b) specifically, he took note of the lift well on the third level of the property being part of Lot 61.

33 The Tribunal has difficulty accepting that evidence in whole. Specifically, it has difficulty accepting that, at the time of preparing the Valuation Report, Mr Eftos treated the Proposed Subdivision as pending only, and took account of the lift well space as being included in the respondent's lot. The reference at para 4.1 of the Valuation Report to Lot 61 as comprising 339m² suggests otherwise. However, the Tribunal does note that the lot description and the schedule of unit entitlements in para 5.6 refer to 'Lot 61' rather than 'Lot 62'.

34 In the event, Mr Eftos gave oral evidence to the effect that the Proposed Subdivision would not materially impact his valuation of the respondent's lot, explaining that in his view:

(a) the value of the lot to any purchaser would be as a home and that the square meterage of the living space would be the key determinant of value in that regard; and

(b) any benefit of owning the lift well space on level three would be offset by the costs associated with its upkeep.

35 The Tribunal is satisfied that Mr Eftos had an opportunity, at and prior to the Hearing, to consider the impact of the Proposed Subdivision not having been effected, and accepts his evidence that his valuation as it pertains to Lot 61 is not materially affected.

36 The Tribunal accepts the valuations contained in the Valuation Report.

The Tribunal's consideration

37 The Tribunal is satisfied that, in preparing the Valuation Report, Mr Eftos fulfilled the prescribed requirements relating to determining the value of a lot (s 37(4); reg 54 of the Regulations), noting in particular that the Tribunal accepts that Mr Eftos:

- (a) is a licensed valuer and carried out a physical inspection of the Scheme property;
- (b) prepared the Valuation Report within two years of the date of the Hearing, having regard to its purpose being for the assessment of unit entitlements;
- (c) makes particular reference in the Valuation Report to the range of configurations and standard of fit outs in the Scheme lots;
- (d) determined the current market value of the Scheme lots, which in this case meets the definitional requirements of 'capital value' (as required by s 37(3)), being 'the capital amount which an estate of fee simple in the land might reasonably be expected to realize upon sale' (see [14] above).

38 Having accepted the valuations contained in the Valuation Report, the Tribunal finds that:

- (a) the unit entitlements under the Current Schedule (being one unit per lot) are clearly not proportionate to the capital value of each of the lots relative to the whole of the Scheme;
- (b) the unit entitlements in the Proposed Schedule are, within a 5% variance, proportionate to the capital value of each of the lots relative to the whole of the Scheme; and
- (c) accordingly, if unit entitlements for the Scheme were to be allocated today, the schedule of unit entitlements on the Strata Plan would require amendment in line with the Proposed Schedule.

Orders

39

The Tribunal orders:

- Pursuant to s 38(5) of the *Strata Titles Act 1985* (WA), the Tribunal authorises the schedule of unit entitlements registered in respect of Strata Plan 11880 for the property known as Claisebrook Heights and located at 22 Nile Street, East Perth in the State of Western Australia to be amended by being deleted and replaced by the schedule attached hereto and marked 'A':

Lot Number	Unit Entitlement
1.	215
2.	215
3.	215
4.	215
5.	235
6.	235
7.	235
8.	230
9.	230
10.	230
11.	230
12.	230
13.	240
14.	240
15.	240
16.	240
17.	240
18.	240
19.	240
20.	240
21.	240
22.	240
23.	225
24.	225
25.	225

26.	225
27.	225
28.	255
29.	225
30.	225
31.	255
32.	245
33.	245
34.	245
35.	245
36.	250
37.	275
38.	275
39.	275
40.	275
41.	275
42.	275
43.	275
44.	275
45.	275
46.	225
47.	230
48.	230
49.	230
50.	230
51.	260
52.	260
53.	260
54.	260
55.	250
56.	250
57.	250
58.	250
59.	190
60.	230
61.	1,000

2. Pursuant to s 38(6) of the *Strata Titles Act 1985* (WA), the applicant must lodge a copy of this order with the Registrar of Titles for registration of the amendment of the schedule of unit entitlements under order 1.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

DR B MCGIVERN, MEMBER

15 OCTOBER 2020