20 Illawong Avenue, Tamarama NSW 2026

Strata Plan 1731

Paper Outlining Issues for Owners

Factual Background

1. I am a barrister and the New South Wales Bar and a Chartered Tax Advisor.

2. I am instructed by Strata Plan 1731 in relation to the redevelopment of 20 Illawong Avenue, Tamarama NSW 2026 (hereafter, the '**Property**'). The Property is governed by Strata Plan 1731 of which there is an **Owners' Corporation** relevant to this opinion.

3. The strata lots in which are owned by various **Owners** who can be grouped as those who:

   (a) occupy their lot as their main residence (hereafter, the '**Owner Occupiers**'); and

   (b) lease out their lot for profit (hereafter, the '**Investment Owners**').

4. The Strata Plan comprises 78 units between which 870 entitlements are spread. The entitlements vary from 9, 10, 12, 15 or 19 per lot.

5. The Property is currently being redeveloped (hereafter, the '**Development**'), by:

'Penthouse Work'

(a) The addition two penthouse apartments (hereafter, the '**Penthouses**') on top of the existing building but within the height limits for the Property;

(b) Extending the lift wells to the Penthouses level;

'Capital Works'

(c) Inserting underground carparking for the strata lots;

(d) The addition of a second lift to the building;

'***Repair Works'***

(e) Replacing the current exterior of the building with a new exterior, including balconies, that will enable a greater weight to be placed on the building;

(f) Various structuring and integrity measures to improve the building;

(g) Improvement to the quality of design and fitout of the foyer area; and

(h) Landscaping for the building.

6. The Development has been funded by way of contributions from the Owners and by bank finance procured by the Owners Corporation secured against the Property.

7. The cost and funding of the Development is approximately as follows:

Item	Cost / Income
Total Development Cost	$75 million
Expected proceeds on sale of Penthouses	$40 million (both being $20 million)

8. Therefore, there will be $75 million expended – and funded by Owners' contributions and borrowings of the Owners Corporation – that will be reimbursed by the sale proceeds of $40 million on sale of the Penthouses. The costs that can be attributed to

the construction of the Penthouses, as opposed to the balance of the Development, is yet to be determined but will be critical to the final tax position.

9. The Owner Occupiers and any tenants of the Investment Owners have had to vacate the Property during the Development. Contributions toward alternate rental accommodation (for the Owner Occupiers) and the forgone rental income (for the Investment Owners) has been paid by the Owners Corporation to the Owners in proportion to their entitlements. This cost is part of the $40 million mentioned above.

10. I have provided an opinion to the Strata Plan regarding its GST, tax and duty consequences of the above.

Purpose of this Issues Paper

11. I have provided an opinion to the Strata Plan regarding its GST, tax and duty consequences of the above.

12. This *Issues Paper* is provided to raise issues the Owners should consider and on which they should seek further, specific, advice.

13. This *Issues Paper* **is not** advice on which any Owner should rely. It is a prompt to raise issues for consideration upon which that particular Owner should seek the appropriate advice.

Table of Issues to Consider

14. The following outline of issues are matters that the Owners ought to consider and upon which advice should be sought:

Income/CGT:

(a) By *Taxation Ruling* 2015/3 the **Commissioner** of Taxation confirms that amounts derived from Owner contributions is not assessable[1] but amounts derived from external sources (such as sale proceeds from the Penthouses) is assessable as dividend income to the members. Appropriate apportionment of expenses is to

[1] Based on the mutuality principle.

be made between mutual income (e.g. contributions) and external income (see below).

(b) The sale proceeds of the Penthouses is likely to be on revenue account and, therefore, subject to income tax instead of capital gains tax. The Strata Plan will need to apportion the costs of the Penthouse work from the cost of repairs, maintenance and improvement works of the original building.

(c) The amounts paid to the Owners during the Development, which is sourced from the Owners own funds arising from borrowings, may not be assessable income to the Owners because of the mutuality principle.

(d) Any expenses incurred in relation to the:

  (i) Penthouses are deductible against the sale proceeds of the Penthouses. This will result in income tax only being payable on the net profit of the Penthouses.

  (ii) Repair and Maintenance of the original building may be added to the cost base of the apartments, though the Investment Owners may wish to seek advice on whether they can claim those costs ad deductible expenses (the issue is that the Investment Owners were not deriving assessable income at the time of the repairs and maintenance being incurred).

  (iii) Improvements or Capital Expenditure of the original building may be added to the cost base of the apartments.

GST

(e) The Owners Corporation will be registered, or required to be registered, for GST. Therefore, it can claim input tax credits for any GST it paid in relation to the Penthouse works and it will have to remit GST on the sale of the Penthouses.

(f) This does not bear, per se, on the Owners.

Duty

(g) Any Owners that receive a car space are likely to be liable to *ad valorem* duty on the attachment of that car space to their title. The duty will be assessed against the unencumbered value of the car space.

Conclusion

15. The Development has been a substantial undertaking that raises many complex matters for the Owners' tax, GST and duty positions. The above is a non-exhaustive list of issues the Owners may want to raise with their professional advisors.

With compliments,

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