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# Storm brewing on Sydney apartment sites, projects no longer viable



Sydney apartment developers face some big decisions on whether to proceed with projects. Louise Kennerley

by John Grimble

A perfect storm is brewing on an increasing number of residential development sites in Sydney.

Scores of development sites have become 'sterilised' – stuck in limbo - with off-the-plan sales at too low a price to justify the increasing construction costs required to complete the project.

With projects taking on average three to five years to come to completion and construction costs rising by 4.5 per to 5 per cent in the last NSW financial year, project completion on many sites is now no longer viable.

Historically, when significant delays made a project unfeasible, developers could rescind off-the-plan contracts, allowing the purchaser to walk away with its cash.

However, with [the takeoff in the Sydney market](#), a handful of developers did this with an eye on entering into new contracts at substantially higher prices in a rapidly improving market.



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The government responded to the howls of protest by the unit-buying public with legislation which now governs the residential off-the-plan sector.

This [sunset date legislation introduced in November 2015](#), means that even where projects are no longer feasible developers are prevented from rescinding off-the-plan contracts unless given permission by a court.

If a developer seeks such court support, in most circumstances they must pay the buyers' court costs and tests contained in the legislation greatly favour buyers, even where their case lacks merit.

To date, cash-strapped developers have been reluctant to test their luck and their wallets by challenging the legislation in court.

In addition, the banks' historical insistence on high levels of local pre-sales and their general reluctance or refusal to lend to overseas buyers of off-the-plan residential property, have contributed to a distinct market tightening.

This has left many developers with a few unpalatable alternatives such as to sell the site at the bank's direction or by a mortgagee in possession sale; or a direct sale to third parties without passing the off-the-plan sales to the new buyer.

Both scenarios are highly problematic and both are consequences which the legislators of the sunset date laws would likely not have anticipated.

They are a result of the legislation heavily favouring the buyer and they are creating sterilised development sites that leave both developers and their off-the-plan customers at a very unsatisfactory impasse.

One solution would be for developers to invite their buyers to work with an independent expert to develop a scheme so the project can be re-booted, with price adjustments sufficient to allow the project to be re-commenced.

This might involve 'hold still periods' while all of the parties can negotiate their interest in the recommencement of a sterilised project.

Such an approach might be led by the relevant real estate institutes and law societies which could broker the arrangements to appoint experienced independent experts such as licensed valuers, to determine the best financial solution and gain agreement for all parties.

The current legislation does not allow for such an approach, but with an increasing number of projects at a standstill in NSW and with upward price pressure on residential properties in Sydney it is difficult to see how this won't be changed in the future.

*John Grimble is a Partner at law firm Dentons*

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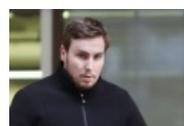
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