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10 June 2020

Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Contact
Natalie Bryant (02) 9210 6227
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Attention:

Dear Sir/Madam,

**Crown Sydney Property Pty Ltd
Crown Sydney Hotel Resort
Amendment to Barangaroo South Building Management
Statement (DP1204948)**

We act for Crown Sydney Property Pty Limited (**Crown**), the developer of the building known as the Crown Sydney Hotel Resort in the Barangaroo South Precinct (**Precinct**).

This letter accompanies a copy of a request relating to the amendment of the building management statement for the Precinct (**Request**), being the building management statement registered with deposited plan 1204948 (**Registered BMS**). Please note that the Request is an advanced draft but not yet finalised (see our further comments on this at item 5 below).

1 What is the Registered BMS?

The Registered BMS is the document that governs the management and operation of the Precinct. In particular, it provides for:

- the establishment of a building management committee (**Committee**) to make decisions as to the management and operation of the Precinct – the Committee is made up of members of the different stratum lots that were created on the initial subdivision of the Precinct by way of deposited plan 1204948, and as the Precinct is further subdivided, additional members are added to the Committee;
- rules and obligations as to subdivision and maintenance of property within the Precinct; and
- the fair allocation of shared costs relating to the Precinct (such as maintenance of shared areas and items (including public areas, access ways, shared services, shared plant and switch rooms, and general plant and equipment), the treatment of waste, and security).

2 Why an amendment to the Registered BMS?

Normally in a building such as the Crown Sydney Hotel Resort containing a proposed hotel/retail component and a residential component (as a result of the stratum subdivision of the building by way of a deposited plan), the management and operation of the building would be governed by a strata management statement required by Part 6 Division 1 of the *Strata Schemes Development Act 2015* (NSW). This strata management statement would be registered with the strata plan subdividing the residential component of the building (and establishing the strata scheme the subject of the strata plan, and its owners corporation).

As the Crown Sydney Hotel Resort development site (**Crown Site**) is part of an area already governed by the Registered BMS, registering a strata management statement for the building on that site presents the following issues:

- The whole of the Precinct is considered to be “one building” from a structural perspective (in that it shares a common basement) and, as noted above, the Registered BMS contemplates the shared facilities and shared management of the Precinct as a whole.
- The amendment to the Registered BMS the subject of Annexure C to the Request is generally in the same form as a strata management statement (but for some necessary changes to terminology).
- From a legal perspective, a strata management statement cannot be registered over land the subject of a building management statement without that building management statement falling away (section 196J of the *Conveyancing Act 1919*). This is the case even where the land the subject of the strata management statement forms only part of the land the subject of the building management statement – there is no mechanism by which a registered building management statement can fall away to the extent the land is covered by a strata management statement.
- In addition, it is not possible to have two building management statements registered in respect of the same land given that a building management statement regulates the management of a ‘building’ – not ‘buildings’.
- The Registered BMS is still required to be registered and operative, as it documents the management of the Precinct, and as such owners and occupiers in the Crown Sydney Hotel Resort will be bound by its terms. However, in its existing form the Registered BMS does not contemplate or set out the necessary terms and conditions in relation to the operation of the Crown Sydney Hotel Resort as a mixed use building within the Precinct (such as management of the building and contributions to shared facilities by its hotel/retail and residential components). Given the restrictions on creating a strata management statement, or registering a second building management statement, it is appropriate for those terms and conditions to be inserted into the Registered BMS by way of an amendment to that Registered BMS. This is done by way of a registered request to the NSW Registrar-General.

We confirm that our approach in relation to the registration of an amendment to the Registered BMS (rather than a strata management statement or separate building management statement) has been confirmed by both the Office of the Registrar-General and the head of legal at the NSW Land Registry Services.

3 The operation of the Request

The Request will amend the Registered BMS by inserting a new Annexure C that specifically covers the management and operation of the Crown Sydney Hotel Resort as between its hotel/retail component and residential component in the same manner as a strata management statement, including provision for:

- the establishment of a building management committee for the Crown Sydney Hotel Resort (**Hotel Resort Committee**) to make decisions as to the management and operation of the building – the Hotel Resort Committee is to be made up of two members (being the owner of the hotel/retail component and the owners corporation for the strata scheme established on registration of the strata plan subdividing the residential component);
- rules and obligations as to subdivision and maintenance of the components within the Crown Sydney Hotel Resort; and
- the fair allocation of shared costs relating to the Crown Sydney Hotel Resort (such as maintenance of shared areas and items (including public areas (such as lifts, lobbies and amenities that are able to be used by owners and occupiers in the residential component), access ways, shared services, shared plant and switch rooms, and general plant and equipment), the treatment of waste, and security).

The new Annexure C is expressly stated to only bind those members, owners and occupiers within the Crown Sydney Hotel Resort, and will not affect other members, owners or occupiers in the Precinct.

4 Titling structure for the Crown Sydney Hotel Resort

For clarity, we note the following relevant information in relation to the titling structure for the Crown Sydney Hotel Resort:

- Infrastructure NSW currently holds, and will continue to hold, the freehold title to the Crown Site, and the land created on the further anticipated:
 - stratum subdivision of the Crown Site into the hotel/retail component (being stratum lot 1) and residential component (being stratum lot 2); and
 - strata subdivision of the residential component (stratum lot 2) into the residential strata lots and common property of the residential strata scheme.
- Crown (or a related entity) will hold the leasehold title to the land after entering into 99 year leases with INSW in respect of the:
 - hotel/retail stratum lot 1; and

- the residential strata lots in the strata scheme (the leasehold title to these lots will be transferred to the purchasers of the relevant strata lots after completion of the contracts in respect of those lots).
- The owners corporation for the strata scheme will hold the leasehold title to the common property of the strata scheme after entering into a 99 year lease with INSW in respect of that common property.
- With regard to the timing of entry into the leases by the relevant parties and the subsequent registration of the leases, as at the date of this letter we are instructed that the anticipated timing is as follows:
 - the hotel/retail lease will be entered into by the parties and registered on or about 1 December 2020; and
 - the common property lease and residential strata lot leases will be entered into by the parties and registered with the strata plan creating the common property and the residential strata lots between December 2020 to March 2021.

5 Finalising the Request

We have noted above that the Request this letter accompanies is currently in draft form and will require further information to be included in the document, most relevantly in relation to the fair allocation of shared costs of the shared facilities in the Crown Sydney Hotel Resort. A significant number of these costs will be allocated on the basis of the gross floor area of the respective stratum lot components of the building, which will not be able to be calculated until around the time the building is practically complete.

We confirm that practical completion of the building also represents the time around which Crown intends to have the strata plan for the residential component lodged for registration, and note that a strata management statement is normally lodged for registration with a strata plan over part of the building to which the statement relates. It is therefore appropriate that this is also the time when the Request will be lodged.

6 Timing considerations regarding registration of the Request

The amendment of the Registered BMS must be approved not only by the landowner, INSW, but also formally approved by the Committee at its next meeting, which we are advised is to be held in October 2020.

Crown has given consideration to the timing of registration of the Request following its approval by INSW and the Committee, and proposes that the registration of the Request occur at a time where there is a clear separation between the respective hotel/retail and residential components of the Crown Sydney Hotel Resort. At that point, the components will be operating independently of one another, making it necessary that a document is in place and operative that sets out the rules and obligations of owners and occupiers in the building, with respect to its operation and management, and the costs involved.

10 June 2020

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Crown suggests that the date for registration of the Request be on or before the date the strata plan is lodged for registration to strata subdivide the residential component. In these circumstances:

- The Request would be lodged for registration with the strata plan.
- As noted above:
 - the amendment to the Registered BMS the subject of the Request is taking the place of a strata management statement in this instance; and
 - a strata management statement is normally lodged for registration with a strata plan.
- At this time, all relevant information would be known to:
 - calculate the fair allocation of the shared costs between the hotel/retail component and the residential component; and
 - otherwise finalise the Request.

7 Next steps

Should you have any questions or comments in relation to this letter or the Request following your review, please contact me.

Yours faithfully

Corrs Chambers Westgarth



Natalie Bryant
Partner