

COMMUNITY LAND MANAGEMENT BILL 1989

NEW SOUTH WALES

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Community Land Development Bill 1989 which provides for the registration of a community plan, precinct plan or neighbourhood plan.

A community plan would comprise 2 or more community development lots (for future subdivision) and 1 other lot that would be community property.

A precinct plan (which would be optional) would subdivide a community development lot into 2 or more precinct development lots (for future subdivision) and 1 other lot that would be precinct property.

A neighbourhood plan would subdivide a development lot, or any other land that is not part of a community plan or a precinct plan, into 2 or more neighbourhood lots and 1 other lot that would be neighbourhood property.

A development lot could also be subdivided by a strata plan under the Strata Titles Act 1973 that includes common property.

The registration of a community plan would initiate a community scheme in which the participants would be the proprietors of neighbourhood lots and strata lots comprised in subdivisions of the development lots. They would have the benefit of the community property in the community plan.

The registration of a precinct plan would initiate a precinct scheme in which the participants would be the proprietors of neighbourhood lots and strata lots comprised in subdivisions of the precinct development lots. They would have the benefit of the precinct property in the precinct plan as well as the community property in the community plan of which the precinct plan is a subdivision.

The registration of a neighbourhood plan would initiate a neighbourhood scheme in which the participants would be the proprietors of the neighbourhood lots in the plan. They would have the benefit of the neighbourhood property in the

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neighbourhood plan and, if the neighbourhood scheme is within a community scheme, of the community property in the community plan, and the precinct property in any precinct plan, of which the neighbourhood plan is a subdivision.

The objects of this Bill are:

- (a) to define the rights and obligations arising on the establishment of community schemes, precinct schemes and neighbourhood schemes; and
 - (b) to provide for the management of those schemes; and
 - (c) to make such provision as is necessary to supplement the operation of the Strata Titles Act 1973 in its application to a strata scheme within a community scheme.
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PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence at the same time as the Act ("the Development Act") proposed by the Community Land Development Bill 1989 with which this Bill is cognate.

Clause 3 defines certain expressions for the purposes of the proposed Act.

Clause 4 provides for the proposed Act to bind the Crown except in relation to obtaining approvals and consents from a local council.

**PART 2 - MANAGEMENT OF COMMUNITY SCHEMES AND
NEIGHBOURHOOD SCHEMES**

Division 1 - Miscellaneous

Clause 5 establishes as a community association the corporation constituted by the registration of a community plan under the Development Act and specifies as its members:

- (a) the proprietor of each community development lot in the plan that has not become subject to a precinct scheme, neighbourhood scheme or strata scheme; and
- (b) each precinct association or neighbourhood association established by clause 6 or 7 on subdivision of a community development lot; and
- (c) each body corporate ("strata corporation") constituted on registration under the Strata Titles Act 1973 of a strata plan subdividing a community development lot or a precinct development lot.

Clause 6 establishes as a precinct association the corporation constituted by registration of a precinct plan under the Development Act and specifies as its members:

- (a) the proprietor of each precinct development lot in the plan that has not become subject to a neighbourhood scheme or a strata scheme; and

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- (b) each neighbourhood association established by clause 7 on subdivision of a precinct development lot; and
- (c) each body corporate ("strata corporation") constituted on registration under the Strata Titles Act 1973 of a strata plan subdividing a precinct development lot.

Clause 7 establishes as a neighbourhood association the corporation constituted by registration of a neighbourhood plan under the Development Act and specifies as its members the proprietors of the lots in the neighbourhood plan.

Clause 8 provides for the keeping and affixing of the seal of an association.

Clause 9 provides for the calling of the first meeting of an association in order to elect an executive committee and attend to other essential business.

Clause 10 relates to the calling and holding of the first annual general meeting of an association, subsequent annual general meetings and special general meetings.

Clause 11 enables the Community Schemes Commissioner appointed under clause 62 to call the first annual general meeting of an association if clause 10 is not complied with.

Clause 12 provides for the calling and holding of subsequent general meetings.

Clause 13 specifies the persons bound by the management statement registered under the Development Bill for an association. The management statement consists of by-laws and other particulars governing participation in the relevant scheme.

Clause 14 deals with the manner in which a management statement may be amended.

Clause 15 makes a development contract binding on interested parties as if they had entered into covenants with each other to comply with its terms. A development contract is a statement that may be lodged with a community plan or a precinct plan and must be lodged with a neighbourhood plan. It specifies the manner in which the relevant scheme is to be developed. The covenants involved are set out in detail in Schedule 2.

Clause 16 deals with the manner in which a development contract may be amended.

Clause 17 enables the by-laws for a scheme to relate to the preservation of the essence or theme of the scheme and requires a unanimous resolution in order to amend by-laws of that kind.

Clause 18 makes the management statement for a scheme binding on a lessee of a lot or association property in the scheme.

Clause 19 requires a lessor of a lot or association property in a scheme to annex a copy of the relevant management statement to the copy of the lease submitted to the lessee for execution.

Clause 20 enables an association to levy its members for contributions to meet its expenses. The contributions would be based on the unit entitlement for the member

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which would, in turn, be based on a valuation of the interest of the member under the scheme.

Clause 21 lays down the procedure to be followed when the address for service of notices on an association is to be changed.

Clause 22 enables an association to provide amenities or services to a lot within its scheme or to the proprietor or occupier of a lot.

Clause 23 restricts the powers of an association during the early stage of the scheme by which it is established, this being referred to as "the initial period".

Clause 24 deprives an association of any power to enter into certain kinds of agreements during the initial period unless the agreement terminates, or is ratified before the end of the first annual general meeting of the association or is disclosed in the management statement.

Clause 25 requires an association to prepare and maintain a roll containing particulars set out in Schedule 3 to the Bill. The roll would include information of interest to a prospective purchaser or mortgagee.

Clause 26 requires an association to make its roll available for inspection by interested parties and to supply certificates as to the information in the roll.

Division 2 - Executive committee of association

Clause 27 constitutes the executive committee of an association that has 3 members or fewer.

Clause 28 constitutes the executive committee of an association that has 4 members or more.

Clause 29 specifies the qualifications required for election to the executive committee of a community association or a precinct association.

Clause 30 specifies the qualifications for election to the executive committee of a neighbourhood association.

Clause 31 enables a member of an executive committee to appoint a substitute to act in his or her place at a meeting of the committee.

Clause 32 provides for the vacation of office by a member of the executive committee of a community association or precinct association and for the filling of the vacancy.

Clause 33 provides for the vacation of office by a member of the executive committee of a neighbourhood association and for the filling of the vacancy.

Clause 34 provides for the appointment by an executive committee of a chairperson, secretary and treasurer.

Clause 35 provides for the chairperson to preside at a meeting of an executive committee and for a member of the committee to preside in the absence of the chairperson.

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Clause 36 limits the persons who may exercise a function of an association that involves the receipt or spending of money or the keeping of accounts.

Clause 37 enables the executive committee of an association to recover property of the association that is in the possession of another person.

Clause 38 relates to the quorum for, and the making of decisions by, the executive committee of an association.

Division 3 - Insurance

Clause 39 penalises an association that fails to keep its association property insured against damage or destruction.

Clause 40 penalises an association that fails to maintain other insurance such as insurance under the Workers Compensation Act 1987 and insurance against actions for damages.

Clause 41 gives an association an option to maintain other insurance.

Clause 42 deals with the expeditious application of money received by an association in settlement of an insurance claim for damage to, or destruction of, a building.

Clause 43 confers on an association an insurable interest in relation to insurance it is required to effect and deals with certain rights of action and subrogation.

Clause 44 requires the Community Schemes Commissioner to keep a record of insurers approved by the Minister.

Division 4 - Notices

Clause 45 requires certain notices to be given to a community association with respect to subsidiary schemes within the community scheme.

Clause 46 requires notice of certain leases to be given to an association.

Clause 47 enables a person to give an association notice of an interest of the person in a development lot or neighbourhood lot that confers on the person a right to vote at a meeting of the association.

Clause 48 enables a person who has given a notice under the proposed Division to give the association notice of a change of particulars.

Clause 49 withholds a right to vote at a meeting of an association from a person who fails to give a notice under the proposed Division on being called on by the secretary of the association to do so.

Division 5 - Managing agents

Clause 50 enables a general meeting of an association to appoint a managing agent and, with some exceptions, to delegate functions of the association to the managing agent. It also imposes certain restrictions in relation to a managing agent appointed for an association during the initial period.

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Clause 51 penalises a managing agent who, on being required to do so by the relevant association, fails to provide the association with certain information.

Clause 52 penalises a managing agent who fails to perform a duty delegated by an association if the association would, but for the delegation, be penalised for a like failure.

PART 3 - ASSOCIATION PROPERTY

Clause 53 provides for the comparative value of certain interests of the members of an association to be based:

- (a) in the case of a community association or a precinct association - on the "unit entitlements" of the existing or subdivided development lots in the community scheme or precinct scheme; or
- (b) in the case of a neighbourhood scheme - on the "unit entitlements" of the neighbourhood lots in the scheme.

Unit entitlements are an indication of the comparative values of the lots.

Clause 54 enables a restriction to be imposed on the use of part of association property or the common property under a strata scheme that is part of a community scheme.

Clause 55 prescribes the effect of a restriction on the use of association property or common property.

Clause 56 enables an association to make an agreement with a member for payments to be made to or by the member in relation to association property.

Clause 57 subrogates to an association certain rights under a contract for the carrying out of work on the association property.

Clause 58 enables a community association or precinct association to do work on a development lot or association property on a failure to do the work by another person responsible for the doing of the work.

Clause 59 makes in relation to a neighbourhood association the same kind of provision that is made by clause 58 in relation to a community association and a precinct association.

Clause 60 confers certain powers of entry on an association for the purpose of doing work referred to in clause 58 or 59.

Clause 61 obliges interested persons to use association property, and common property under a subsidiary strata scheme, reasonably.

PART 4 - DISPUTES

**Division 1 - Community Schemes Commissioner
and Community Schemes Boards**

Clause 62 authorises the employment under the Public Sector Management Act 1979 of a Community Schemes Commissioner ("the Commissioner") and staff.

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Clause 63 constitutes a Magistrate as a Community Schemes Board ("a Board") and provides for a Clerk to a Board.

Clause 64 confers on the Commissioner certain powers relating to the giving of advice and the settlement of disputes.

Division 2 - Applications for orders on disputes

Clause 65 specifies the persons by whom, and the manner in which, application may be made to the Commissioner or a Board for settlement by the Commissioner under proposed Division 3, or by a Board under proposed Division 4, of a dispute arising under the proposed Act.

Clause 66 specifies the grounds on which the Commissioner may dismiss an application including an application for an order by a Board.

Clause 67 provides that (unless the application is dismissed) the Commissioner must notify specified persons that an application has been made and that each person notified is entitled to make a written submission to the Commissioner.

Clause 68 provides for the Commissioner to investigate an application and confers certain powers of entry.

Clause 69 requires the Commissioner to refer to a Board an application for an order that may be made only by a Board and authorises the Commissioner to refer to a Board an application for an order that the Commissioner could make but considers should be made by a Board.

Clause 70 prescribes the procedure to be followed in referring an application to a Board.

Division 3 - Orders by the Commissioner

Clause 71 authorises the Commissioner to make an order for settlement of a dispute that is not referred to a Board or is not within the exclusive jurisdiction of a Board.

Clause 72 authorises the Commissioner, in an urgent case, to make an interim order relating to a dispute, including a dispute within the exclusive jurisdiction of a Board.

Clause 73 precludes the Commissioner from making an order before the expiration of the time allowed for making submissions on the application for the order.

Clause 74 enables the Commissioner to amend an order to correct or clarify it or to extend a time and limits the duration of an order that is not an interim order or an order for damages.

Clause 75 specifies the persons on whom the Commissioner must serve a copy of an order and requires the order to be displayed by the relevant association or strata corporation.

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Division 4 - Orders by Boards

Clause 76 authorises a Board to make an order for settlement of a dispute that is referred to the Board even though it could have been made by the Commissioner.

Clause 77 enables a Board to make certain orders in relation to the expiration of the initial period for a scheme.

Clause 78 specifies orders that may be made by a Board in relation to a schedule of unit entitlements considered by the Board to be based on unreasonable valuations.

Clause 79 authorises a Board to amend a management statement in relation to a restriction, or a refusal to restrict, the use of association property or the common property under a strata scheme that is part of a community scheme.

Clause 80 specifies the circumstances in which a Board may order the revocation or amendment of an amendment to the management statement for an association.

Clause 81 authorises a Board to revoke so much of the management statement for an association as the Board considers to be invalid.

Clause 82 authorises a Board, except in specified circumstances, to invalidate a resolution passed, or an election held, at a meeting of an association in respect of which there was a failure to comply with the proposed Act.

Clause 83 authorises a Board to make certain orders in respect of a contribution levied, or proposed to be levied, by an association.

Clause 84 authorises a Board to order an association to vary an amount for which the association has effected insurance.

Clause 85 authorises a Board to appoint, and to specify the functions of, a managing agent for an association or for a strata corporation within a community scheme.

Clause 86 confers on a managing agent appointed by a Board an exclusive right to exercise a function conferred or imposed by the Board in making the appointment.

Clause 87 authorises a Board to amend or revoke an order made by it or another Board or by the Commissioner.

Division 5 - Appeal to a Board

Clause 88 provides for an appeal to a Board from an order (including an interim order) made by the Commissioner on an application for settlement of a dispute.

Clause 89 lays down the procedure for an appeal to a Board.

Clause 90 enables proceedings on an order of the Commissioner (including an interim order) to be stayed pending determination of an appeal to a Board against the order.

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Clause 91 deals with the determination of an appeal to a Board.

Division 6 - Boards generally

Clause 92 requires a Board to investigate an application to it for an order on a dispute or an appeal and enables it to dispense with formalities and the rules of evidence.

Clause 93 deals with appearances before a Board.

Clause 94 authorises a Board to issue a summons to give evidence or produce documents.

Clause 95 enables a Board to examine a witness on oath.

Clause 96 penalises contempt of a Board.

Clause 97 requires a Board, on making an order on an application or an appeal, to send the order and the relevant papers to the Commissioner.

Division 7 - Miscellaneous

Clause 98 enables ancillary provisions to be included in an order by the Commissioner or a Board and gives to an order requiring an association or strata corporation to do, or refrain from doing, a specified act the same effect as a resolution of the association or strata corporation.

Clause 99 provides for certain orders to take effect only when recorded in the Register under the Real Property Act 1900 and for other orders to take effect when made or as provided by the order.

Clause 100 provides for the circumstances in which, and the manner in which, a resolution of an association or strata corporation may alter the effect of an order made by the Commissioner or a Board.

Clause 101 penalises a contravention of an order made by the Commissioner or a Board.

Clause 102 confers on the Commissioner, and on the Magistrate constituting a Board, the same protections and immunities as a justice of the peace.

Clause 103 limits the jurisdiction of the Commissioner and a Board in determining a question of title to land.

Clause 104 precludes the making by the Commissioner or a Board of an order for costs.

Clause 105 limits the authority of an association or a strata corporation to make a levy for, or to pay from its funds, its costs and expenses in proceedings under Part 4 or on an appeal to the Supreme Court on a matter arising in any such proceedings. The object is to prevent a contribution being levied on a successful party for costs awarded to the party and against the association or strata corporation.

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PART 5 - PROCEEDINGS IN SUPERIOR COURTS

Clause 106 relates to orders that may be made by the Land and Environment Court in proceedings relating to a breach of a development contract.

Clause 107 enables the Land and Environment Court, in certain circumstances, to give approval to an amendment to a development contract that would otherwise require the approval of the relevant association.

Clause 108 provides for an appeal to the Supreme Court, on a matter of law, from a decision of a Community Schemes Board on a dispute.

Clause 109 refers generally to the jurisdiction of the Supreme Court and the Land and Environment Court under the proposed Act and the proposed Community Land Development Act 1989.

PART 6 - GENERAL

Clause 110 deals with mutual duties owed to each other by participants in a community scheme or a neighbourhood scheme that is not part of a community scheme.

Clause 111 enables a corporation to nominate a natural person to act for it in exercising a function under the proposed Act.

Clause 112 enables the Court that hears proceedings between an association and any of its members to control any levy to be made by the association for its costs and expenses in the proceedings.

Clause 113 enables legal proceedings to be taken by or against an association instead of by or against its members jointly.

Clause 114 provides for the manner of service on an association of a summons or other legal process.

Clause 115 provides for the manner of service of a notice or other document by the Commissioner and other persons on a member of an association or a person having an interest in a lot within a scheme.

Clause 116 makes provision for the status of access ways in the nature of roads within a community scheme or a neighbourhood scheme.

Clause 117 deals with the effect of the Dividing Fences Act 1951 in relation to a scheme.

Clause 118 deals with rights of entry conferred by an Act on a public authority.

Clause 119 imposes a duty on an association to notify its members of any notice given to the association under the Real Property Act 1900.

Clause 120 preserves any rights or remedies available apart from the proposed Act or the Strata Titles Act 1973 but requires the plaintiff to pay the costs if the Court finds that the taking of proceedings otherwise than under either of those Acts was not justified.

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Clause 121 requires proceedings for an offence under the proposed Act to be taken before a Local Court constituted by a Magistrate.

Clause 122 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 deals with the duties of an association in relation to:

- (a) the management of its association property and of its personal property; and
- (b) the keeping of records; and
- (c) financial matters; and
- (d) the implementation of its decisions.

Schedule 2 sets out in detail the covenants that arise as a consequence of the registration of a development contract for a community scheme, neighbourhood scheme or strata scheme.

Schedule 3 provides for the entries to be made in an association roll.

Schedule 4 deals with the duties of an association in relation to the availability of its records for inspection and the giving of certificates in relation to its affairs.

Schedule 5 contains:

- (a) in Part 1 - the provisions applicable to the calling and conduct of the first annual general meeting of a community association; and
- (b) in Part 2 - the provisions applicable to the calling and conduct of the first annual general meeting of a precinct association; and
- (c) in Part 3 - the provisions applicable to the calling and conduct of the first annual general meeting of a neighbourhood association.

Schedule 6 contains:

- (a) in Part 1 - the provisions applicable to the calling and conduct of a general meeting (including a special general meeting) of a community association other than the first annual general meeting; and
 - (b) in Part 2 - the provisions applicable to the calling and conduct of a general meeting (including a special general meeting) of a precinct association other than the first annual general meeting; and
 - (c) in Part 3 - the provisions applicable to the calling and conduct of a general meeting (including a special general meeting) of a neighbourhood association other than the first annual general meeting.
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