

[Act 1996 No 80]



Community Land Development Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Strata Titles Amendment Bill 1996* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Community Land Development Act 1989* (“the Principal Act”) with respect to the following:

- (a) development contracts (see Schedule 1),
- (b) public roads and public reserves (see Schedule 2),
- (c) access ways (see Schedule 3),
- (d) statutory easements (see Schedule 4),
- (e) miscellaneous matters (see Schedule 5).

The amendments proposed by Schedules 1–4 relate to the *community schemes*, *precinct schemes* and *neighbourhood schemes* dealt with by the Principal Act. Those are schemes that extend the *common property* concept (introduced by the *Strata Titles Act 1973*) to schemes involving conventional subdivisions. However, to avoid confusion, the Principal Act provides that,

instead of extending the meaning of the term *common property*, the relevant expressions for those schemes would be *community property* for a community scheme, *precinct property* for a precinct scheme and *neighbourhood property* for a neighbourhood scheme.

A community scheme is initiated by the registration of a *community plan* comprising 2 or more *community development lots* and another lot which would be community property for the use of participants in the community scheme.

A precinct scheme is initiated by the registration of a *precinct plan* subdividing a community development lot into 2 or more *precinct development lots* and another lot which would be precinct property for the use of participants in the precinct scheme. A community scheme need not include a precinct scheme.

A community development lot or precinct development lot is then subdivided by the registration of a *neighbourhood plan* comprising 2 or more *neighbourhood lots* for separate occupation (like a strata lot) and another lot for the use of participants in the neighbourhood scheme as neighbourhood property. Other development lots in the community scheme or precinct scheme could then be subdivided by the registration of another neighbourhood plan or a strata plan.

The Principal Act also provides for the establishment of neighbourhood schemes that do not form part of a community scheme or precinct scheme. The miscellaneous amendments proposed by Schedule 5 are explained later.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 gives effect to the proposed amendments set out in Schedules 1–5.

Schedule 1 Amendments relating to development contracts

Schedule 1 amends section 26 of the Principal Act.

- **Schedule 1 [1]** is intended to make it clear that the consent to be given by a council to the subdivision proposed by a neighbourhood plan is conditional on approval also being given by the council to a proposed development contract for the neighbourhood scheme. A *development contract* comprises instruments, plans and drawings that are registered

with a community plan, precinct plan or neighbourhood plan and describe the manner in which it is proposed to develop the land in the plan to which they relate.

- **Schedule 1 [2]** removes the compulsory imposition, as a condition of development consent to a community scheme or precinct scheme, or to the subdivision effected by a neighbourhood plan, of a requirement that the community, precinct or neighbourhood scheme be developed in accordance with the terms of a development contract. The imposition of the condition will be at the discretion of the council. Even if the council chooses not to impose such a condition, or chooses not to take any action for a breach of such a condition, the proprietors of lots within the scheme could take proceedings for breach of the development contract.
- **Schedule 1 [3]** is intended to make it clear that the development of a community scheme, precinct scheme or neighbourhood scheme may take place anywhere in the State and is not restricted to circumstances in which an environmental planning instrument requires development consent for a subdivision.

Schedule 2 Amendments relating to public roads and public reserves

Schedule 2 [1] amends Schedule 1 to the Principal Act to make it clear that a public road or a public reserve may be dedicated on the registration of a community, precinct or neighbourhood plan of subdivision, so that the opportunity for effecting such a dedication is not limited to registration of the original plan. The amendment would not enable a plan of subdivision to dedicate *association property* as a public road or public reserve, unless it is done under section 21 of the Principal Act. That section enables a neighbourhood association to make such a dedication *if it is a neighbourhood association that is not part of a community scheme*.

Schedule 2 [2] amends Schedule 11 to the Principal Act in order to deal with the situation that arises if a lot in a community plan, precinct plan or neighbourhood plan, or part of such a lot, having a unit entitlement, is proposed to be dedicated as a public road or a public reserve. When the lot is dedicated, it carries no unit entitlements, so that an adjustment of the unit entitlements for the scheme becomes necessary. The proposed amendment provides for the adjustment to be made in a way similar to that provided by Schedule 8 to the Principal Act on the severance of a community development lot from a community scheme or a precinct development lot from a precinct scheme.

Schedule 3 Amendments relating to access ways

The *Local Government Act 1993* has a definition of *public place* that includes places such as public roads and public reserves. The proposed amendments would adopt this definition.

Access within a community, precinct or neighbourhood scheme may be provided either by a public road, by an *open access way* or by a *private access way*. An open access way has many of the features of a public road, while a private access way is part of the *association property* in the scheme to which it relates. (Association property comprises community property, precinct property or neighbourhood property and is the equivalent of the common property in a strata scheme).

As access ways are created by inclusion in the management statement for the scheme involved, it is possible for an association, by altering its management statement, to close an access way or convert an open access way to a private access way. It is proposed to require the consent of all associations using the access way before such an alteration to a management statement may be made.

An access way may at present be linked only to a public road, so that there is no provision enabling an access way to be linked to any other public place such as a park. It is proposed to enable an access way to be linked to any public place.

Schedule 3 [1] proposes adoption of the definition of *public place* in the *Local Government Act 1993*.

Items [2]–[6] of Schedule 3 deal with open access ways

Schedule 3 [2] and **[3]** amend section 41 of the Principal Act which at present enables a part (but not all) of the land that is community property in a community scheme to be set apart as an open access way connecting the land and a public road. The proposed amendment would remove the present limitation applying the section to part only of the land and would also enable a means of open access to be provided in order to connect the land and *any* public place.

Schedule 3 [4] amends section 42 of the Principal Act which at present enables a part (but not all) of the land that is precinct property in a precinct scheme to be set apart as an open access way connecting the land and a public road. The proposed amendment would remove the present limitation applying the section to part only of the land and would also enable an open access way to be provided in order to connect *any* public place and:

- (a) a part of the precinct parcel, or
- (b) an open access way within the community parcel of which the precinct parcel forms part.

Schedule 3 [5] amends section 43 of the Principal Act which at present enables a part (but not all) of the land that is neighbourhood property in a neighbourhood scheme to be set apart as a means of open access connecting the land and a public road. The proposed amendment would remove the present limitation that enables only part of the land to be set apart and would also enable a means of open access to be provided in order to connect the land and *any* public place.

The proposed amendment would also limit section 43 to a neighbourhood scheme that is not part of a community scheme.

Schedule 3 [6] proposes to insert new sections 43A and 43B in the Principal Act.

- Section 43A would enable all or part of the land that is neighbourhood property in a neighbourhood scheme that is part of a community scheme to be set apart as a means of open access connecting *any* public place and:
 - (a) part of the neighbourhood parcel, or
 - (b) means of open access within the relevant community parcel.
- Section 43B relates to the closure of an open access way that connects *any* public place and land within a community parcel. The provision would prohibit the closure of such an access way without the authority of a unanimous resolution of each of the associations of which the members are entitled to use the access way. (A unanimous resolution is a resolution passed at a duly convened general meeting of an association *without a vote being cast against it.*)

Items [7]–[10] of Schedule 3 deal with private access ways

Schedule 3 [7] and **[8]** amend section 44 of the Principal Act which at present enables a part (but not all) of the land that is community property in a community scheme and is not an open access way to be set apart as a private access way connecting the land and a public road, or an open access way, within the community parcel. The proposed amendment would remove the present limitation applying the section to part only of the land and would also enable a private access way to be provided to connect the land and *any* public place.

Schedule 3 [9] amends section 45 of the Principal Act which at present enables a part (but not all) of the land that is precinct property in a precinct scheme and is not an open access way to be set apart as a private access way connecting the land and a public road or an open access way within the precinct parcel. The proposed amendment would remove the present limitation applying the section to part only of the land and would also enable a private access way to be provided to connect the land and a public place.

Schedule 3 [10] amends section 46 of the Principal Act which at present enables a part (but not all) of the land that is neighbourhood property in a neighbourhood scheme and is not an open access way to be set apart as a private access way connecting the land and a public road or an open access way within the neighbourhood parcel. The proposed amendment would remove the present limitation applying the section to part only of the land and would also enable a private access way to be provided to connect the land and a public place.

Schedule 4 Amendments relating to statutory easements

Schedule 4 amends section 36 of the Principal Act.

- **Schedule 4 [1]** amends the definition of *statutory easement* in section 36 (1). This is an easement conferring rights to enter land through which runs a *service line* such as a pipe or cable supplying water, gas, electricity, sewerage or drainage. Because it may be difficult to properly maintain a service line close to a boundary without entering land other than that subject to the easement, the proposed amendment would extend the easement to permit any necessary entry on adjoining land in order to provide or maintain a service line.
- **Schedule 4 [2]** requires the Registrar-General to be notified when a proposed service line is completed.
- **Schedule 4 [3]** requires the registration of a diagram that shows the actual location of a service line that is different from its proposed location.
- **Schedule 4 [4]** provides that if a service line is installed after registration of the management statement, the developer must, within 1 month after the installation (rather than after “a reasonable time”) give a copy of the prescribed diagram for the service line to the relevant association.

- **Schedule 4 [5]** adds to the implied covenants by the proprietor of the land to which the statutory easement is appurtenant.
- **Schedule 4 [5]** also provides for the making in the Register kept under the *Real Property Act 1900* of such entries relating to the statutory easement as the Registrar-General thinks fit.

Schedule 5 Other amendments

Schedule 5 [1] amends the definition of *public authority* which at present states only that the expression includes the council of a city, municipality or shire. Because of changes made by the *Local Government Act 1993*, the proposed amendment refers to a council by reference to that Act and extends the definition to include a corporation prescribed by the regulations as a public authority.

Schedule 5 [2]–[5] make some amendments by way of statute law revision.

Schedule 5 [6] validates certain actions taken before the commencement of amendments made by the proposed Act.