

COMMUNITY LAND DEVELOPMENT BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Community Land Management Bill 1989;

Strata Titles (Community Land) Amendment Bill 1989;

Miscellaneous Acts (Community Land) Amendment Bill 1989.

Since the enactment of the Conveyancing (Strata Titles) Act 1961 (repealed and replaced by the Strata Titles Act 1973) the concept of "common property" vested in a body corporate of which the members are the proprietors of the lots in a strata scheme has become familiar.

The "common property" concept was developed in order (to take a simple case) to provide for a common means of access to the separately owned parts of the building and for shared responsibility for such matters as the maintenance of the structure of the building. In many strata schemes, the common property has come to include such amenities as a swimming pool.

The object of this Bill is to extend the common property concept to schemes involving conventional subdivisions. A "community scheme" would be initiated by registration of a "community plan". The community plan would comprise 2 or more "community development lots" and another lot which would be "community property" for the use of participants in the community scheme.

In some community schemes, a community development lot or lots would then be subdivided by a precinct plan comprising 2 or more "precinct development lots" and another lot which would be "precinct property". This subdivision would initiate a "precinct scheme" as a "subsidiary scheme" within the community scheme, the precinct property being for the use of participants in the precinct scheme.

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Some community schemes would not include precinct schemes.

A development lot, being:

- (a) a precinct development lot in a community scheme that includes precinct schemes; or
- (b) a community development lot in a community scheme that does not include precinct schemes,

may in turn be subdivided by a "neighbourhood plan". The other development lots in the scheme would be subdivided either by a neighbourhood plan or by a strata plan under the Strata Titles Act 1973.

A neighbourhood plan would consist of 2 or more "neighbourhood lots" for separate occupation and another lot which would be neighbourhood property. Its registration would create a "neighbourhood scheme", the neighbourhood property being for the use of participants in the neighbourhood scheme.

A neighbourhood scheme or strata scheme initiated by subdivision of a precinct development lot would be a subsidiary scheme within:

- (a) the precinct scheme; and
- (b) the community scheme under which the precinct scheme is a subsidiary scheme.

A neighbourhood scheme or strata scheme initiated by subdivision of a community development lot would be a subsidiary scheme within the community scheme.

The Bill also provides for neighbourhood schemes that are not part of a community scheme. These would be initiated by registration of a neighbourhood plan subdividing land other than a development lot into 2 or more lots for separate occupation and another lot which would be neighbourhood property.

The registration of a community plan would constitute a corporation (referred to as a "community association") in which the community property in the community plan would vest.

The registration of a precinct plan would constitute a corporation (referred to as a "precinct association") in which the precinct property in the precinct plan would vest.

The registration of a neighbourhood plan would constitute a corporation (referred to as a "neighbourhood association") in which the neighbourhood property in the neighbourhood plan would vest.

This Bill deals with the registration of community plans, precinct plans, neighbourhood plans and related documents, matters affecting association property and access ways within a scheme and the effect of a resumption of land in a scheme.

The expression "association property" is used to describe community property, precinct property and neighbourhood property. The expression "common property" is retained in relation to strata schemes.

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As in strata schemes, matters such as the value of votes on a poll among members of an association and the proportionate shares in association property are based on the concept of "unit entitlements" representing the comparative values of lots in the relevant scheme.

The cognate Community Land Management Bill 1989 deals with the management of a community scheme, precinct scheme or neighbourhood scheme constituted on the registration of a community plan, precinct plan or neighbourhood plan.

If a community scheme is to include a strata scheme, the Strata Titles Act 1973 will continue to deal with the registration of the strata plan and related documents and (with some exceptions) with the management. The proposed Act will, however, deal with resumptions of land in a strata scheme that is part of a community scheme.

References in this Explanatory Note, and in the proposed Act, to a strata scheme and related matters apply only to a strata scheme that is a subsidiary scheme within a community scheme.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

Clause 4 excludes from registration under the proposed Act a subdivision that should be effected under the Strata Titles Act 1973. It also provides for the proposed Act to bind the Crown except in relation to obtaining approvals and certificates from a consent authority (local council).

PART 2 - COMMUNITY SCHEMES AND PRECINCT SCHEMES

Clause 5 provides for the registration of a community plan subdividing land into 2 or more community development lots and another lot that is community property. There must be lodged with the plan a community management statement setting out rules for the day-to-day management of the community scheme. There may be lodged with the plan a development contract explaining the manner in which (including the stages in which) it is proposed to develop the community scheme.

Clause 6 enables minor adjustments to be made to the boundaries shown on a community plan.

Clause 7 enables 2 or more, but not all, of the community development lots in a community plan to be consolidated.

Clause 8 enables a community development lot to be subdivided into 2 or more community development lots.

Clause 9 provides for the registration of a precinct plan subdividing a community development lot into 2 or more precinct development lots and another lot that is

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precinct property. There must be lodged with the precinct plan a precinct management statement setting out rules for the day-to-day management of the precinct scheme. There may be lodged with a precinct plan a development contract explaining the manner in which (including the stages in which) it is proposed to develop the precinct scheme.

Clause 10 enables minor adjustments to be made to the boundaries shown on a precinct plan.

Clause 11 enables 2 or more, but not all, of the precinct development lots in a precinct plan to be consolidated.

Clause 12 enables a precinct development lot to be subdivided into 2 or more precinct development lots.

Clause 13 sets out the procedure for subdividing a development lot by a neighbourhood plan or a strata plan in order to constitute a subsidiary scheme within the community scheme, and any precinct scheme, of which the development lot forms part. A neighbourhood plan must be accompanied by a development contract explaining the manner in which it is proposed to develop the neighbourhood scheme.

Clause 14 enables a community development lot to be converted to community property and a precinct development lot to be converted to precinct property instead of being subdivided by a neighbourhood plan or a strata plan.

Clause 15 sets out the procedure to be followed in order to sever a development lot from a community scheme or a precinct scheme.

Clause 16 enables a community association or a precinct association to add to its association property by taking land on lease.

Clause 17 enables a community association or precinct association to grant a lease of some, but not all, of its association property that is not held by it on lease.

PART 3 - NEIGHBOURHOOD SCHEMES

Clause 18 provides for the registration of the neighbourhood plan for a neighbourhood scheme that is not a subsidiary scheme within a community scheme. There must be lodged with such a plan:

- (a) a development contract explaining the manner in which it is proposed to develop the neighbourhood scheme; and
- (b) a neighbourhood management statement setting out proposed rules for the day-to-day management of the neighbourhood scheme.

Clause 19 enables 2 or more (but not all) of the neighbourhood lots in a neighbourhood scheme to be consolidated.

Clause 20 enables a neighbourhood lot to be converted to neighbourhood property.

Clause 21 enables a neighbourhood association to dedicate neighbourhood property to open or widen a public road or to create a public reserve or a drainage reserve.

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Clause 22 provides for various ways in which neighbourhood lots, and neighbourhood property, may be subdivided.

Clause 23 enables a neighbourhood association to acquire additional neighbourhood property by way of lease or, if the neighbourhood scheme is not a subsidiary scheme, by way of transfer.

Clause 24 enables a neighbourhood association to grant a lease of any of its neighbourhood property that is not held by it on lease and, if the neighbourhood scheme is not a subsidiary scheme, enables it to transfer some of its neighbourhood property.

PART 4 - COMMUNITY SCHEMES, PRECINCT SCHEMES AND NEIGHBOURHOOD SCHEMES

Clause 25 provides for the constitution:

- (a) on registration of a community plan - of a corporation named as a community association with the same number as the registered plan; or
- (b) on registration of a precinct plan - of a corporation named as a precinct association with the same number as the registered plan; or
- (c) on registration of a neighbourhood plan - of a corporation named as a neighbourhood association with the same number as the registered plan.

This clause also provides for the membership and functions of the corporations to be as prescribed by the proposed Community Land Management Act 1989 (cognate Bill).

Clause 26 relates to the functions of a consent authority (local council) in relation to:

- (a) development consent to a community scheme or precinct scheme the subject of a proposed (optional) development contract; or
- (b) development consent to a neighbourhood scheme the subject of a proposed (mandatory) development contract.

Clause 27 provides for the registration of an amendment made under the proposed Community Land Management Act 1989 to a development contract.

Clause 28 provides for registration of a notification of expiration of the initial period for a community scheme, a precinct scheme or a neighbourhood scheme. The initial period for a scheme is the period during which the developer of the scheme has at least two-thirds of the voting power on a poll conducted among members of the association constituted under the scheme.

Clause 29 imposes requirements for initial and revised schedules of unit entitlements applicable under a community scheme, precinct scheme or neighbourhood scheme.

Clause 30 sets out the procedure for obtaining a revised schedule of unit entitlements for a scheme.

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Clause 31 vests:

- (a) in a community association - the community property in the community scheme; and
- (b) in a precinct association - the precinct property in the precinct scheme; and
- (c) in a neighbourhood association - the neighbourhood property in the neighbourhood scheme,

as agent for the member, or members, of the association.

Clause 32 bases on unit entitlements the proportionate share in association property held by the members of an association.

Clause 33 restricts dealings in association property to those provided for under the proposed Act and the proposed Community Land Management Act 1989.

Clause 34 provides a procedure under which a public authority may, as an alternative to resumption, purchase land (including association property) the subject of a community scheme, precinct scheme or neighbourhood scheme.

Clause 35 enables a community association:

- (a) to create or accept an easement, or a restriction on use, that burdens or benefits the community property or the community parcel; or
- (b) to release, or accept the release of, such an easement or restriction on use other than the statutory easement referred to in clause 36.

The clause also enables a precinct association or neighbourhood association to act in a similar manner.

Clause 36 creates a statutory easement for the passage within a community scheme, a subsidiary scheme or a neighbourhood scheme that is not part of a community scheme of water, sewerage, drainage, gas, electricity and electronic services, and other services.

Clause 37 deals with the registration of additional and replacement sheets for a community plan, a precinct plan or a neighbourhood plan.

Clause 38 enables the Registrar-General to simplify a schedule of unit entitlements.

Clause 39 provides for the registration of an amendment to a management statement made under the proposed Community Land Management Act 1989.

Clause 40 deals with the registration of certain orders made by a Community Titles Board constituted under the proposed Community Land Management Act 1989 or by a Court.

PART 5 - ACCESS TO SCHEMES

Proposed Part 5 deals with the internal road network in a community scheme, precinct scheme or neighbourhood scheme.

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Proposed Division 1 (clauses 41-43) provides for the setting apart as open access ways of parts of the association property in a scheme. These would provide access to the scheme by the general public.

Proposed Division 2 (clauses 44-46) provides for the setting apart of private access ways of parts of the association property in a scheme. These would be roads connected to open access ways and a public road but would be for use only by participants in the scheme and their invitees.

Proposed Division 3 consists of:

Clause 47 which retains access ways as association property and excludes the operation of the Local Government Act 1919 in so far as it would otherwise vest the access way in the local council.

Clause 48 which excludes in relation to an access way the rule of law under which the owner of adjoining land would otherwise have title to the access way up to the middle line of the road. It also limits the rights of an adjoining owner to those conferred by the proposed Act and the proposed Community Land Management Act 1989.

PART 6 - RESUMPTIONS

Clause 49 provides for proposed Part 6 to prevail if it is inconsistent with another Act. The proposed Part applies only to resumptions of land within a community scheme, precinct scheme or neighbourhood scheme, or a strata scheme that is within a community scheme.

Clause 50 requires a notice of resumption to state whether or not the land resumed is excluded from the related scheme and deals with the consequences of such an exclusion.

Clause 51 requires the resumption:

- (a) of the whole of a community parcel if it is proposed to resume all the community property or all the development lots (including those already subdivided) in the community parcel; or
- (b) of the whole of a precinct parcel if it is proposed to resume all the precinct property or all the precinct development lots (including those already subdivided) in the precinct parcel; or
- (c) of the whole of a neighbourhood parcel if it is proposed to resume all the neighbourhood property, or all the neighbourhood lots, in the neighbourhood parcel; or
- (d) of the whole of a strata parcel if it is proposed to resume all the common property, or all the strata lots, in the strata parcel.

Clause 52 requires a resuming authority, before resuming a community parcel, precinct parcel, neighbourhood parcel or strata parcel, to apply to the Supreme Court for an order terminating the related scheme if the resumed land is to be excluded from the scheme.

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Clause 53 requires a resuming authority to apply to the Supreme Court for an order dealing with the consequences of a proposed resumption other than a resumption of part only of the association property or common property in a scheme.

Clause 54 deals with the recordings to be made by the Registrar-General where resumed land excluded from a scheme is the whole of a development lot, neighbourhood lot or strata lot.

Clause 55 requires a resuming authority to apply for certain orders from the Supreme Court if it is proposed to resume part only of a development lot, neighbourhood lot or strata lot without its exclusion from the related scheme.

Clause 56 requires a resuming authority to lodge certain plans with the Registrar-General if part of a lot (not being association property or common property) in a scheme is resumed without being excluded from the scheme.

Clause 57 requires a resuming authority to apply for certain orders from the Supreme Court relating to the residue of a development lot, neighbourhood lot or strata lot part of which will be excluded from the related scheme when resumed.

Clause 58 requires a resuming authority to lodge certain plans with the Registrar-General if part of a lot (not being association property or common property) in a scheme is to be resumed and is to be excluded from the scheme.

Clause 59 requires a resuming authority to lodge certain plans with the Registrar-General before resuming part only of the association property or common property in a scheme.

Clause 60 deals with requirements to be complied with before registration by the Registrar-General of a resumption of part only of the association property or common property in a scheme.

Clause 61 denies to the resuming authority any interest in association property or common property if other land in the scheme is resumed and excluded from the scheme.

Clause 62 specifies the persons entitled to be served with notice of an application under the proposed Part to the Supreme Court.

Clause 63 enables the Supreme Court to direct that an application to it under the proposed Part be dealt with as an application under the proposed Community Land Management Act 1989 (cognate Bill) to vary or terminate the relevant scheme.

Clause 64 requires the resuming authority to pay the costs of an application to the Supreme Court unless the Supreme Court otherwise directs.

Clause 65 requires compensation for the resumption of part of a lot to be assessed having regard to the effect of the resumption on the residue of the lot.

Clause 66 requires compensation for the resumption of association property or common property to be paid by the resuming authority to the community association, neighbourhood association or strata corporation in which the property was vested.

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Clause 67 deals with the situation that arises when the proposed provisions relating to resumptions are not complied with because the resuming authority is not bound by the proposed Act.

Clause 68 deals with the consequences of a resumption under which the resumed land is excluded from the relevant scheme.

Clause 69 provides for the continuation within a scheme of land that is not excluded by a notice of resumption and comprises the whole of the parcel or land that is not association property or common property.

PART 7 - VARIATION OR TERMINATION OF SCHEME

Clause 70 enables the Supreme Court to vary a development contract for a scheme, or vary or terminate a scheme, if satisfied that completion or continuation of the scheme has become impracticable.

Clause 71 sets out the procedure for an application to the Supreme Court to vary a development contract or vary or terminate a scheme.

Clause 72 enables the Registrar-General to terminate a neighbourhood scheme that is not part of a community scheme on the application of the neighbourhood association and the proprietors of the neighbourhood lots.

Clause 73 gives effect to an order of the Registrar-General terminating a neighbourhood scheme.

PART 8 - GENERAL

Clause 74 gives effect to proposed Schedule 12 providing for transitional matters, particularly in relation to existing subdivisions.

Clause 75 enables the Governor to make regulations for the purposes of the proposed Act.

SCHEDULES

Proposed Schedule 1 sets out the basic requirements for the plans for which provision is made by the proposed Act.

Proposed Schedule 2 sets out the matters for which a development contract must provide but this does not preclude provision for other matters.

Proposed Schedule 3 sets out the matters for which a community or precinct management statement must provide but this does not preclude provision for other matters.

Proposed Schedule 4 sets out the matters for which a neighbourhood management statement must provide but this does not preclude provision for other matters.

Proposed Schedule 5 specifies certain recordings required to be made by the Registrar-General in relation to association property.

Proposed Schedule 6 sets out certain requirements to be complied with for the conversion of a development lot to association property.

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Proposed Schedule 7 sets out certain requirements to be complied with for the conversion of a neighbourhood lot to neighbourhood property.

Proposed Schedule 8 sets out certain requirements to be complied with for the severance of a development lot from a community scheme or a precinct scheme.

Proposed Schedule 9 sets out the documents required to accompany a lease or transfer adding land to association property.

Proposed Schedule 10 sets out the requirements to be complied with in relation to various dealings with association property.

Proposed Schedule 11 sets out the requirements for an initial schedule of unit entitlements.

Proposed Schedule 12 sets out transitional provisions, including provisions for the conversion to a scheme under the proposed Act of certain existing kinds of subdivision of land.
