P. Hamilton
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20/9/89

NEW SOUTH WALES

MINISTER FOR NATURAL RESOURCES

With Compliments

Ian Causley, M.P.

Minister for Natural Resources

Proposed Community Titles Legislation

I propose to introduce legislation into Parliament during the current session to permit a new form of land subdivision in New South Wales known as community titles.

As the legislation is both lengthy and complex, I consider that information should be made available to Members prior to introducing the legislation into Parliament. The attached booklet is provided to enable Members to become familiar with the key features of the concept and to facilitate informed debate on the proposals.

My officers in the Land Titles Office are available to discuss any feature of the legislation and further information may be obtained by contacting Mr. Len Hawthorne, Assistant Director, on telephone 228 6703.

J R Causley

LAND TITLES OFFICE
NEW SOUTH WALES

AN INTRODUCTION TO THE PROPOSED COMMUNITY TITLES LEGISLATION

MAY 1989

NEW SOUTH WALES

MINISTER FOR NATURAL RESOURCES

PROPOSED COMMUNITY TITLES LEGISLATION

Since the recent announcement by the Government of its intention to facilitate land development in New South Wales by introduction of the proposed community titles legislation, the widespread expressions of interest in the proposals has highlighted the need for the availability of a brief explanation of the relevant principles involved.

This booklet has been prepared in the Land Titles Office for that purpose as a service to all persons and organisations associated with the land development industry.

While I am confident the booklet will enable interested parties to derive a basic understanding of the community title concept, I trust readers will appreciate that information concerning the proposals must necessarily be framed in general terms pending the Government assessing the legislation in draft Bill form.

I also trust it will be evident to all concerned that the proposals, which are quite innovative, will bring significant benefit to the community and will permit new levels of sophistication in land developments in New South Wales.

Ian Causley

I.R. CAUSLEY, M.P.,
MINISTER FOR NATURAL RESOURCES.

PROPOSED COMMUNITY TITLES LEGISLATION

The community titles legislation is designed to fill the vacuum between conventional subdivision and strata subdivision which are the only existing methods of subdividing land in New South Wales. The effect of the legislation will be to enable common property to be created within a conventional subdivision.

In addition to extending the concept of the shared use of common facilities to subdivisions which might consist of no more than vacant blocks of land, the legislation will also provide for the development of planned communities of any type where the use of some of the land is shared. It will enable development of non-stage schemes or of schemes comprising several stages over an unlimited time frame, and will permit projects ranging in size from small groups of houses clustered around common open space to large communities with shared roadways and facilities based on commercial, sporting, recreational or agricultural features.

As is the case with the strata legislation, common areas within a development will be owned and managed by a body corporate (known as an association) comprising all lot owners. The association will own the common property as agent for its members in shares proportional to the members' unit entitlement, based on site values, which will determine voting rights and contributions to maintenance levies.

However, as a means of overcoming the limiting effect of the strata legislation, which does not facilitate the promotion of theme developments or mixed developments containing separate areas for residential, commercial, recreation and industrial uses, the proposed legislation will provide the machinery for flexibility in the management and administrative arrangements operating within a scheme. This necessary degree of flexibility will be achieved by providing for a multi-tiered management concept and by permitting a management statement to be prepared for each scheme, setting out the rules and procedures relating to the administration of, and participation in, the scheme.

The new subdivision concept will facilitate government initiatives to provide a legislative framework for medium density housing and will also permit the construction of major resort developments in New South Wales.

The proposed legislation will contain a number of significant features to permit its application to a wide variety of developments and to provide sufficient flexibility to maximise its use by developers. The features are as follows:

1. Stage development of schemes

The legislation will permit community schemes to be completed in stages. This will have several advantages:

- initial development costs will be lower because one stage can be used to finance the construction of later stages;
- higher density may be achieved;
- with an amalgamated site, greater flexibility of design will permit the more appropriate siting of buildings in sympathy with each other and with the environment. The legislation will thus promote the more effective use of land than existing forms of subdivision;
- purchase prices should be lower if the initial development costs are reduced.

Because staged projects may be completed over a period of several years, it is proposed that developers be given sufficient flexibility to alter schemes to adapt to changing social and economic circumstances. However, within each stage of the scheme, developers will be required to make a disclosure of all details relating to the particular stage being undertaken, and this disclosure will be incorporated in a development contract binding on the developer and proprietors of lots within that stage.

It is proposed that the legislation should enable a developer to amend a scheme prior to completion and this is referred to in greater detail in paragraph 5 below headed "flexibility of development".

2. Non-stage development

The proposed legislation will permit developers to undertake non-stage subdivisions and such developments will be known as neighbourhood schemes. Upon registration of the related subdivision plan which will be termed a neighbourhood plan, a body corporate known as a neighbourhood association will be created.

A developer undertaking a neighbourhood scheme will be required to disclose at the outset whether facilities are to be constructed on the common property (known as neighbourhood property). The disclosure will be contained in a development contract which will accompany the neighbourhood plan when lodged for registration and which will be binding on the developer and subsequent purchasers.

3. Management structures

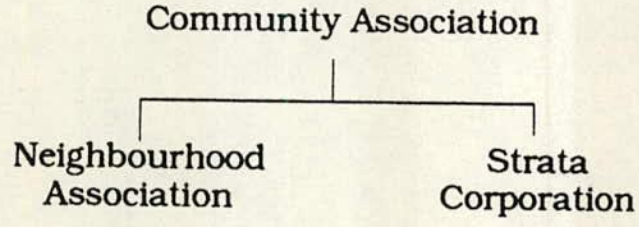
A multi-tier management concept is regarded as a key feature of the proposed legislation. Experience has shown that the management and related provisions of the strata legislation are inadequate to cope with the managerial aspects of large scale developments. The concept is designed to overcome these deficiencies and enable promoters to develop large scale schemes in the knowledge that there is adequate statutory support to ensure that the schemes may be effectively managed in the future.

The multi-tier management concept will apply only to schemes which are developed in stages. Accordingly, only one level of management will be permitted in a non-stage scheme. However, the premise that it should be discretionary upon the developer to determine whether a scheme should be developed in stages and, if so, the resulting management structure which should apply, will not be prejudiced by the proposed legislation.

A two tier or the maximum three tier management structure will apply where a stage development is undertaken. The first plan to be lodged for registration will be a community plan, and upon registration of the plan a community association will come into existence. It would be entrusted with the first tier of management and would exercise "umbrella" control over matters concerning the community as a whole. For example, the community association may be concerned with maintenance of the overall community theme, architectural guidelines, security, road network and landscaping.

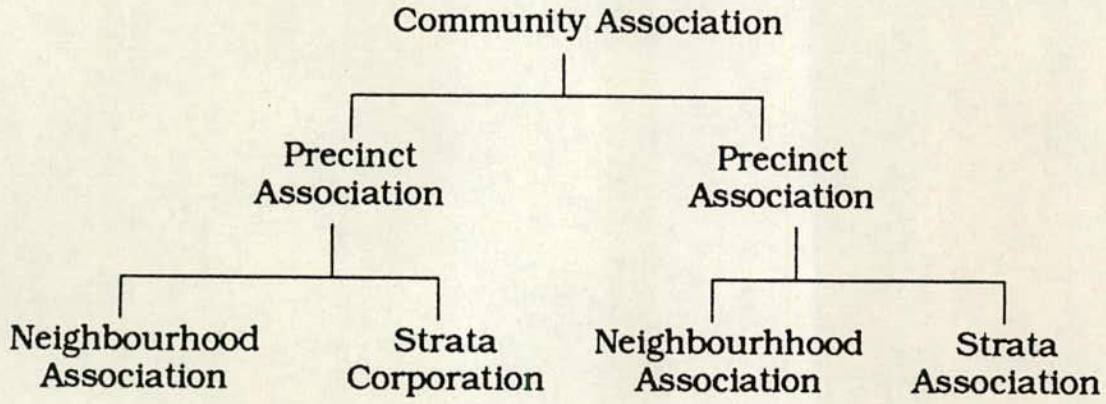
In a proposed two tier managerial structure, the second tier of management is created by registration of a neighbourhood plan subdividing a development lot in a community plan into lots for separate use or disposition. The neighbourhood scheme will be administered by a neighbourhood association which will automatically become a member of the community association. Alternatively, development lots may be subdivided by strata plans, in which case the strata body corporate created upon registration of the strata plan (known as a strata corporation) would become a member of the community association and would constitute the second level of management

The resulting levels of management would be as follows:



Where a developer wishes to create three levels of management, this may be done by interposing a precinct association between the community

association and any neighbourhood association or strata corporation as follows:



Thus the three tier management structure is created in the following way: a community plan divides land into development lots and community property, giving rise to a community association. A precinct plan is then prepared, subdividing one of the development lots into precinct lots and precinct property. Upon registration of the precinct plan, a precinct association comes into being. A precinct lot is then subdivided by a neighbourhood plan or a strata plan, giving rise to a neighbourhood association or strata corporation, the third tier of management.

4. Management statement

Because the common areas are owned and managed by proprietors of lots in a community scheme, the legislation will give statutory recognition to the need for adoption of management rules and conditions that are especially relevant to the particular development concerned. The proposed legislation recognises that the management provisions essential to the effective administration of, for example, a retirement scheme, would be substantially different from those applying within a rural community or a scheme established for special sporting or recreational activities.

All management and related details applying within a scheme will be set out in a management statement which will be binding on all participants in the scheme and would be made available to any prospective purchaser for inspection. The management statement will accompany the relevant plan lodged for registration at the Land Titles Office. The statement will include the particular rules associated with participation in the scheme and the by-laws attaching to related common property.

While the proposed legislation will list a number of issues which must be accommodated in the rules or by-laws attaching to community schemes, the terms in which those particular issues and other relevant matters are

addressed in the management statement will be left to the discretion of the developer.

The use of a management statement provides sufficient flexibility to adapt management requirements to the type of development undertaken. For example, where the scheme includes a private road network which is not deemed to be public road (see later in paragraph 9), the community association may establish appropriate rules for the use of such roads. Where the scheme includes private waterways, their use may similarly be regulated in the management statement.

The legislation will also recognise that circumstances may arise where it is necessary or desirable to vary the terms of a management statement, and in such cases protective measures will be included to ensure that a variation may not be effected without participants taking part in the decision-making process.

5. Flexibility of development

In a stage scheme, it is possible that the development may take several years to complete. During that time, events beyond the control of the developer may affect the viability of the project and may necessitate changes to the scheme. Alternatively, market forces might compel the developer to alter the scheme before completion.

Flexibility will be provided by not requiring the developer at the outset to disclose in a binding form a description of the whole scheme. Thus, later stages of a development project may be amended without the need for approval from residents in the scheme, provided the developer:

- complies with existing planning laws governing the amendment of any local environmental plan, development control plan or development consent; and
- obtains the approval of the council.

However, developers who wish to make a full disclosure of all particulars of a project at the commencement of the scheme will be permitted to voluntarily furnish a development contract for the community development binding on the developer and enforceable by all participants in the scheme. This option will be particularly attractive for developers who wish to make binding commitments in order to secure higher prices in the market place.

Where at some point during construction of the scheme a developer decides to depart from the development approval granted by council, it may be necessary to apply to the council for a variation of the development consent (or, in some cases, the development control plan or the local environmental plan). The council will publicly advertise applications to amend a development control plan or local environmental plan. In addition, where

the developer makes application to the council for an amendment to the development consent, it is proposed that the legislation require the council to notify the association and community members owning land adjacent to the land affected by the application.

Although the developer may change the sequence and type of development as the scheme progresses, within each stage the developer must make a binding declaration of the contents of that stage. Before registration of a precinct or neighbourhood plan, the developer will be required to fully disclose all details of the stage in a development contract. The contract will be deemed to be a binding agreement between the developer and subsequent lot owners within the stage described in the contract, and may only be varied with the consent of owners of lots in that stage.

The development contract therefore provides a contractual obligation on the developer to complete the stage. On the other hand, as the development contract will set out particulars regarding the building zone, hours of work, means of access, rights of storage of building equipment and other necessary matters, the developer will be ensured of sufficient power to complete the stage.

6. Maintenance of existing functions of local councils

The above discussion highlights the fact that the zoning and planning legislation and its administration by local councils will be largely unaffected by the new laws.

Plans of community schemes will essentially be land subdivisions and will require council approval in the manner already provided in the Local Government Act 1919 and the Environmental Planning and Assessment Act 1979. Councils in most cases where a staged scheme is being undertaken will continue to prepare a development control plan setting out in some detail the contents of the scheme. Developments must either fit existing zoning requirements or an application for rezoning will be required. Changes to schemes involving amendment of the local environmental plan, development control plan or development consent will also require the approval of council.

The alternatives available to a developer proposing to develop a scheme in stages are:

- to obtain council approval for the whole scheme at the outset;

  or

- to obtain council approval separately for each stage.

However, should these options prove inadequate, consideration will be given to amending the Environmental Planning and Assessment Act to expand the concept of the staged approval process. This would permit councils to approve the whole project in principle at the outset and to separately approve detailed development applications for each stage of the scheme.

Prospective purchasers will continue to have the opportunity to obtain details of any local environmental plan, development control plan or development consent affecting the scheme from the local council.

7. Conversion of existing schemes to community title

The legislation will recognise that there are developments presently being undertaken which would be more appropriately completed under the community titles legislation. It is therefore envisaged that the legislation may permit where appropriate, and where participants in the scheme consent:

- the conversion of land subdivisions to neighbourhood schemes where, for example, one lot is owned jointly by the proprietors of all the remaining lots and is, in effect, the equivalent of "common property";
- the conversion of existing strata developments to community schemes;
- the conversion to neighbourhood schemes of what are essentially land subdivisions effected by strata plans;
- the formation of a community scheme by adjoining strata schemes which retain their separate identity.

8. Flexibility of creation of easements for services

Another measure considered essential in a community is provision for a system of reciprocal statutory easements for services over all lots and common property within a scheme. In conventional subdivisions, services are normally supplied through the public road grid. However, under the proposed legislation, services may be supplied through the land within the community, none of which may be public land. It is proposed that the extent of the easements would be limited to the physical service lines and that access for maintenance or similar purposes would be by way of ancillary rights.

The easements would be created by the statute rather than by instrument and will be limited to the physical service lines. The location of the pipes

and cables affected by the easements will be shown on a working plan forming part of the management statement lodged at the Land Titles Office.

Where the services have not been installed at the time of lodgment of the plan, so that the location of statutory easements has not been settled, the developer will be required to lodge with the community, precinct or neighbourhood plan as part of the management statement a plan showing a strip of land as a proposed site of easements. Services must subsequently be installed within the strip of land.

9. Private road networks

It is envisaged that the legislation will enable private roads to be established in two ways:

- roads forming part of the common property may be deemed to be public roads to which the normal motor traffic regulations apply. Regulations controlling traffic policy and safety, including rights of enforcement by police and compliance with usual compulsory insurance provisions, will automatically apply to such roads.
- roads may also be established as part of the common property and yet not be deemed to be public roads. The use of such roads would be regulated by appropriate by-laws set out in the management statement. Roads of this nature would, for example, facilitate the introduction of security measures in appropriate developments.

10. Adjustment of boundaries

The proposed legislation will also recognise that in a stage development there may be instances where some adjustment is required of the boundaries of development lots with community property shown on the original community plan. It is envisaged that during the course of a development, especially a large scheme planned for development over a period of several years, minor changes of this nature may become necessary due, for example, to engineering factors. It is proposed that these changes should be effected simply by registration of a boundary adjustment plan which would correct the boundaries of the development lots and community property or precinct lots and precinct property without any further assurance.

This simplified procedure is specifically designed to enable changes to be made without the expense associated with usual conveyancing procedures yet with proper protection of the interests of existing associations whose consents would be endorsed on the plans. This procedure would also obviate the need for the issue of replacement certificates of title to reflect

the adjusted boundaries, as it is proposed that the boundary adjustment plan would simply supersede the community plan as originally drawn by assuming the same plan number and the same lot numbering sequence as the original plan.

11. Restricted common property

Another key feature of the proposed legislation is the adoption of the "restricted common property" concept. Restricted common property within a scheme may be determined at the outset of the development by means of a suitable inclusion in the management statement, or subsequently by means of a special resolution by the association.

Restricted common property will be managed and maintained by the association in accordance with the management statement which must specify the nature and extent of the restrictions, the parties within the community benefiting and details relating to matters such as access, maintenance or hours of use.

12. Disputes

In any such group-based schemes with shared facilities and resources there are likely to be disputes, both between proprietors individually and with the body corporate. The proposed legislation will make provision for disputes to be dealt with by a Community Titles Commissioner and Community Titles Boards in a manner similar to the resolution of disputes in strata schemes by the Strata Titles Commissioner and Strata Titles Boards.

13. Plan information

Plans of community subdivisions will essentially be land subdivisions based on survey information and will therefore require council approval under the Local Government Act 1919 and the Environmental Planning and Assessment Act 1979.

Plans lodged under the legislation will be a special class of deposited plan, clearly distinguishable from other deposited plans by a distinctive notation and numbering.

In relation to survey requirements, as the status of the land comprising the road system within a community will generally be common property, the usual requirement for the placement of permanent marks within roads may not apply. As this could result in there being no internal marking of a substantial and permanent nature, the proposed legislation will require that the internal survey marking system will incorporate permanent marks placed under Regulation 12 of the Survey Practice Regulations 1933 of the type specified in the Survey Co-ordination Act 1949 or otherwise approved

by the Surveyor General and will be in positions determined with the concurrence of the Surveyor General.

Further information from the Land Titles Office may be obtained by contacting

Steve McFadzean, Principal Legal Officer, on telephone (02) 228 6701
Len Hawthorne, Assistant Director, on telephone (02) 228 6703.