



New South Wales

Community Land Development Bill 2020

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Community Land Management Bill 2020* is cognate with this Bill.

Overview of Bill

The object of this Bill is to repeal and re-enact the *Community Land Development Act 1989*.

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act.

Clause 4 provides for the interpretation of the proposed Act and provides that the proposed Act is to be interpreted as part of the *Real Property Act 1900*.

Clause 5 defines *community scheme* for the purposes of the proposed Act.

Clause 6 defines *precinct scheme* for the purposes of the proposed Act.

Clause 7 defines *neighbourhood scheme* for the purposes of the proposed Act.

Part 2 Establishment of schemes

Clause 8 provides for the establishment of a community scheme and the constitution of the community association for the community scheme.

Clause 9 provides for the establishment of a precinct scheme on a development lot in a community scheme and the constitution of the precinct association for the precinct scheme.

Clause 10 provides for the establishment of a neighbourhood scheme either as a standalone scheme or on a development lot in a community scheme or a precinct scheme. The proposed section also provides for the constitution of the neighbourhood association for the neighbourhood scheme.

Clause 11 excludes a community association, precinct association and neighbourhood association in relation to the whole of the *Corporations Act 2001* of the Commonwealth.

Clause 12 sets out the requirements for the registration of a scheme plan.

Clause 13 provides for the subdivision of a community development lot or a precinct development lot by the registration of a strata plan that includes common property and sets out obligations for the Registrar-General on the registration of a strata plan.

Part 3 Plans and instruments affecting schemes

Division 1 Plans of subdivision and consolidation

Clause 14 permits a community plan of subdivision, precinct plan of subdivision or neighbourhood plan of subdivision to be used for certain purposes.

Clause 15 sets out registration requirements for a scheme plan of subdivision that subdivides or creates lots.

Clause 16 sets out registration requirements for a scheme plan of subdivision that adds land to the scheme parcel as a development lot or neighbourhood lot.

Clause 17 permits a community plan of consolidation, precinct plan of consolidation or neighbourhood plan of consolidation to be used to consolidate 2 or more, but not all, of the development lots in the same scheme plan and sets out registration requirements for the scheme plan.

Division 2 Community and precinct development lots

Clause 18 permits a boundary adjustment plan to be used to make a minor adjustment to boundaries between community development lots and the community property in a community plan, or to make a minor adjustment to the boundaries between precinct development lots and precinct property in a precinct plan and sets out registration requirements for the boundary adjustment plan.

Clause 19 provides for an instrument in the approved form to be used to sever a community development lot from a community scheme or to sever a precinct development lot from a precinct scheme and sets out registration requirements for the approved instrument.

Part 4 Association property

Clause 20 defines certain interests in land as a *relevant interest* for the purposes of the proposed Part.

Clause 21 provides for the registration of a plan or dealing creating association property to vest the land in the relevant association and to free the land and discharge it from all relevant interests.

Clause 22 provides for an association for a scheme to hold association property in the scheme as an agent for the owners of lots in the scheme and subsidiary bodies as tenants in common.

Clause 23 sets out how association property may be dealt with.

Clause 24 provides for an instrument in the approved form to be used to convert development lots or neighbourhood lots into association property and sets out registration requirements for the approved instrument.

Clause 25 permits an association to add land to its association property by transfer in certain circumstances and sets out registration requirements for the transfer.

Clause 26 permits an association to add land to its association property by lease in certain circumstances and sets out registration requirements for the lease.

Clause 27 permits an association to grant a lease of land forming part of its association property if certain conditions are met and sets out registration requirements for the lease.

Clause 28 permits an association to transfer land forming part of its association property if certain conditions are met and sets out registration requirements for the transfer.

Part 5 Easements and restrictions

Division 1 Granting or accepting relevant interests

Clause 29 provides that an easement, a restriction on the use of land or a positive covenant is a *relevant interest* for the purposes of the proposed Division.

Clause 30 sets out how an association may grant or accept a relevant interest that burdens or benefits association property or varies or releases a relevant interest.

Clause 31 sets out registration requirements for a dealing by an association to grant, release, vary or accept the benefit of, a relevant interest.

Division 2 Statutory easements

Clause 32 sets out the meaning of terms used in the proposed Division.

Clause 33 defines *statutory easement* for the purposes of the proposed Act, being certain rights and obligations relating to the delivery of a utility service to the scheme by way of a service line through the scheme.

Clause 34 provides for the creation of a statutory easement for a service line within a scheme when a prescribed diagram is registered as part of the management statement for the scheme.

Clause 35 provides that a service provider is to have the benefit of a statutory easement created in a scheme in relation to a service line if certain circumstances are met.

Clause 36 provides that an association, owner of land or service provider having the benefit of a statutory easement, is subject to certain covenants, including that the person exercising the rights under the easement will make good, at their own expense, any damage to, or interference with, the parts of the scheme affected by the exercise of the rights.

Clause 37 provides that if the installation of a service line is completed after the creation of the statutory easement, the relevant association must provide notice to the Registrar-General, and if the service line is installed in a different position, a new prescribed diagram.

Clause 38 provides that a developer must give a copy, within 1 month, of the prescribed diagram relating to a service line to the association for the scheme if a service line is installed as part of the scheme after registration of the management statement.

Clause 39 permits the Registrar-General to make recordings in the Register about any action taken under the proposed Division.

Clause 40 provides that the proposed Division does not affect any rights or obligations relating to service lines conferred or imposed by another Act.

Part 6 Access to schemes

Clause 41 provides that association property in a scheme may be set apart as an open access way or a private access way connecting the scheme parcel to a public place.

Clause 42 provides that an open access way within a community parcel may not be closed unless the closure is authorised by special resolution of each association whose members are entitled to use the access way.

Clause 43 makes it clear that setting apart land as an access way does not cause the land to cease to be association property.

Clause 44 makes it clear that section 45A of the *Real Property Act 1900* does not apply to a conveyance of land abutting on an open access way or private access way and provides that an owner of a lot in a scheme has no rights in relation to association property set apart as an open access way or private access way other than rights conferred by the proposed Act, the *Community Land Management Act 2020* or the management statement for the scheme.

Part 7 Development contracts

Clause 45 sets out a number of definitions used in the proposed Act, including *development contract*, being the instruments, plans and drawings registered with a scheme plan that describe the way in which it is proposed to develop land in the scheme.

Clause 46 sets out requirements for the form of a development contract and the matters that must be included in a development contract.

Clause 47 sets out certain requirements for the grant of planning approval by a planning authority for development in accordance with a proposed scheme plan accompanied by a proposed development contract.

Clause 48 permits a development contract to apportion the liability for certain expenses differently from the way liability would otherwise be apportioned by the schedule of unit entitlement applicable to lots under the scheme.

Clause 49 provides that a development contract registered with a scheme plan has effect as if it included an agreement under seal with certain covenants applicable to the developer and all other parties.

Clause 50 sets out how a development contract may be amended.

Clause 51 sets out what is to occur if a planning authority does not approve an amendment of a development contract, including obliging the planning authority to issue a notice, and provides for an appeal to the Land and Environment Court.

Clause 52 sets out the jurisdiction and powers of the Land and Environment Court to hear matters relating to an application made for the amendment of a development contract, and includes certain procedural matters.

Clause 53 permits the Registrar-General to register an amendment to a development contract made under the proposed Part.

Clause 54 permits the Land and Environment Court to make certain orders in addition to, or instead of existing orders provided under the *Environmental Planning and Assessment Act 1979* or the *Land and Environment Court Act 1979* in relation to court proceedings for a breach in relation to a development contract.

Clause 55 defines *development concerns* for the purposes of the proposed Part.

Clause 56 authorises a relevant developer to carry out development that is a development concern.

Clause 57 sets out certain requirements for meetings of an association relating to development concerns.

Clause 58 sets out when a development contract is concluded.

Part 8 Amalgamation of schemes

Clause 59 provides that a precinct scheme or neighbourhood scheme forming part of a community scheme may be amalgamated with the community scheme.

Clause 60 provides that a public notice must be made 14 days before an application for amalgamation is made.

Clause 61 sets out registration requirements for an application for amalgamation.

Clause 62 sets out additional matters that must accompany an application for amalgamation.

Clause 63 permits the Registrar-General to register an amalgamation, and sets out the effect on certain rights and liabilities of the registration of the amalgamation.

Clause 64 provides for regulations to be made in relation to the amalgamation of schemes under the proposed Part.

Part 9 Variation or termination of scheme

Division 1 Variation or termination by Supreme Court

Clause 65 permits the Supreme Court to vary or terminate a scheme, and provides for certain orders to be made by the Supreme Court to vary or terminate a scheme.

Clause 66 permits the Supreme Court to vary any applicable development contract, and provides for certain orders to be made by the Supreme Court to vary a development contract.

Clause 67 sets out who can make an application to the Supreme Court for an order under the proposed Division and also provides for other related court procedure matters in relation to the application.

Division 2 Termination by Registrar-General

Clause 68 permits the Registrar-General to terminate a scheme on the application of each owner of a lot within the scheme and any subsidiary scheme.

Clause 69 sets out certain requirements for the making of an application to the Registrar-General, including an obligation to issue a public notice.

Clause 70 sets out what occurs when a scheme is terminated by the Registrar-General.

Part 10 Resumptions

Division 1 Preliminary

Clause 71 sets out the meaning of terms used in the proposed Part.

Clause 72 specifies how the proposed Part fits with other Acts relating to resumptions and identifies land to which the proposed Part applies.

Division 2 Applications to Supreme Court

Clause 73 requires a resuming authority that proposes to resume land comprising all or part of a scheme to apply to the Supreme Court for an order terminating or restructuring the scheme, unless the land is association property or common property or below the surface of the scheme.

Clause 74 provides for a resuming authority, when making an application to the Supreme Court under the proposed Division, to provide a notice to certain interested people.

Clause 75 provides that the Supreme Court may direct an application in relation to a scheme to be heard and determined as if it were an application to vary or terminate the scheme.

Clause 76 provides for the hearing of an application under the proposed Division and includes the matters the Supreme Court must consider when deciding the application.

Clause 77 provides that the costs of an application made under the proposed Division are payable by the resuming authority unless the Supreme Court directs otherwise.

Clause 78 provides that an order of the Supreme Court under the proposed Division generally takes effect on registration of the order.

Division 3 Notice of resumption

Clause 79 provides for a notice of resumption to include certain matters, and the effect of a notice of resumption.

Clause 80 provides for certain circumstances when the resuming authority must resume the whole of the scheme parcel or strata parcel.

Division 4 Plans and instruments to be lodged with Registrar-General

Clause 81 defines *resumption application* for the purposes of the proposed Division.

Clause 82 provides for the lodgment of plans with the Registrar-General.

Clause 83 specifies when a registered plan is to take effect.

Clause 84 permits the Registrar-General to make recordings and notations when registering a resumption application.

Clause 85 specifies the documents to be lodged when the land to be resumed is a scheme parcel or strata parcel that will cease to be subject to a scheme.

Clause 86 specifies the documents to be lodged when the land to be resumed is an entire development lot, neighbourhood lot or strata lot and is to be excluded from a scheme.

Clause 87 specifies the documents to be lodged when the land to be resumed is part of a lot and is not to be excluded from the scheme.

Clause 88 specifies the documents to be lodged when the land to be resumed is part of a lot and is to be excluded from the scheme.

Clause 89 specifies the documents to be lodged when the land to be resumed is part of association property.

Clause 90 specifies the documents to be lodged when the land to be resumed is part of common property.

Division 5 Effect of resumption

Clause 91 provides for certain land that has been resumed to be excluded from a scheme.

Clause 92 provides that a resuming authority does not acquire any interest in association property or common property by a resumption of land if the land is excluded from the scheme and the land is not association property or common property.

Clause 93 provides for limited circumstances in which resumed land remains within a scheme.

Division 6 Sale as alternative to resumption

Clause 94 defines *acquisition plan* for the purposes of the proposed Act.

Clause 95 provides that a resuming authority proposing to resume part of the land in a community scheme, precinct scheme or neighbourhood scheme may instead register an acquisition plan and purchase the land in the acquisition plan.

Clause 96 provides for certain circumstances in which the Registrar-General may refuse to register an acquisition plan.

Clause 97 permits an association to sell part of its association property to a resuming authority if certain conditions are met.

Clause 98 provides for the effect of registration of a transfer to a resuming authority of land in an acquisition plan.

Clause 99 provides for the proposed Division to have effect despite any other proposed provision in the proposed Act.

Division 7 Miscellaneous

Clause 100 provides that the residue of the part lot that has been resumed must be considered in assessing compensation for the resumption.

Clause 101 provides that only the association or strata corporation in which association property or common property is vested may claim compensation.

Clause 102 provides that, where land is resumed by an authority not bound by the proposed Act, an application may be made under the proposed Act for an affected scheme to be varied or terminated.

Part 11 Lodgment and functions of Registrar-General

Clause 103 provides for the application of the proposed Act to electronic plans and documents.

Clause 104 provides that the Registrar-General is to make certain recordings and notations when registering an order, plan or other instrument under the proposed Act.

Clause 105 provides that a requirement to lodge a plan or instrument for registration may be satisfied, if appropriate, by lodging an amendment to an existing registered plan or instrument.

Clause 106 provides for a replacement sheet or an additional sheet for a plan, or a replacement schedule of unit entitlement, to be registered with a relevant plan, order of a court or other instrument.

Clause 107 provides for circumstances in which plans for strata subdivision are not registrable under the proposed Act.

Clause 108 provides for an amendment to a management statement made under the *Community Land Management Act 2020* to be registered in the Register.

Clause 109 provides for certain circumstances in which the Registrar-General is to give notice to the Valuer-General.

Clause 110 provides for the Registrar-General to make recordings that are necessary to give effect to certain orders.

Part 12 Miscellaneous

Clause 111 provides for the functions of associations.

Clause 112 provides for a notification of the expiration of the initial period under a scheme to be lodged with the Registrar-General.

Clause 113 provides for a document accompanying a plan to become part of the plan on registration.

Clause 114 provides that the proposed Act binds the Crown in right of New South Wales.

Clause 115 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 116 provides for the repeal of the *Community Land Development Act 1989* and the *Community Land Development Regulation 2018*.

Schedule 1 Plans

Schedule 1 specifies requirements for plans lodged under the proposed Act.

Schedule 2 Management statements

Schedule 2 specifies the matters that must be included in management statements for community schemes, precinct schemes and neighbourhood schemes.

Schedule 3 Schedules of unit entitlement

Schedule 3 specifies requirements for schedules of unit entitlement under the proposed Act.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 5 Amendment of Acts and instruments

Schedule 5 amends the Acts and instruments specified in the Schedule.

Dictionary

The *Dictionary* sets out the meaning of terms used in the proposed Act.