Strata Title Reform – Steaming Ahead for 2015

By Trudi Firth

Landgate has been tasked by the State Government with delivering strata title reforms, and has issued a consultation paper on the proposed reforms.

The breadth of the proposed reforms is extensive, and includes:

- the introduction of:

1. new forms of strata title schemes, including community title and leasehold strata;

1. greater flexibility for staged strata developments; and

1. greater support for mixed use developments;

- measures to improve the:

1. quality of information provided to buyers;

1. management of strata schemes;

1. resolution of strata title disputes, including widening the jurisdiction of the SAT to create a one-stop shop for strata disputes; and

1. way in which strata title schemes can be terminated, including permitting termination by majority vote.

Given the extent of the proposed changes, this article will touch on ways in which local governments will may be impacted by the reforms.

Community Schemes and Development Statements

A community title scheme is a type of strata scheme which contains more than one strata scheme within an integrated development, with an overarching management body known as a community corporation. The scheme may include a mix of uses such as residential, retail and commercial activities; and may include two or three management levels. Common Property can either be at a community level (everyone can use it) or at strata level (only for use by people within a particular scheme).

Pursuant to the proposed reforms, each community scheme must have a development statement setting out the detailed land use, development controls and developer covenants for the community scheme. The statement must provide details of planning, land use, design and implementation of the proposed subdivision and development, including amenities, facilities and infrastructure.

The development statement must be approved by the WAPC, and once approved it is intended to have effect as if it were a planning instrument having some of the features of a local structure plan or development plan. The statement is intended to prevail over any prior local structure plan or development plan, but operate subject to the terms of a local planning scheme.

In approving development statements, WAPC will be given powers to:

1. impose reasonable conditions concerning the content of a proposed statement relating to any aspect of the planning, design and development of the site, including:

- when infrastructure and facilities must be provided;
- taking into account the need for public access to or across the scheme; and
- assessing public open space contributions or other requirements consistent with established planning policies and practice.

1. refuse to approve a community plan:

- where other land tenure arrangements would be preferable in order to achieve development outcomes; and
- where the intention is not to create multiple levels of management.

The community plan and community development statement will be registered at Landgate, and upon registration:

1. will continue to have effect beyond the four years of the WAPC approval;
1. will bind subdivision and development decision makers in the exercise of their discretionary powers. A subdivision or development must not be approved by a decision-maker, unless it is consistent with the development statement; and
1. cannot be varied without the WAPC's and the community corporation's approval.

The consultation paper does not specify the role that local governments will have in the review of the community development statements, which appear to have a very important planning function. However, it is clear that all subdivision and development decisions made by a local government must be consistent with an approved development statement.

Rate Reductions?

Some stakeholders have pushed for the reforms to make provision for local government rates to be reduced for community schemes owners who maintain infrastructure which would normally be maintained by local authorities, such as public open space, road networks and stormwater drains.

In this regard, the current proposal provides as follows:

"Proposal 61. To allow for the Valuer General to apply a discount for rating purposes in a community title scheme. Alternatively local government may be empowered to provide a rate reduction where some of its traditional services are provided by a community corporation

Proposal 62. SAT should be given jurisdiction to approve an appropriate rate discount methodology".

Local Government Input in Termination

Under the current regime, a strata scheme can only be terminated if all owners agree or a District Court order is obtained.

The reforms propose to transfer applications to terminate strata schemes to the SAT. Principles will be developed to guide SAT on factors to take into account when determining whether to terminate a scheme, and one of those factors is intended to be the relevant local government's view on the termination.

Conclusion

Landgate expects that new laws will be introduced to parliament by the end of 2015. The impact of the reforms will be extensive. We would recommend that local governments review the consultation paper and submit feedback to Landgate to ensure that their interests are given due regard.

For further information in regard to the above, contact Trudi Firth on 9424 6205 or tfirth@mcleods.com.au. The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.

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