

# Information Session 2 - Managing a community titles scheme and buying/selling a lot

## Slide 1 - Community Titles Session 2

Can I just have a show of hands of who was not at the first session this morning? For the rest of you, you might hear some of the things I have said being repeated just for the benefit of the newcomers. Welcome back for those of you who knew what you are in for and came back anyway.

In the first session, I explained a little bit about what a community scheme might look like. Since you missed it, I will try and summarise the entire fifty minutes session into one sentence. Here goes, think of those Russian dolls that you get, which they split open, and you have another Russian doll inside, and it splits open, and it has another Russian doll inside. Community titles is like strata in Russian dolls - you have a little strata, in a middle strata, in a larger strata. Also, you have these stratas nested in other stratas, and that allows you to do flexible things around the common property and around by-laws as well.

I am going to go into a little bit more detail about how this complex beast of a community scheme could actually be managed effectively and efficiently. The other thing too is that these sessions are all being recorded. If you want to see the first session, or for those of you who were here and who want to relive the glory, we should be uploading that onto the website fairly shortly.

## Slide 2 – Session topics

The session topics that I am covering in this session: I want to focus on some of the details about what it might be like to live in a community scheme and how they might be managed, bought and sold. This might be of particular interest for those entities that are planning to set up a community scheme in the future, or for scheme managers who might be managing one of these things, or people who have a consumer interest in thinking they might buy into a lot in the future.

In a few places in this presentation, I'll draw your attention to particular regulations that we want some feedback on. For those of you who were not in the first session, yesterday, our Minister announced that the consultation regulations had been uploaded for community titles - that was the opening of a one month public consultation period that closes on the 9<sup>th</sup> of December. We really encourage everybody to download those regulations and have a look at what is provided and give us feedback, because we really want these regulations to provide for functioning community schemes.

I am looking at the management of community schemes. I'll talk a little bit about scheme managers. I'll give some specific requirements about buying and selling a lot in a community scheme, and I will cover how you can find out more and have your say.

### **Slide 3 – Management of community schemes**

Generally speaking, community schemes are like strata schemes. Where possible, we have kept the Community Titles Act the same as the Strata Titles Act, but because of the tiered nature of schemes, there are some elements around management that are really quite different.

### **Slide 4 - Community corporations**

Okay, you can have up to three tiers in a community scheme, and each community titles scheme has its own community corporation. The community corporation is the equivalent to the strata company in a strata scheme, but it might have some extra layers. Community corporations are made up of the lot owners in that scheme, and the community corporations if any of the schemes that belong to the scheme.

So, what does that mean? Well, if you have a look at this diagram – this is a scheme that has been created in three layers. If you look at the tier three scheme on the left-hand side, that has got a community corporation, and that at that level makes decisions very much like the strata companies that you know and love, for example, it maintains the gardens, makes sure that people are following the by-laws and that sort of thing. But that community corporation at that level is also a member of the community corporation at the tier two level above. This is how the tier three people get to have a seat at the table at the next level up. The kind of thing that the tier three level might want to have a say in at the next level up is for example, if there's tier two common property, they might want to have some say on how that is maintained or elements to do with that tier two common property. So, what you have here is that tier two community corporation has in this case, two members, and that is the community corporation at the tier three level on the left-hand side, and the community corporation at the tier three level on the right-hand side. I will go through an example a bit later to demonstrate what that might mean.

### **Slide 5 – Functions of community corporations**

Just like a strata company and strata scheme, a community corporation has a number of important functions to ensure the effective management of the community titles scheme. But there are some special considerations due to it being a community scheme. The first two dot points here are bolded, because they are a bit special due to the tiered nature of community schemes. For example, a community corporation must participate within the community scheme. If you have a community corporation at the tier three level, it is a member of the community corporation at the tier two level that it belongs to. Let's call the tier three scheme the smaller scheme, because it is always going to be smaller than the one at the next level up. The smaller community corporation is a member of the larger community corporation and has to participate in member meetings of that larger community corporation to ensure the effective running of the scheme. This means that the community corporation of the smaller scheme has to think about communicating matters to its owners and getting directions from them on how to vote at the next level up at the larger community corporation. That is a special consideration due to the tiered nature of the scheme.

Another function is to control and manage common property in its community titles scheme for the benefits of its members. If the community corporation is just comprised of owners at that level, say at the tier three level - on the one-hand, it is just like the decisions that the strata company has to make for its own owners. But, if it's a community titles scheme that has another community titles scheme that belongs in it – it's like the little Russian doll with another little Russian doll inside it - then the community corporation must manage the common property for the benefit of the members of any such schemes that belong to it. If you were in the overview session, if you thought of the example where there were two tier three schemes, and they both had a tier two driveway and common property. That means the tier two community corporation has to think about making decisions in relation to that tier two common property for the benefit of its tier three members who use it.

Further functions of the community corporation are very similar to what a strata company must manage, and includes managing scheme insurance, managing scheme finances, scheme record keeping, and the provision of information to people with a proper interest, such as a buyer of a lot.

### **Slide 6 – Each community corporation has its own council**

Some further provisions around management. Each community corporation has its own council. Unless the scheme by-laws provide otherwise that council is constituted of the owner of each lot in the community title scheme; that is if you own a lot at that level, and you are on the council. It also includes the community corporations that belong to that community titles scheme. That is, if the community titles scheme in question has been subdivided by another community titles scheme, the community corporations of those schemes are members on the council.

So, what does that mean? Let's consider a community titles scheme at the tier two level that has three lots. Two of the lots are owned by individual proprietors, those owners are on the council. Let's say that the third lot was actually further subdivided to create a tier three community titles scheme. The tier three community titles scheme has a community corporation and that community corporation is also a member on the tier two council. So, what you've got at that level is two owners, and one community corporation for the tier three scheme - so you can have a mix, but they are all members on that council.

As with strata, the council is responsible for performing the functions of the community corporation, subject to the Act, the scheme by-laws, and any other ordinary resolution of the community corporation in that community titles scheme.

Council members will also have statutory duties imposed on them, and these are the same as in strata, for example, that they act honestly and in good faith. Certain people are not eligible to be council members, for example, a scheme manager of any community corporation in the community scheme.

### **Slide 7 - How do I vote/take part in scheme management?**

How do I vote/take part in scheme management? By voting on resolutions within your scheme's community corporation. Here's a real difference with strata, there are only two sorts of resolutions in community titles – that is, an ordinary resolution and a special resolution.

For those of you who know and love strata, count the many different types of resolutions – you’ve got a unanimous resolution, a resolution without dissent, a special resolution, and an ordinary resolution. There are only two for community titles. We needed to make sure that decision making is supported by clear resolutions.

An ordinary resolution is passed if the value of the votes for the resolution are more than the votes against. A special resolution is passed if the votes for the proposed resolution are more than three quarters, or 75% of the total unit entitlement in the community titles scheme.

However, if the community corporation only has two or three members, to pass a special resolution the value of the votes for the resolution needs to be more than two thirds, or 66% of the total unit entitlement in the community titles scheme. The value of the vote is the unit entitlement of the lot, or tier parcel.

### **Slide 8 - Proposed resolution example**

I’m sure that was all very confusing, so the best way to explain it is to walk through an example.

Let’s have a look at an example of voting in a community scheme. Let’s say a member of the tier one community corporation wants to put forward a proposal to build a playground on the tier one common property. They want to put this to the vote. As it’s tier one common property, and it’s going to be an improvement of the common property, not just repair and maintenance of what is already there, it’s an improvement, something that was not there before, and that requires a special resolution. It requires a special resolution to be passed at the tier one community corporation level. The community corporations for the tier two and tier three schemes that belong to that tier one scheme, they also need to vote and their vote requires an ordinary resolution to be passed at the tier two and tier three level.

### **Slides 9 and 10 - Proposed resolution example**

We’ll have a closer look at how this voting might work. For those of you who were at the first session, this is essentially the same structure community scheme. The vote has to start at the tier three level first, and then go upwards. At tier three, and tier two level. The required vote for the community corporation for the playground is just an ordinary resolution.

We’ll start with the tier three scheme on the left-hand side - they vote first. They’ve got six townhouses and it gets put to a meeting “Do we have the playground or not?” Three of the townhouses say “Yes, we should have the playground” and two vote “No” and one did not turn up at the meeting. Okay, so that’s more for the proposal than against - so, that is a vote for the playground.

What then goes up to the next level? They send a representative who takes that vote up to the next level, and the vote is “yes”. It’s a whole, “yes” - it’s not three out of the six - it’s the entire unit entitlement of that tier three scheme votes “yes”. The vote going up is “yes” in proportion to their unit entitlement.

Okay, on the right-hand side there, that scheme also voted “yes”. They send a representative with the “yes” vote up to the tier two community corporation. There is a meeting of the tier two community

corporation, "How did you vote?" The vote is "yes". It's "yes" on both sides for their unit entitlements. That entire unit entitlement of "yes" goes up to the meeting of the tier one scheme via their representative.

Now over on the other side, that's the shopping centres, and they have a meeting of their community corporation, and they say "no", they do not want the playground.

So, what happens then? Well, then it comes down to the unit entitlement of this side on the left versus the side on the right. For the sake of simplicity, let's say that side there has 76% of the unit entitlement. That is enough for the special resolution that is required at the community corporation level. It's passed - the playground will be built on the tier one common property. This gives you a little bit of insight that developers who set up one of these schemes in the first place, they need to give some thought of how they subdivide the scheme up, in order to create a functional scheme over time, because you could have situations where one side always gets its own way. They really need to think carefully about how to set one of these up so that it's a scheme that runs well into the future.

### **Slide 10 - Scheme by-laws**

Just like strata there's by-laws in community titles. Scheme by-laws are the rules established by the community corporation to regulate itself. These are required to be registered as part of the scheme documents for registration of a community titles scheme. But there are some key differences from strata titles, including that the Community Titles Act does not have default by-laws. As I was saying in the earlier session, the Strata Titles Act has Schedule one and Schedule two default by-laws. A strata scheme can have its own by-laws, but if it does not, then the by-laws in the Strata Titles Act apply. For community titles, no default by-laws. The reason for this is that you can use community schemes in many different sorts of settings, it might not just be residential, so the developer has to really think about the community scheme and how it will run, and put in place the best by-laws - the ones that will serve the community going forward. It's intended that community schemes really will be used to deliver mixed-use, or at least they can make mixed-use easier. Just the residential by-laws that are in the Strata Titles Act might not be the best use, fit for all purposes. The Community Titles Act does not distinguish between governance and conduct by-laws, which is a very important distinction in the Strata Titles Act. Scheme by-laws are made, amended, or repealed by special resolution, just special resolution - there is not the distinction made in strata.

In relation to exclusive use by-laws, there is another difference. Under the Community Titles Act, a special resolution is required to remove an exclusive use by-law and the written consent of the lot owners benefiting from the exclusive use by-law is not required. In strata, if you're going to remove an exclusive use by-law, you have to basically get the consent of a person who is the beneficiary of that exclusive use by-law, which tends to mean that it lasts forever. Whereas in community title, that consent is not required.

## **Slide 11 – Dispute resolution**

Dispute resolution. Just like in strata, the State Administrative Tribunal is the one-stop-shop for community titles disputes. The key differences: there is additional scheme participants, a member of the council of a community corporation, or an officer of a community corporation in a community scheme, who is not a member of the community corporation. In comparison to the Strata Titles General Regulations, the proposed Community Titles Regulations has been re-structured so that all scheme participants are listed in the one spot. Disputes between occupiers, and the owner of a lot, and the trustee, and owner of a lot, and proponent are found in the area of the proposed regulations covering disputes. That is essentially, that proponent and trustee, that is in relation to terminations – that's in the same area as scheme dispute participants.

## **Slide 12 – Managing scheme insurance**

Just like the Strata Titles Act that sets out a strata company has an obligation to insure, the Community Titles Act sets out that community corporation is responsible for ensuring that all insurable assets of the scheme are insured against fire, storm, tempest, lightning, explosion and earthquake.

Insurable assets include the common property of the scheme, including fixtures and improvements on the common property, parts of the scheme building that comprise lots in a community titles building scheme and anything included as an insurable asset in the regulations. The insurable assets must be insured to the replacement value or to the replacement value up to, for an event of a specified kind, a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances.

A community corporation is responsible for obtaining public liability insurance against damage to property, death, bodily injury, or illness for which the community corporation could become liable. The amount of that cover is set in the regulations - we have set that it must not be less than \$10million in the regulations. Now that is the same as strata. So that's in our draft regulations, that is something that we are calling for comment on. Is that a suitable amount under the circumstances?

## **Slide 13 – Expenditure controls**

Just like the strata company for a strata scheme, a community corporation must establish a budget for the scheme for each financial year, and control, and manage the common property. The Act and the regs together seek to provide reasonable expenditure limits on the community corporation. On the one hand, you want to make sure that they have got enough money, that they can sort of do the things that need to be done, but also, you do not want them to just go mad and spend too much money on certain things, so we have got some expenditure controls. The Act sets out that the community corporation can budget for improvements on common property. By improvements, I mean, not repair and maintenance of what is already there, but like the example I gave earlier - improving the common property by putting something there that was not there before, like the playground.

The regs set a limit for how much the community corporation can spend on improving the common property and what you can put in the budget. This is important, because the budget is approved by the community corporation by ordinary resolution, which means more people voted for the resolution than against. That might not be an appropriate level of control for somebody to say, "Well let's put in a swimming pool" or you know, do something very expensive on the common property. The regs set a limitation - at the moment it's set at \$500. What that means is, okay, you can approve \$500 per lot. What that means is, yes, you can improve your common property by \$500 per lot, multiplied by the amount of lots in that scheme. But if it is more than that, you need a special resolution – and that's like the example that I gave for the playground.

What we are calling for comment on, is whether that \$500 per lot is reasonable for that particular expenditure control on improving the common property as per the budget. Similarly, the Act also allows for a non-budgeted amount to be spent without triggering the requirement for a special resolution. This is to allow the community corporation to do you whatever needs to be fixed around the scheme without always having to go back to meetings, and so forth, just for inconsequential repairs, and the like. So similarly, to the improving common property, we are currently proposing \$500 per lot in the community titles scheme. This is the same figure as for strata titles, is that appropriate? That is something we are hoping for people to comment on in this public consultation phase.

#### **Slide 14 – Making and keeping records**

Just as in strata, a community corporation has the responsibility for making and keeping records. These include all of the sort of records that you need in strata with a few additional ones. It includes the CDS in force for the community scheme and any current or proposed amendments to it that the community corporation is aware of. You can appreciate, especially if you were in the first session, that a Community Development Statement is going to be a really important document for scheme. It is important for owners to be able to get access to that.

In addition, we have this sort of situation where you have the smaller schemes and they are subject to, for example, the by-laws of the schemes that they came out of - the larger schemes - and also, they are subject to decision making made at the higher schemes. One of the requirements we have made is that if the community corporation is a member of another community corporation, they must keep the minutes of that other community corporation's general meetings and resolutions of those community corporations – because, the members at the smaller level will be subject to those decisions.

If the community corporation is a member of another community corporation's council, they also have to keep the minutes of the other council's meetings, and records of decisions made at the other council. You can see that the smaller scheme, if it is subject to the decisions made by the larger scheme, it should keep those records and that is something provided for in the regulations.

## **Slide 15 – Infrastructure on common property**

This is another example of something where we are trying to get feedback in the regs in relation to infrastructure on common property. The Community Titles Act provides that a community corporation can install, remove and operate infrastructure, as well as examine, maintain, repair, modify, and replace it. Now, the intention here is that for example, maybe a third party wants to install some solar panels on the common property, and sell the electricity back to the community corporation for a reduced price – so, there would be a contract in place for that.

Now, the proposed regulation regarding the rights and obligations of community corporations and the infrastructure owner in relation to that contract, sets out that the written consent of the community corporation who is a party of the contract, is required in order to transfer the ownership of that infrastructure, dispose of the infrastructure, transfer or assign the rights and obligations of the infrastructure owner under the contract. This is a little bit different from what is provided in strata, where the infrastructure owner only needs to notify the strata company that one of those occurrences has taken place. In community titles, the written consent of the community corporation is required.

## **Slide 16 – Scheme managers**

Scheme managers. Scheme managers is the term for a strata manager in community titles. A community corporation may appoint a person or organisation as a scheme manager, under a scheme manager contract. A scheme manager is a new term for this sort of strata manager.

## **Slide 17 – Functions of scheme managers**

The functions of scheme managers. The scheme manager fulfils the functions agreed to in the scheme management contract. This is where the role of the scheme manager will really depend on the scheme management contract. They might just manage one community titles scheme in a development, or they could manage the whole development, and that will be something covered in the scheme management contract. Essentially, they fulfil the same role as a strata manager, but that depends on what is agreed in the contract. However, scheme managers could have broader functions due to the tiered nature of the community scheme. Well, it depends what is in their management contract, but if you think of the example I gave earlier of the playground, you could have a scheme manager who is actually organising the cascade of meetings starting at the tier three, then going up to the tier two, and up to the tier one, for example.

## **Slide 18 – Volunteer scheme managers**

You can also have volunteer scheme managers, and that is the same as with strata - there is no requirement that a scheme manager must be appointed.

A volunteer scheme manager is the owner of a lot in a community scheme who personally performs the work of a scheme manager. Volunteer scheme managers are required to operate under an

authorisation from the community corporation. There is no requirement for a volunteer community scheme manager to have a scheme management contract.

Volunteer scheme managers are also exempt from the requirements to obtain criminal record checks, educational qualifications, and professional indemnity insurance. However, the authorisation from the community corporation could include, for example, that criminal record checks be conducted on a periodic basis. Something that we've got in the regs is that the amount of honorary fee or reward fixed for performing the functions of a volunteer scheme manager is \$250 per calendar year for each lot and tier parcel in the community titles scheme - that is something we are calling for feedback, is that an appropriate amount? Give us your feedback.

Just one comment in relation to volunteer scheme managers - we wanted to just make it so that if people really want to manage their own schemes, we don't want to put it in place at the moment that they can't – so people can still manage their own schemes in a community scheme situation.

### **Slide 19 - Educational requirements**

For professional scheme managers, there are educational requirements, and they need to meet those educational requirements that are set out in the regulations. These educational requirements are broadly similar to what is in the Strata Titles General Regulations. Key differences are that there is more compulsory units and less elective units to choose from, because the regs actually sets out specifically the units. In particular, a Principal must have a Cert four to manage a community scheme. We have defined the term Principal in the Community Titles Regs – it wasn't defined in the Strata Titles General Regulations. A Principal is a person who is an individual and is a scheme manager, or a director of a body corporate that is a scheme manager, or a partner of the scheme management is a partnership, or a designated person who meets the prescribed educational requirements.

The definition of designated person has changed, and they're now defined as an individual who is an agent, employee or contractor of the scheme manager, and who is authorised or expected to perform any of the scheme functions that the scheme manager is also authorised to perform. There is a transitional period of two years beginning on the commencement day of the Act in respect of designated people with a key role. We are actually requiring, especially the Principal must hold the Cert four, before entering into a scheme management arrangement.

### **Slide 20 – Professional indemnity insurance**

Professional scheme managers will have to hold a minimum amount of professional indemnity insurance and maintain it. As with strata, this must be adequate insurance cover of not less than \$1 million for any one claim during the period of cover. However, an addition to the proposed regulations is that there is a requirement for cover to contain an option to extend the cover, with a period of extent of at least six years from the date that the policy is issued or renewed as applicable. There is also a requirement for the scheme manager to exercise the option before ceasing to be a scheme manager.

## **Slide 21 – Periodic returns**

As with strata, we are requiring scheme managers to do a periodic return. The idea is there is an annual return, where they provide to Landgate some generalised information about how many schemes are under management. The idea is that Landgate, once it receives this information from strata managers, and also scheme managers, will get some insight into how many people are in the industry and so forth, and we can advise the Minister on policy settings going forward.

There are just a few different items of information reflecting the different nature of community schemes. For example, the information required to be included in the periodic return includes the total number of each tier one, tier two and tier three schemes that the scheme manager services, and a total number of each of these schemes comprised in a community scheme.

The commencement date for the periodic returns is much later than in strata, to reflect the fact that currently there are no community title schemes. We are giving it more time, before anyone has to report on them.

## **Slide 22 – Property and dishonesty offence**

One thing that is a little different in the Community Titles Regulations is that we have tightened up the definition of a property and dishonesty offence, which is also in Strata Titles. What this means is that a scheme manager is required to disclose particulars of a conviction for a property and dishonesty offence. The definition of property and dishonesty offence for the purpose of criminal record checks, disclosure in criminal record statements, and warranty in scheme management contracts does differ. Under the proposed regulations, it is defined as an offence that involves dishonesty, deception, fraud, stealing, robbery, extortion, burglary, bribery, property laundering, receiving stolen property, or perjury – which sounds to me like a list of things you would not want your scheme manager to be convicted of – and that is convicted within the State, or outside of the State, and anything with a penalty specified in written law, which includes imprisonment for three months or more. Again, this is something in the regulations.

## **Slide 23 – Appointment of scheme managers as proxy**

The appointment of scheme managers as proxy. Section 107 of the Act allows a member of a community corporation to appoint a person to vote for them as their proxy. But the key difference the Strata Titles Act is that the Community Titles Act allows the regulations to impose limitations on a scheme manager being appointed as a proxy.

The proposed regulation set out that a scheme manager for a community corporation must not be appointed as a proxy for a member of the council of a community corporation. This aligns with section 117 of the Act, which provides that a scheme manager cannot be authorised to perform the functions of a community corporation as a member of the council, or as an officer of another community corporation. Scheme managers must not be appointed as a proxy unless the instrument of appointment limits the vote to a specified meeting, or to a vote on a specified resolution.

## **Slide 24 – Precontractual information**

I will wrap up today by providing you with a quick overview of the disclosure requirements when buying and selling a lot in a community titles scheme. These are broadly the same as for strata, including the implications of failing to provide this information.

This precontractual information, this is the information that must be provided before the signing of a contract. It includes all the same kinds of things like minutes and so forth that is required in strata. The key differences involve the addition of precontractual information relating to the Community Development Statement, and the scheme documents for the schemes that belong to the scheme that is being bought into - that is the smaller scheme, larger scheme. The provisions of the CDS is particularly important for buyers as it will give them some idea of how the community scheme will look like and how it is developed, and when it is complete.

Additionally, the proposed regulations set out the information and statements required to be provided in the Act, must be included in the sales contract in a prominent position, and grouped together. The front page of the contract is an example of a prominent position.

## **Slide 25 – Notifiable variations**

Notifiable variations refer to the contract of sale has been signed, but it is before settlement. The idea is that if certain key events happen, the seller has to notify the buyer, because it might impact on them. These requirements are similar to the strata titles requirements - there are implications if this information is not included, such as the delay of settlements, or even the voidance of the contract entirely.

The key differences are that the amendment of the CDS is a type two notifiable variation. In the first session, I talked about the Community Development Statement guides how the community scheme is staged, it can be amended. If it is amended, the seller will have to tell the buyer if it happens in that time period. Unlike strata, the proposed regulations do not include a regulation explaining when these events have to take place – it's just if the seller becomes aware of a notifiable variation, they must tell the buyer as soon as that information becomes available.

There's a proposed regulation to note that a type one notifiable variation includes anything relating to the proposal for the termination of a community titles scheme. Although, the seller's scheme might not be being terminated, the seller might still receive notices about proposals for termination of other schemes in that community titles scheme, which they might ultimately be called upon to vote for – so, those have to be disclosed to the seller.

## **Slide 26 – Find out more and have your say**

Find out more and have your say. As I've been saying, the regulations are currently available for comment. You can download them from [strata.wa.gov.au](http://strata.wa.gov.au). That website has got a lot of information

about community titles that you can have a look at. You can also subscribe to email updates and for further developments – we are going to use that as a key channel to update people as we go along.

### **Slide 27 – Disclaimer**

As I mentioned in the earlier session, I have tried to explain things in clear language, but there is just no substitute for reading the Act yourself. Do not base your investment decisions on the information I have given you here, today - read the Act or seek professional advice.