

CLUSTER TITLES BILL.

COMMITTEE NOTES.

Clause 1.

Specifies the six Parts into which the Bill is divided and provides for the various provisions to come into operation on a day or days to be proclaimed.

Clause 2.

Requires the Bill to be read in conjunction with the *Transfer of Land Act* 1958 except certain provisions thereof dealing with requirements as to conventional plans of subdivision and building subdivisions.

Clause 3.

Defines terms used in the Bill which generally correspond with similar terms used in the *Strata Titles Act* 1967.

Clause 4.

Requires a person intending to subdivide in cluster form or to redevelop part of an existing cluster subdivision to give notice to the appropriate municipal council in the same way as for a conventional land subdivision. Notice must be in the form prescribed in the First Schedule, be accompanied by copies of the plan of cluster subdivision (or redevelopment) and show the purpose for which each new or enlarged lot is to be owned and used.

Clause 5.

Gives effect to the intention that the Strata Titles Act shall, in future, be used only for the division of buildings into strata. The villa unit subdivisions currently being carried out under that Act are to be in future carried out under the Cluster Titles legislation. The Bill provides that twelve months after the commencement of the Cluster legislation a council may refuse to seal a plan of strata subdivision if satisfied that the purposes of the developer could be achieved by use of a plan of cluster subdivision.

Clause 6.

Restricts cluster developments to areas which are under town planning control. That is, areas in which there are approved planning schemes or interim development Orders in force under the *Town and Country Planning Act* 1961. A proposed cluster scheme must also be permitted by or under the scheme or order. To obtain the maximum benefit from the cluster form of development the designer must be given freedom to utilize the site to advantage and municipalities administering town planning schemes are best able to control developments of this nature. Sealing is conclusive evidence of compliance with the clause and accordingly the Registrar of Titles need not make further enquiry on this point.

Clause 7.

Sets out the requirements which must be met by a person submitting a plan of cluster subdivision to a municipal council. These requirements are based on the corresponding requirements of the Local Government Act and the Strata Titles Act. There are also requirements peculiar to cluster plans ; in particular—

- (a) a distinction must be made between roads and streets set apart for public use and those intended to remain private roads and streets as part of the common property. The public roads and streets will vest in the municipal council ;
- (b) lands proposed to be set apart for public drains, sewers and other services must be shown and a schedule provided indicating in whom they are to be vested ;

- (c) a scheme of development must accompany the plan. This scheme must set out any requirements or restrictions proposed to be imposed on each lot and the common property ;
- (d) provision is made for the creation of public open space ;
- (e) the developer is required to give particulars of all buildings works or facilities that are laid out or constructed on the common property or are to be laid out or constructed there ; e.g. tennis courts, swimming pools &c.

Clause 8.

Sets out requirements for a plan of cluster redevelopment. This involves the enlargement of a lot or lots or the creation of new lots from existing lots and the common property. Information is required showing how the existing scheme of development will be affected. Redevelopment is likely to be a rare occurrence.

Clause 9.

Provides that a lot on a plan may comprise two or more parcels of land. The corresponding provision in the Local Government Act is section 569A (3). This would meet such circumstances as would occur where the acquisition of land by a public authority severed a lot into two portions.

Clause 10.

Provides for notices of restriction in the form of the Second Schedule. This enables residential lots to be tied to car park lots in the same way as is provided by the Strata Titles Act.

Clause 11.

Applies various provisions of the Local Government Act relating to the sealing of plans of subdivision to cluster subdivision with modifications. These provisions are as follows :—

569B. This section will enable a council to charge fees for examination of a plan of cluster subdivisions. It will require a council to refer the plan to the various statutory authorities responsible for water supply, sewerage, drainage and other services. (In the case of a plan of redevelopment reference to the authorities is at the discretion of the municipal engineer because the original plan would have been referred). The section sets out various grounds on which a council may refuse to seal a plan. This includes refusal to consent to the plan by a statutory authority. The power of a council to demand a 5 per cent. recreational lands contribution is also applied under this section. In considering this council is required to take into account any land which by the cluster plan is to be set aside for public resort and recreation.

569C. This section requires the council to fix the level of every new street and road on the plan.

569D. This section specifies certain acts as offences ; e.g. failing to give notice of intention to subdivide, conveying or transferring any part of the land before the plan is sealed &c.

569E. Enables a council to require a subdivider to carry out works or to pay to or give security to the council for the cost thereof. The plan is sealed and an endorsement made thereon as to the requirement and the Registrar of Titles will not approve the plan until he is advised by council that the requirement has been withdrawn or satisfied. The power to require the construction of building, works or services or to finance such works has been extended considerably for cluster subdivisions.

569H. Enables a council to demand the 5 per cent. recreational lands contribution when application is made for a building permit for the construction of flats or apartment houses.

570, 573A and 574. These sections provide for appeals to the arbitrators appointed under the Local Government Act against a refusal by a council to seal a plan of subdivision or against requirements imposed as a condition of sealing a plan.

571 and 572. These sections permit a developer to proceed to make streets if the council defaults in fixing levels. They also make it an offence to make or lay out streets before a plan is sealed or without giving notice to council and to fail to observe any level fixed by the council.

Clause 12.

This clause prohibits registration of any dealings with cluster lots at the Titles Office until the plans concerned have been registered or approved by the Registrar.

Clause 13.

This clause prohibits registration of dealings with restricted lots without the associated car park lots and requires a warning notice to be inserted in the certificate of title for a restricted lot.

Clause 14.

Provides for the breaking of the tie between a restricted lot and its associated car park lot, if the council consents under seal. The lots may then be dealt with separately.

Clause 15.

Prohibits dealing with accessory lots independently of ordinary lots.

Clause 16.

Prescribes the form of a certificate of title for a cluster lot. This is set out in the Third Schedule. The form is simple and the certificate would not require alteration in the event of redevelopment.

Clause 17.

This clause applies the provisions of Part II. of the *Strata Titles Act 1967*, which deals with registration of plans of strata subdivision, to the registration of plans of cluster subdivision with modifications. This Part sets out the requirements which must be satisfied before the Registrar of Titles will register a plan. It requires the plan to be accompanied by a schedule of unit entitlement and unit liability and deals with the subject of common property and the powers and duties of the body corporate. Provision is also made for the cancellation of a registered plan on the application of all unit holders.

Clause 18.

Provides for the streets set apart for public use to be, on registration of the plan, public highway vested in the municipality. On construction thereof the municipality becomes liable for maintenance and reconstruction. Land set apart for public resort and recreation also vests in the municipality. The clause also provides that lands set apart for public sewers and other services shall vest in the bodies designated in the schedule accompanying the plan.

Clause 19.

Authorizes the body corporate to execute instruments dealing with the common property on behalf of owners where there is a unanimous resolution to this effect.

Clause 20.

Adopts the provisions of section 98 of the Transfer of Land Act as to implied easements arising from a plan of subdivision.

Clause 21.

Requires every plan of cluster subdivision lodged for registration to be accompanied by a scheme of development in the prescribed form. This must show in respect of each lot and the common property any requirements or restrictions to be imposed concerning the erection of buildings or the making of improvements or generally in relation to the use of the land. These requirements and restrictions are binding on the unit holders and the body corporate. A scheme of development may be altered on redevelopment or with consent of the council.

Clause 22.

Concerns plans of cluster redevelopment and applies the corresponding provisions (Part III.) of the Strata Titles Act to cluster redevelopment with necessary modifications. Redevelopment means further subdivision of an existing cluster subdivision. This involves the creation of new lots or enlargement of an existing lot. New lots may be created from an existing lot or lots or from a lot or lots and common property. Enlargement may be effected by adding part of the common property to an existing lot. On the sealing of a plan of cluster redevelopment and its approval by the Registrar of Titles, the original plan must be amended and certificates of title issued in accordance with the amended plan. It is expected that redevelopments would occur only rarely.

Clause 23.

And subsequent clauses deal with stage development of cluster subdivisions. The need to develop an area in stages would arise mainly because of the difficulty of financing large scale development. Apart from this the cluster form of subdivision can be used to great advantage on large tracts of land. Using stage development, services can be laid on to particular areas and the lots released for sale before subsequent stages have been completed. This clause introduces the expression "clearing statement" which means advice by a council to the Registrar of Titles that its requirements in respect of works on a plan of cluster subdivision have been satisfied or have been withdrawn. These are requirements made under the applied 569E, Local Government Act. On receiving a clearing statement the Registrar is then free to approve the plan. If a requirement were the subject of an appeal to an arbitrator under the Local Government Act, the arbitrator could furnish the clearing statement if he found in the appellant's favour.

Clause 24.

Provides that if a developer proposes to develop a cluster subdivision in stages he must give particulars of the stages to council when he gives notice of his intention to subdivide.

Clause 25.

Enables a council, in the case of stage development, to relate its requirements for works and the laying on of services to parts of a subdivision. This is to facilitate stage development.

Clause 26.

Enables the Registrar of Titles to register a sealed plan of cluster subdivision if a council has issued a clearing statement in respect of one stage (or alternatively if there were no requirements in respect of a stage) even though there are outstanding requirements in respect of other stages. However, no dealings would be accepted in respect of uncompleted stages, except in the case of a mortgage given over all the lots in all the stages which remain subject to any council requirement (to enable a developer to raise finance to comply with any such requirement).

As stage development proceeds minor adjustments may be found necessary in the plan and a council may seal a substitute plan incorporating these amendments and the Registrar may register the substitute plan.

Clause 27.

Applies certain general provisions of the Strata Titles Act to cluster subdivisions. These concern applications to the Supreme Court and the jurisdiction of arbitrators. There is also a provision authorizing the Registrar of Titles to add additional sheets to a registered plan to incorporate amendments and other information.

Clause 28.

Excludes the operation of certain statutory provisions insofar as cluster subdivisions are concerned. These are—

Housing (Standard of Habitation) Regulations (Regulations 31 and 33). These provide (Regulation 31) that a house shall not be so situated as to face a street less than 25 feet wide and (Regulation 33) that a house and its allotment shall have for its whole width an unobstructed frontage to a street.

Uniform Building Regulations. Specified parts of Chapter 8. These prescribe site requirements—minimum size of site, minimum width of frontage, minimum depth, distances of walls from outer boundaries &c. By-Laws made by municipalities under this Chapter are also excluded. However, it is provided that the Regulations shall be deemed to authorize a council to refuse to issue a building permit unless it is satisfied that the site for the building is sufficiently large, that the building will be erected in a suitable place thereon and that there will be proper access to the building.

Clause 29.

Requires the Registrar of Titles to ensure that there has been no contravention of section 9 of the *Sale of Land Act 1962*. This prevents the sale of cluster lots before the Registrar of Titles registers the plan or, in the case of stage development, before a clearing statement is issued in respect of a stage.

Clause 30.

Permits a body corporate (or the governing committee thereof) to appoint a managing agent to exercise some of its functions. This is likely to be required in the case of a large scale development.

Clause 31.

Enables the body corporate or committee to demand security from a managing agent for the due performance of his duties.

Clause 32.

Authorizes the Governor in Council to make rules and regulations for the purposes of the legislation. The authority is necessarily expressed in fairly general terms in the absence of any practical experience of cluster subdivisions in this State.

Clause 33.

Provides that once land is subdivided in cluster form it can only be dealt with under the cluster legislation.

Clause 34.

Excludes the operation of the conventional land subdivision provisions of the Local Government Act insofar as cluster subdivisions are concerned.

Clause 35.

Excludes the operation of the transitory provisions of the Health Act as regards cluster subdivisions. This requires (*inter alia*) that streets shall be 50 feet wide at least, and that dwelling houses shall have a frontage to a street 50 feet wide at least.

Clause 36.

Excludes the operation of the provisions of the Local Government Act relating to private street construction schemes, insofar as cluster subdivisions are concerned.

Clause 37.

Excludes as regards cluster subdivisions, the operation of the provisions of the Local Government Act enabling construction of footpaths, kerbs and channels at the cost of frontages.

Clause 38.

Enables a municipal council to require that common property shall be kept in good order and condition. If the body corporate fails to act on request the council may do so and recover the cost from the body corporate.

Clause 39.

Amends the Town and Country Planning Act to permit inclusion in a planning scheme of general requirements for development of a cluster subdivision.

Clause 40.

Applies the provisions of the Sale of Land Act to cluster subdivisions in order to prevent the sale of lots before the registration of a plan and to enable the acquisition or extinguishing of easements to facilitate subdivision. In the case of stage development a clearing statement must be lodged in respect of a stage before dealings can be lodged in respect of lots on that stage.

Clause 41.

Enables councils to control dealings with common property on cluster subdivisions. It does this by amending the Strata Titles Act to exclude the operation of the subdivision provisions of the Local Government Act as regards common property on strata or cluster subdivisions.