



THE LAW SOCIETY  
OF NEW SOUTH WALES

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29 July 2021

Community Land Management Regulation 2021 and  
Community Land Development Regulation 2021 consultation  
Department of Customer Service

Webpage portal: <https://www.haveyoursay.nsw.gov.au/community-schemes>

Dear Sir/Madam,

**Draft Community Land Management Regulation 2021 and Draft Community Land Development Regulation 2021**

The Law Society of NSW appreciates the opportunity to comment on the new draft Regulations for Community Land Schemes in NSW.

The Law Society's Property Law Committee has contributed to this submission, with our responses to questions raised in the Regulatory Impact Statements contained in the attached table.

Thank you for the opportunity to comment. Any questions in relation to this submission should be directed to Gabrielle Lea, Policy Lawyer on 9926 0375 or email: [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au).

Yours faithfully,

Juliana Warner  
**President**

**Encl.**

## Regulatory Impact Statements:

### Proposed Community Land Management Regulation 2021

### Proposed Community Land Development Regulation 2021

### Law Society of NSW submission – July 2021

NO.	QUESTIONS	COMMENTS
<b>Draft Regulatory Impact Statement – Community Land Management Regulation 2021</b>		
<b>Commencement</b>		
<b>Clause 2 – Commencement</b>		
1.	Is the proposed commencement date of 1 December 2021 suitable? If not, what alternative date should be adopted and why?	We support the proposed commencement date, assuming the Regulation is published in the third quarter of 2021. The proposed commencement date provides an appropriate balance between allowing sufficient time for industry preparation and the clear benefit of commencing the reforms sooner rather than later.
<b>Management of schemes</b>		
<b>Clause 6 – Agenda for the first annual general meeting (AGM)</b>		
2.	Are there any more items that should be mandatory on the agenda of the first AGM of the association?	No, the proposed mandatory items are sufficient.
<b>Clause 7 – Documents and records to be provided to association at first AGM</b>		
3.	Are there any more documents or records that the original owner should be obliged to provide the association at the first AGM, or 3 years after the registration of the scheme?	No, the proposed documents or records are sufficient.

NO.	QUESTIONS	COMMENTS
<b>Property management</b>		
<b>Clause 25 – Initial maintenance schedule</b>		
4.	Is the list of property assets provided in clause 25(2) appropriate for a maintenance schedule? Should any other items be included?	<p>In clause 25(2)(a), we suggest adding “windows” after “walls”, as these are a common source of water ingress.</p> <p>We also suggest consideration of the addition of “waterproofing membranes” at clause 25(2)(g), as the failure of membranes is also a common cause of water ingress.</p>
<b>Any other comments</b>		
5.	Do you have any other feedback on the proposed Regulation not covered by the specific questions above?	<ul style="list-style-type: none"> <li>• <u>Schedule 1 item 2</u>: The s 171 updated discounted fee for giving a certificate under the Act will rarely operate in practice because it is most unlikely that the update request will be “by the same person”. In a sale context, the initial request will be made by or on behalf of the <i>vendor</i> to comply with its contractual obligations. Any update request will be sought by or on behalf of the <i>purchaser</i>. We suggest the qualification that the discounted fee only applies to requests “by the same person’ be removed.</li> <li>• <u>Clause 24</u>: We note that the wording of clause 24 differs slightly from the wording in clause 26 of the <i>Strata Schemes Management Regulation 2016</i>, despite the respective provisions in the principal Acts being identical. In the absence of a particular reason for the different approach, we prefer the wording in clause 26 as practitioners are familiar with this approach.</li> <li>• <u>Initial period expiry</u>: The expiration of the initial period is determined in accordance with the definition of the “initial period” in the Dictionary to the Community Land Management Act 2021 (“CLMA”). For a precinct scheme or community scheme this may require updated information as to when occupation certificates issue for the lots comprising the scheme. We note that there is a practical problem for precinct or community schemes where there is no immediately apparent way to monitor when or whether the requisite number of occupation certificates have issued, where there are multiple parties applying for occupation certificates. For example, a precinct scheme</li> </ul>

NO.	QUESTIONS	COMMENTS
		<p>consisting of vacant lots where individual owners apply for an occupation certificate in relation to a residence built on the lot. If possible, further guidance in the Regulation or otherwise would be welcome.</p> <ul style="list-style-type: none"> <li data-bbox="965 379 2013 647">• <u>Email address for service</u>: Section 225 of the CLMA provides the ability for a chairperson or secretary of the association, or a member of the association committee, to specify an email address for service, but it does not set out how that address is to be notified. Service by email would be particularly useful for the service of association interest notices. We note that a similar problem exists in the <i>Strata Schemes Management Act 2015</i> (“SSMA”) in relation to s 262(2)(c). If possible, further guidance in the Regulation or otherwise would be welcome.</li> <li data-bbox="965 663 2013 1031">• <u>Short term rental accommodation and pets</u>: We note that the CLMA does not contain equivalent provisions to those in the SSMA limiting the scope of a community management statement or a precinct management statement in relation to short term rental accommodation (s 137A SSMA) or the recently introduced provision regarding pets (s 137B SSMA). Pursuant to s 139(7) of the SSMA, a community management statement or a precinct management statement prevails to the extent of any inconsistency with a by-law for a strata scheme that is also part of a community scheme or precinct scheme. Although this is something outside the scope of the current review, we note that s 139(7) SSMA may operate to thwart the broader policy objectives in these areas. These issues could be considered more broadly in the future.</li> </ul>

NO.	QUESTIONS	COMMENTS
<b>Draft Regulatory Impact Statement – Community Land Development Regulation 2021</b>		
<b>Development contracts – Clause 20 Matters that must be addressed in a development contract</b>		
1.	Are there any other matters that should be mandatory to address in a development contract lodged with a community, precinct or neighbourhood plan? Please explain your answer.	No. These items, when read in conjunction with section 46(4) of the <i>Community Land Development Act 2021</i> (“CLDA”) address the items that should be mandatory. Other items can be included at the discretion of the developer in accordance with section 46(6) of the CLDA.
<b>Development contracts – Clause 23 Conclusion date for a community development contract – up to 20 years</b>		
2.	Is it appropriate to allow up to 20 years for conclusion of a development contract in larger, more complex community schemes? Please explain your answer.	Yes. Community schemes, by their very nature, take longer to develop than strata schemes. Well known community developments such as Bingara Gorge, the New Rouse Hill and Harrington Grove have taken over 10 years to develop. These types of large-scale developments should be able to utilise the development contract by allowing development to be completed over the longer 20 year period.
3.	Is the information required to be submitted to the Registrar General in support of an extended conclusion date sufficient? Please explain your answer.	We suggest that clause 23(2)(c) should either be removed or amended to read “ <i>the details of any planning approvals granted in respect of part or all of the development of the land in the community scheme</i> ”. Consideration could also be given to requiring a brief outline of those parts of the development where planning approvals have yet to be granted. In a large-scale development it is highly unlikely that all planning approvals will have been granted for the development at the time the development contract is prepared and registered.

NO.	QUESTIONS	COMMENTS
<b>Management statements – Clause 28 amendments to management statements in consolidated form</b>		
4.	Is the proposed process for requiring amendments to a management statement to be lodged for registration in consolidated form appropriate? Please explain your answer.	<p>We see some benefit in requiring consolidation, but this process may be unduly onerous and may cause a number of practical difficulties. For example, it is not uncommon for a community management statement to contain architectural plans and design guidelines which may not be produced digitally. Rescanning of such documents over successive consolidations is likely to reduce quality and legibility.</p> <p>If a consolidation is required, there should be an exemption where the amendment is simply to replace an Access Way Plan or Statutory Easement Diagram. Currently these are lodged through NSW Land Registry Services in an A2 form. It would be particularly onerous to require community associations to prepare consolidations that incorporate A2 sized plans.</p>
<b>Schedule of unit entitlements – Clause 31 valuation day</b>		
5.	Is the process for determining the valuation day appropriate? Please explain your answer.	Yes. Within two months before an application is made for a subdivision certificate or consent of a planning authority is a reasonable period and is consistent with Clause 7 of the <i>Strata Schemes Development Regulation 2016</i> .
<b>General comments</b>		
6.	Do you have any other feedback on the proposed Regulation not covered by the specific questions above? Please explain your answer.	The CLDA does not seem to specify who is required to sign the relevant Management Statement (if anyone). Currently this requirement is set out in section 7 of Schedule 3 of the <i>Community Land Development Act 1989</i> . We suggest that this should be clarified, if possible, in the Regulation.