Embedded Networks – Government Action Required

Embedded networks, in a strata context, involve installation, during the construction phase, of infrastructure required for delivery of various utilities and services, which is owned by a third party, rather than the owners corporation. Typically, this involves electricity, but other services can be involved, e.g. solar electricity or heating, gas, heating, air conditioning, potable water, hot water, chilled water for cooling, telephone, internet access, storm water and waste removal systems.

Embedded networks are becoming more and more common in strata developments and more and more new lot owners are becoming aware too late what an expensive trap these can be. In some cases, these appear intended to pass on development costs and squeeze substantial additional amounts out of owners corporations and occupiers, using contracts negotiated by the developer and ratified by the owners corporation at the first AGM, at a point where other lot owners are disadvantaged by complex arrangements which they don't understand, lack of adequate disclosure, the strata manager likely having been appointed by the developer and being unable to provide proper advice and a perception that there is no practical alternative, the infrastructure already being in place and services being required urgently.

In these cases, the owners corporation soon realises that:

- It does not own infrastructure, which it assumed would form part of common property and cannot practically use an alternate retailer, without use of that infrastructure.
- It needs to pay substantial network service/management fees to use that infrastructure.
- It must purchase the infrastructure, at a substantial price, at the end of the contract term.

The NSW Government has taken some measures to address these issues, but as presently framed, they are largely ineffective. In particular:

- The National Electricity Law and the National Electricity Rules have been amended to better protect customers of embedded networks. However, these measures provide little assistance to an owners corporation stuck with an uncommercial embedded network, being limited to electricity and even then providing little practical assistance with the crucial issue of infrastructure ownership.
- The NSW Government is introducing a new Section 132A into the Strata Schemes Management Act 2015 ("SSMA") to limit the term of agreements for the supply of electricity and other utilities and services to owners corporations. However, these expressly exclude the supply of electricity to occupants through an embedded network and fail to address the real problem for owners corporations, being non ownership of vital infrastructure.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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We have suggested a legislative reform package aimed at addressing these issues.

Suggested Reforms

These suggestions are aimed at levelling the current unfair playing field as between developers and "off the plan" purchasers, by measures including:

- Amending the strata development legislation to prevent undisclosed third party ownership of what appears to be common property infrastructure.
- Amending the conveyancing legislation to require disclosure of embedded network arrangements, especially in relation to sales "off the plan".
- Amending the SSMA to require that certificates under Section 184 include details of embedded network arrangements.
- Amending Section 132A of the SSMA to extend its operation to embedded network arrangements.
- Amending Section 26 of the SSMA to restrict entry into embedded network arrangements during the initial period.

We have received a sympathetic response from the Government, indicating that the Government will consider these suggestions as part of a broader review.

Government response

We greatly appreciate that response. However, given the enormous problem this issue represents for owners corporations and lot owners and that unsuspecting purchasers are currently purchasing strata apartments subject to such arrangements, urgent action is required.

If you are having difficulties with an embedded network in your scheme, we have considerable experience and expertise in this area and can help you.

Key takeaways

- Embedded networks can lead to significant financial burdens for owners corporations.
- Current legislation inadequately protects owners corporations from uncommercial embedded networks.
- Proposed reforms aim to improve transparency and ownership rights regarding embedded networks.
- The NSW Government has shown willingness to consider legislative reforms on this issue.
- Disclosure of embedded network arrangements is crucial for purchasers of strata properties.

BANNERMANS LAWYERS

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P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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Prepared by Bannermans Lawyers
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BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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