

Is your Scheme Locked in to a Long Term Utility Agreement?

An increasingly common problem experienced by new strata schemes concerns discovery by the new scheme that the developer has committed the owners corporation to long-term agreements for supply of electricity, gas or other utilities, potentially involving greater than market charges or other unfair terms. These may or may not form part of embedded network arrangements.

An owners corporation finding itself in this scenario may be considering whether it remains bound to these arrangements or whether it has options. Fortunately, that owners corporation may well have options. In particular, the owners corporation should as soon as possible seek legal advice as to whether any of the following may assist:

- The provisions of the agreement itself may permit termination or review.
- The developer may have entered into the agreement in conflict with requirements of fiduciary duties or legislative requirements, e.g. initial period restrictions, potentially providing a basis for termination of the agreement or at least an action against the developer.
- Section 132A of the Strata Schemes Management Act 2015. This relatively new and not well understood provision provides in effect that such agreements have a maximum term as follows:
 - Agreements in force prior to commencement of Section 132A on 1 October 2019 have a maximum term expiring 10 years after the date of commencement of the agreement.
 - Other agreements have a maximum term expiring:
 - At the conclusion of the first annual general meeting, if the agreement was executed before the meeting.
 - Otherwise, three years after the date of commencement of the agreement.

There are some limitations. In particular, the restriction does not affect any agreement to supply electricity to residents through an embedded network.

We have considerable experience with these issues and can assist if you are having difficulties with them.

Prepared by Bannermans Lawyers

Last reviewed 15 November 2022



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA