SALE OF LAND AMENDMENT BILL 2016

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Donna Faragher (Minister for Planning)**, read a first time.

Second Reading

HON DONNA FARAGHER (East Metropolitan — Minister for Planning) [4.12 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce this bill, which will protect consumers from the risks associated with purchasing from a vendor who is not yet the registered owner of a lot, whilst providing certainty to facilitate the ongoing timely release of new lots by land developers.

The purpose of the Sale of Land Act 1970 is to protect purchasers of land when the land is being purchased from a subdivision of five lots or more and the vendor is not the owner of the land. In particular, the current section 13 of the act prohibits the sale of a lot by a person who has the right to sell five or more lots in a subdivision or proposed subdivision, or two or more lots in a strata subdivision or proposed strata subdivision, unless the seller is the registered owner of the land. The penalty for breaching section 13 is currently $750. The prohibition in section 13 of the act was designed to protect the purchaser from the risk that a vendor/developer never obtains title to the land they are proposing to subdivide and sell and therefore is unable to effect settlement, causing the purchaser loss. That may include the loss of any deposit or any other moneys paid to the vendor/developer, the lost opportunity to purchase an alternative lot, or the difference between the price of the lot purchased and an alternative lot in a rising market.

The practice of a vendor or developer of land who is not the owner offering the land for sale to a purchaser without first having obtained all the relevant development approvals is widespread, especially amongst middle to lower tier developers. The practice is essentially used to gain deposit moneys from purchasers as a way of convincing banks to finance the completion of the development as the deposit moneys represent equity. The practice is not inherently bad; however, it is a risky transaction for the purchaser because there are not sufficient controls around this practice under the current Sale of Land Act to protect the purchaser. This is especially the case if the developer is unscrupulous and absconds with the deposit money without completing the development.

In 2014, the Supreme Court in Barker v Midstyle Nominees Pty Ltd found that these types of sales contracts are unenforceable by the developer/vendor. The court's decision has directly impacted finance and funding arrangements for the land development industry in Western Australia, which will ultimately affect the development and release of new lots onto the market and their affordability. This uncertainty could have a strong negative effect on the sustainability of an important driver of economic activity in Western Australia. This bill will amend the Sale of Land Act to re-establish certainty for purchasers and developers around the enforceability of sale contracts. The Sale of Land Amendment Bill 2016 will introduce the following key reforms. To provide broader consumer protection, the restriction on the sale of subdivisional land will be applied to the sale of one or more lots in a subdivision, including strata subdivisions, rather than on sales of five lots or more, or two lots or more, in a strata subdivision.

To better inform consumers, it is proposed that a pre-contractual statutory warning be included in the future lot contract. This warning will state that the vendor is not currently the registered owner of the lot and include an explanation of the purchaser's rights. If this warning is not contained in the contract, the contract will be illegal and void.

Debate interrupted, pursuant to standing orders.

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Sitting suspended from 4.15 to 4.30 pm