Speech By

Michael Berkman

MEMBER FOR MAIWAR

Record of Proceedings, 14 November 2023

BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (12.01 pm): I rise to make my contribution on the Body Corporate and Community Management and Other Legislation Amendment Bill 2023. There are some really important and commonsense reforms to the management of community titles in this bill which the Greens support. We support changes that allow bodies corporate to create by-laws banning smoking in common areas and disallow by-laws that impose a blanket ban on pets. What we cannot support, however, is creating a pathway for big property developers and investors to intimidate and force unit owners out of their home to seize an investment opportunity. For this reason, the Greens will oppose provisions that allow a body corporate or community management scheme to be terminated for economic reasons with consent from 75 per cent of lot owners.

The status quo requires consensus agreement—that is, 100 per cent of the body corporate to agree—to terminate a community management scheme for economic reasons. Importantly, if they are unable to obtain that agreement, an application can be made to the District Court for termination. This bill instead lays out a process for a scheme to be terminated, even when a quarter of the owners in that community titles scheme disagree.

I agree with the several submissions from resident unit owner advocacy groups who raised serious concerns about the way this bill prioritises the profit opportunities of developers ahead of the needs and wishes of ordinary residents. It lowers the bar for the gentrification of our neighbourhoods, allowing the owner of a humble six-pack walk-up, where the average worker may have been living for years, to be kicked out so that a speculator can knock down their home and build luxury apartments there instead. It is blatantly clear who these changes benefit when you see who has offered their full-throated support for the reforms in their submissions. It is the usual suspects. The REIQ and the Property Council are full of praise and glee. I wonder how many conversations they might have had with government members and ministers at the cash-for-access meetings they are still allowed to buy their way into.

I understand that the justification for this reform is to avoid costly court proceedings where some owners want to sell, perhaps due to high maintenance costs, and others want to stay, but I put it to you that protecting the rights of people to stay in their homes is more important than the right of someone to sell it off for economic reasons. The so-called holdouts who are being used by vested interests to justify the lower threshold seem to be predominantly pensioners, single parents, retirees and other owner-occupiers who thought they were buying a forever home but who, under the proposed legislation, would be at risk of being bullied to sell and unable to afford another place in the local area—in their community. Submissions spoke of how common it is for developers to relentlessly bully these 'holdouts' into selling. While I understand that the extra burden involved with taking a matter to the District Court can be cumbersome for a small body corporate, I believe that it is an appropriate pathway for determining economic viability when the stakes are so high.

Although we cannot support the lowering of the threshold for a community titles scheme to be terminated, there are other changes in this bill that we do support. The bill proposes to limit a seller's ability to use sunset clauses to terminate an off-the-plan contract for land. That is, a sunset clause can no longer automatically terminate a contract, and termination under a sunset clause can only occur with the buyer's written consent, a Supreme Court order or through regulation. Although I share the Queensland Law Society's concerns that sellers will have additional disproportionate rights in this situation because the bill requires the Supreme Court to consider their business viability, on the whole protection for off-the-plan buyers is a welcome amendment to the act, and I am absolutely happy to support it. However, like the Law Society, I fail to understand why apartments should continue to be excluded from these protections. I note that the department's response to this is that they will consider maybe adding apartments as part of a second stage of reforms in a couple of years, but in the meantime they are running awareness campaigns for buyers. This pales in comparison to regulation. Education awareness campaigns simply seem like a cop-out.

Just this week, a constituent of mine came into the office to ask for help. Her daughter bought an apartment off the plan in 2021 with hopes of moving in this year. Their two-year sunset clause is set to expire in December, but the construction has not been completed. The builder has stopped all communication with this constituent, and they now feel like they have no recourse. They are understandably concerned about unfairly losing the apartment they have been patiently waiting for, despite having done everything right. I can only imagine how she is feeling today seeing the news in recent times that Brisbane unit prices have risen 7.8 per cent in the last year, now hitting record highs. Will she be able to afford a home now, two years later? Is the government seriously content to tell apartment buyers like her that they should have paid attention to a government ad warning them about the risks? Why not do what we can right now to protect those Queenslanders from greedy, land-banking developers who will buy up the land, secure the sales and then just drop them when they think they might have an opportunity to make more profit in the future?

Another welcome change in this bill is that body corporate by-laws can no longer ban pets outright and must provide a reason for rejecting a pet application. The Greens—as we have said many times—believe that, whether you rent or own, everyone deserves the opportunity to keep a pet. For so many people, coming home and being able to spend quality time with their pet is really special. For a long time, many Queenslanders have been forced to choose between paying unreasonable rents or surrendering their pets and just keeping a roof over their heads. Last year we finally passed legislation to prevent landlords from banning pets altogether in a rental. This is something the Greens have pushed for for years now, particularly the member for South Brisbane. Everyone will recall that she introduced legislation to that effect in this parliament. This was clearly a positive step, but the legislation as passed still allowed for bodies corporate to include a blanket 'no pets' clause in their by-laws, essentially skirting that amendment in previous legislation. This bill will bring body corporate laws in line with new tenancy laws, and the Greens are absolutely happy to support that. As we said when the tenancy reforms passed, we believe that the onus should rest on the landlord to challenge the keeping of a pet on reasonable terms, rather than the renter to apply for one. The same logic should apply for bodies corporate. This bill is an improvement to the status quo.

I think the bill represents a missed opportunity to tackle one of the biggest developer rorts unit owners face right now—that is, building management statements, BMSs. I briefly outlined during the debate on the Property Law Bill last sitting week how BMSs work. A developer, particularly in mixed-use and residential/retail developments, can retain just one unit in a high-rise and thereby retain effective control over the maintenance levies and other major decisions about the building for all of its residents.

I have been calling for reforms on BMSs for years after hearing some absolute horror stories from constituents in my electorate. Dodgy developers use the lack of oversight and regulation under our current laws to retain control over a building to screw tenants over and enrich themselves and their mates. Anyone I have spoken to about these arrangements is frankly gobsmacked that the government continues to allow dodgy developers a free ride to skirt their obligations and the opportunity to exploit ordinary tenants with no oversight or consequence under BMSs.

There are likely thousands of tenants in Brisbane alone who live under one of these unfair BMSs and they deserve better. I urge the government to consider introducing fairness requirements for BMSs and expand the scope of QCAT and the body corporate commissioner to handle disputes and review, amend or extinguish unfair agreements. Other jurisdictions like New South Wales have already done this and we are, frankly, letting Queenslanders down by allowing our laws to lag behind.

In conclusion, this bill is a real mixed bag. As I have said, on the one hand it gives unit owners greater rights to keep pets and off-the-plan land buyers greater protection from dodgy developers looking to ditch their contracts. On the other hand, it leaves new apartment buyers completely exposed to sunset clause terminations and, worst of all, it paves the way for community titles schemes to be terminated with only 75 per cent owner support. The Greens cannot support clause 7 of the bill because we believe the economic opportunities of wealthy developers and investors should never trump someone's right to stay in their own home.