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NEWS

Changes to off the plan residential sales in NSW— developers beware

Proposed changes to the off the plan disclosure regime in New South Wales will significantly affect the structure of development projects and developer sales if implemented. Special Counsel Brooke Bostock explains the focus of the government review and what developers should do next.

BACKGROUND

The New South Wales government is reviewing the off the plan disclosure regime under the Conveyancing Act and Conveyancing (Sale of Land) Regulation in response to community concerns about sales by developers before they obtain development approvals and before they own the base parcel of land to be subdivided.

FOCUS OF THE REVIEW

Whilst acknowledging the role off the plan sales play in the New South Wales property market, the New South Wales government has made it clear they want to ensure buyers are protected and confidence in the industry is maintained.

On 8 November 2022, a [discussion paper](#) was released which outlines options to increase consumer protections and address issues, including:

- Developers being required to meet minimum readiness requirements before selling off the plan. For example, prohibiting off the plan sales until the developer owns all the land that will make up the development site.
- Enhancing disclosure requirements to—
 - require disclosure about underlying agreements that are in place allowing the developer to acquire title to the base parcel of land
 - disclose whether a development approval application has been made, and
 - disclose details of any embedded electricity network agreements.
- Imposing financial penalties for developers who offer to sell residential land off the plan without appropriate disclosure.
- Expanding sunset clause protections to include other conditional events, such as obtaining development approval by a specified date. This would address concerns that some developers simply delay or refuse to take action to progress the development approval as a way of avoiding their sale contracts.
- Solutions to address the increasing size of off the plan contracts, including by incorporating one page, electronically searchable, summaries.

CONSULTATION INVITED

Consultation closes 5.00pm on 23 December 2022. Formal submissions can be emailed to ORG-Admin@customerservice.nsw.gov.au.

We are interested in your thoughts and feedback and encourage all interested persons to make submissions to the New South Wales government.

Reach out to our [Real Estate team](#) to discuss or to find out more.

Authors



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