



Legal Aspects

21 September 2009



Introduction

The legal structure of Keswick Island starts with the headlease granted by the Queensland Government. The title reference for the headlease is 40003689.

There are two types of “subdivision” on Keswick Island: -

- Direct subdivision
- Development subdivision

There are two types of subleases concerned with residential development on Keswick Island: -

- Development subleases
- Residential subleases

There are two types of residential product being sold on Keswick Island: -

- Land only
- House and land

There are two types of sale on Keswick Island: -

- Primary sales
- Secondary sales

Direct Subdivision

This term describes the subdivision effected by Keswick Developments Pty Ltd (“KD”) granting a residential sublease direct to a buyer. In other words, the residential sublease is carved out of the headlease without any intervening stage.

The process involves registration of a plan of survey identifying a lot, execution and registration of a sublease and ministerial consent.

Development Subdivision

This term describes the process by which a development precinct is created by the grant of a sublease over a “super lot” (which could cover any number of what will eventually become residential subleases). The grantee of this sublease then becomes the developer of the precinct and sells residential subleases to buyers.

The process involves the development sublease being surrendered and regranted over a balance area each time that a residential sublease is sold and again a plan needs to be registered, subleases need to be executed and registered (for both the balance area and the new residential sublease) and ministerial consent obtained.

The buyer ends up with a residential sublease direct from KD.

The sublessee under the development sublease may be KD or other entities.

Primary Sales

A primary sale is a *first* sale. That is, it is the first time that a residential sublease is sold to a buyer (as compared, for example, to a residential sublease that might have been purchased by someone previously that is later on-sold).

The process under which a primary sale proceeds involves the buyer being given a disclosure statement. There is no statutory obligation to provide such a statement but it is provided in any event to give buyers salient information about the Island. Included in it are such things as plans, a copy of the headlease, a copy of the building and design code and information about the Island including estimated levies and copies of ancillary agreements which may apply (eg. a letting agreement).

A contract of sale is then entered into whereby KD (or other relevant entity) agrees to sell and the buyer agrees to buy a residential sublease with or without an associated dwelling.

The following table contains information about some of the legal issues impacting on the process: -

Issue	Comment
<i>BCCM Act 1997</i>	Does not apply to leasehold land (section 9(2) <i>BCCM Act 1997</i>). The sublease provides that if legislation enabling leasehold community titles is introduced in Queensland, the sublessee's interest may be converted to an interest in such a community titles scheme.
PAMDA	Applies. Warning Statement/Cooling Off Period etc.
<i>Fire and Rescue Service Act 1990</i> (smoke alarms)	Applies. Where a domestic dwelling is constructed on the land (section 104 RA).
<i>Electrical Safety Regulation 2002</i> (safety switches)	Ditto (section 77).
<i>Land Sales Act 1984</i>	Does not apply. <i>Britcourt P/L as Trustee for HP Clegg Superannuation Benefit Fund v. Curlew Apartments P/L; Morris & Ors v Curlew Apartments P/L; Griffiths & Anor v Curlew Apartments</i> [2005] QSC 234 (30 August 2005).
<i>Land Act / Land Titles Act</i>	Differences with caveats/settlement notices/priorities. <i>Elsafy Enterprises Pty Ltd v Mermaids Cafe & Bar Pty Ltd</i> [2007] QSC 394; <i>Kevroy Pty Ltd v Keswick Developments Pty Ltd</i> [2009] QSC 49.
Conveyancing Protocol	Should be considered.
GST	It is proposed that the contract of sale provide that the purchase price be inclusive of GST, that the margin scheme will be applied and if for any reason the margin scheme is unable to be applied, KD (or other entity) will absorb any GST payable.

Key Points of Subleases

1. Sublessees are to pay contributions to rent, rates and outgoings in accordance with the formulas set out in the sublease (similar to levies in a community titles scheme situation).
2. A building and design code applies to development on the Island (similar to building covenants applied in subdivisions or the requirements of an ARC code under one of the BCCM modules). For those buying vacant land or wishing to carry out construction there is an ARC application and approval process.

3. There is a building covenant requiring construction of a dwelling within a set period of time.
4. As discussed above, the sublease allows conversion of the sublessee's interest to an interest in a leasehold community titles scheme if this is ever applicable.
5. The sublease provides for an extension of the sublease upon the headlease being extended.
6. In most cases, the permitted use is for one residential dwelling.
7. The sublease will contain other provisions that you would normally expect to see in a lease document including requirements for insurance, indemnities, provisions regarding default and the like.

Secondary Sales

A secondary sale occurs where a sublessee decides to sell its interest to another party. That is, it is not a sale direct from KD or another development entity.

There is an application and consent process. The application should in the first instance be made to us by the seller's solicitor. We will then forward information as to our requirements which will include submitting a consent form and a buyer information form and execution of a deed of covenant. It is important that secondary buyers be fully informed of matters impacting on them. KD is keen to ensure that this occurs and will be requesting confirmation that this has occurred.

The actual transfer is dealt with between the parties. We will require evidence of stamping and registration.

Conclusion

This is a very brief outline of some of the legal aspects relating to the development on Keswick Island.

Please feel free to contact Kelly Legal if you require any assistance or if you have any comments or queries.

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