

1994—No. 646

STRATA TITLES (LEASEHOLD) ACT 1986—REGULATION

(Enabling the commencement of a revised scheme for leasehold staged strata development by providing details concerning strata development contracts and other particulars, and for the purpose of law revision)

NEW SOUTH WALES



[Published in Gazette No. 170 of 16 December 1994]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Strata Titles (Leasehold) Act 1986, has been pleased to make the Regulation set forth hereunder.

GEORGE SOURIS, M.P.,
Minister for Land and Water Conservation.

Commencement

1. This Regulation commences on 1 January 1995.

Amendments

2. The Strata Titles (Leasehold) Regulation 1989 is amended:

- (a) by omitting from clause 6 the matter “7 (1) (a) (i)” and by inserting instead the matter “7 (2) (a)”;
- (b) by omitting from clause 10 (2) the matter “7 (10) (a)” and by inserting instead the matter “5 (4) (a)”;
- (c) by omitting clause 28 (1) and (2) and by inserting instead the following subclause:
 - (1) A certificate by a surveyor given pursuant to section 11 (2) (c) is to be in form 4.
- (d) by omitting from item 13, 14, 15 and 16 in clause 43 the words “development statement” wherever occurring and by inserting instead the words “strata development contract”;

- (e) by omitting from item 16 in clause 43 the word “or statements” and by inserting instead the words “or contracts”;
- (f) by omitting Part 9 (Development Statements) and by inserting instead the following Part:

PART 9—STRATA DEVELOPMENT CONTRACTS

Strata development contracts—information to be included (1974 Reg. 73)

62. (1) A strata development contract must include the following information:

- (a) the warning set out in form 21;
- (b) particulars of title of the land comprising the parcel which is to be developed;
- (c) particulars of title of any other land proposed to be added to the parcel at a later time and a statement setting out whether it is intended that the land (or part of it) will become common property, a further development lot, or an addition to an existing development lot;
- (d) whether or not the developer may be compelled to carry out the proposal to add any such other land to the parcel;
- (e) the covenants set out in Schedule 2AA to the Act.

(2) A strata development contract must include a description of each stage of the development (if any) that the developer is permitted by the contract to carry out and may be compelled to carry out (identified in the contract as “warranted development—proposed development subject to a warranty”) describing separately:

- (a) the types of buildings proposed, the proposed uses of the lots in the buildings, the proposed building style, and the height and density of the buildings; and
- (b) any common property amenities that will be provided; and
- (c) the number of lots to be created in this stage; and
- (d) details of access and construction zones and accompanying rights over common property and development lots during this stage of development; and
- (e) the manner in which it is proposed to landscape the parcel at this stage; and
- (f) building materials and finishes to be used; and

- (g) details of any vertical staging, and of the insurance cover that applies to any such development; and
- (h) whether the developer's liability for expenses relating to the use or maintenance of the common property is to be determined by unit entitlement or differently and details of how the liability is to be determined, if it is to be determined differently; and
- (i) details of any by-laws, management agreements, covenants, easements or dedications which will be created or entered into at this stage.

(3) A strata development contract must include a description of each stage of the development (if any) that the developer is permitted by the contract to carry out but cannot, merely because it is described in the contract, be compelled to carry out (identified in the contract as "authorised proposals—proposed development nor subject to a warranty") describing separately:

- (a) the types of buildings proposed, proposed uses of the lots in the buildings, the proposed building style, and the height and density of the buildings; and
- (b) the maximum number of lots to be created in this stage; and
- (c) details of any vertical staging, and of the insurance cover that applies to any such development; and
- (d) whether the developer's liability for expenses relating to the use or maintenance of the common property is to be determined by unit entitlement or differently and details of how the liability is to be determined, if it is to be determined differently; and
- (e) details of any by-laws, management agreements, covenants, easements or dedications which will be created or entered into at this stage.

**Execution by developer on behalf of body corporate (1974
Reg. 74)**

63. If a dealing, plan or other instrument is executed by a developer on behalf of a body corporate pursuant to section 54 (3) for the purpose of giving effect to a decision about a development concern:

- (a) the execution must be in or to the effect of form 22; and
- (b) a statutory declaration in or to the effect of form 23 must be lodged with the dealing, plan or other instrument.

Notices relating to development concerns (1974 Reg. 75)

64. A motion that relates to a development concern must be identified by the matter “**(This motion relates to a development concern—see sections 54, 55 and 56 of the Strata Titles (Leasehold) Act 1986)**” appearing after the proposed wording of the motion in the following notices and requisitions:

- (a) a notice served on the secretary of the council requiring inclusion in the agenda of the next general meeting of the body corporate of such a motion;
- (b) a notice served on the secretary or, in the absence of the secretary, another member of the council requiring the convening of an extraordinary general meeting to consider such a motion;
- (c) a requisition served on the secretary or, in the absence of the secretary, another member of the council requiring a meeting of the council to be convened to consider such a motion;
- (d) notice of a meeting of the body corporate or of the council of the body corporate at which such a motion is to be considered.

Insurance for vertical staged development (1974 Reg. 76)

65. (1) For the purposes of clause 8 of Schedule 2AA, a policy of indemnity must indemnify the developer against at least the following:

- (a) claims, up to a value at least equivalent to the cover provided by the body corporate’s damage policy maintained pursuant to section 115, for accidental damage to buildings and works for the time being forming part of the parcel (including buildings erected and works carried out under the strata development contract), arising out of or resulting from the carrying out of the permitted development, subject only to such deductibles, exclusions and other terms and conditions as are reasonable and appropriate for contract works insurance;
- (b) claims, up to a value of at least \$10,000,000, for damages because of deaths or personal injuries, for which the developer is liable as an occupier of the parcel, subject only to such deductibles, exclusions and other terms and conditions as are reasonable and appropriate for public liability insurance.

(2) This clause does not affect any obligation of a developer to effect and maintain insurance required by or under any other law, such as the Workers Compensation Act 1987.

(g) by omitting from Schedule 1 forms 4, 7 and 21–23 and by inserting instead, respectively, the following forms:

Form 4

(Cl. 28 (I))

Strata Titles (Leasehold) Act 1986

SURVEYOR'S CERTIFICATE

I,
of
.....

a surveyor registered under the Surveyors Act 1929, certify that:

- (1) each applicable requirement of Schedule IA to the Strata Titles (Leasehold) Act 1986 has been met.
- (2) *(a) the building encroaches on a public place;
- *(b) the building encroaches on land (other than a public place) in respect of which encroachment an appropriate easement:
 - *has been created by registered †
 - *is to be created under section 88B of the Conveyancing Act 1919.
- (3) the survey information recorded in any accompanying location plan is accurate.

Signature:

Date:

*Delete if inapplicable

†State whether dealing or plan, and quote registered number

1994—No. 646**Form 7**

(Cl. 29 (1) (a))

*Strata Titles (Leasehold) Act 1986***COUNCIL'S CERTIFICATE**

..... (Name of Council)

having satisfied itself that the requirements of the Strata Titles (Leasehold) Act 1986 have been complied with, approves of the proposed:

*strata plan; or

*strata plan of subdivision,

illustrated in the annexure to this certificate.

*The strata plan/strata plan of subdivision is part of a development scheme. The Council is satisfied that the plan is consistent with the conditions of any development consent and that the plan gives effect to the stage of the strata development contract to which it relates.

*The Council does not object to the encroachment of the building beyond the alignment of

*This approval is given on the condition that the use of lot(s) (being utility lot/s designed to be used primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like) is restricted to the proprietor or occupier of a lot or proposed lot (not being such a utility lot) the subject of the leasehold strata scheme concerned, as referred to in section 68 of the Strata Titles (Leasehold) Act 1986.

Date

Subdivision No.

General Manager/authorised person

*Complete, or delete if inapplicable

1994—No. 646**Form 21**

(Cl. 62)

*Strata Titles (Leasehold) Act 1986***STRATA DEVELOPMENT CONTRACT—strata Plan No.....****WARNING**

This contract contains details of a leasehold strata scheme which is proposed to be developed in (insert number) stages on the land described in it.

The developer is only bound to complete so much of the proposed development as is identified as “warranted development” in this contract. However, the developer cannot be prevented from completing the balance of the proposed development identified as “authorised proposals” in this contract.

The proposed development might be varied but only in accordance with section 50 of the Strata Titles (Leasehold) Act 1986.

The proposed development might not be completed.

The vote of the developer is sufficient to pass or defeat a motion at a meeting of the body corporate, or of the Council of the body corporate, if the motion is about a development concern. Development concerns are generally those things necessary to be done in order to complete the development in accordance with this contract. See sections 54, 55 and 56 of the Strata Titles (Leasehold) Act 1986.

During development of a further stage there may be disruption to existing occupants due to building and construction activities.

This contract should not be considered alone, but in conjunction with the results of the searches and inquiries normally made in respect of a lot in a leasehold strata scheme.

Form 22

(Cl. 63)

*Strata Titles (Leasehold) Act 1986***ATTESTATION**

The Proprietors Strata Plan No.
 by the developer of
 Leasehold Strata Scheme No pursuant to the power
 given to the developer in section 54 (3) of the Strata Titles (Leasehold) Act
 1986 to execute this dealing/plan/instrument for the purpose of giving effect to
 a decision about a development concern.

Form 23

(Cl. 63)

*Strata Titles (Leasehold) Act 1986***STATUTORY DECLARATION**

I of
 do solemnly and sincerely declare that:

- (1) The dealing/plan/instrument lodged with this statutory declaration gives effect to a decision about a development concern as defined in section 55 of the Strata Titles (Leasehold) Act 1986.
- (2) (If applicable) I am authorised to make this declaration on behalf of Ltd.,
 and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at
 the day of

..... Witness etc. Declarant

(h) by omitting from Schedule 1 forms 5, 24 and 25.

Transitional,

3. The Strata Titles (Leasehold) Regulation 1989, as in force immediately before the commencement of this Regulation, applies to a development scheme provided for, and represented by, a development statement

- (a) that was certified under section 41 (4) of the Strata Titles (Leasehold) Act 1986 before that commencement; or
- (b) that, not needing to be so certified, was duly lodged for registration before that commencement.

EXPLANATORY NOTE

The object of this Regulation is to allow implementation of the provisions of the Strata Titles (Leasehold Staged Development) Amendment Act 1993 which will replace the current legislative scheme under which land in a leasehold strata parcel may be developed in stages. The Regulation repeals Part 9 of the Strata Titles (Leasehold) Regulation 1989 (which prescribed matters relating to development statements) and replaces it with a new Part 9 which prescribes matters relating to strata development contracts, the equivalent instrument regulating staged development under the new scheme.

References to development statements in clause 43 (relating to fees payable to the Registrar-General) are updated to refer to strata development contracts.

The new Part 9 prescribes the following for leasehold strata scheme staged development:

- (a) certain information, and the form of the warning, required to be included in a strata development contract;
- (b) how dealings, plans and other instruments are to be executed and verified by a developer authorised to execute instruments on behalf of a body corporate in order to implement a decision about a development concern;
- (c) details to be included in a notice or requisition served by a proprietor proposing a motion relating to a development concern or in a notice about a body corporate or council meeting at which such a motion will be considered;
- (d) particulars of the minimum insurance coverage that a developer must obtain when carrying out a vertical staged development.

Forms 7 and 21–23 are replaced by new forms 7 and 21–23 as a consequence of the new scheme for staged strata development.

Other amendments are made for the purpose of law revision. Clauses 6, 10 and 28 are amended to update references to sections of the Strata Titles (Leasehold) Act 1986 that were either amended by the Strata Titles (Leasehold Part Strata) Amendment Act 1992 or are amended by the Strata Titles (Leasehold Staged Development) Amendment Act 1993. Form 4 is replaced with a new form 4 that now refers to Schedule 1A of the 1986 Act containing survey requirements for strata plans. Forms 5, 24 and 25 are omitted.

As a transitional measure, the Regulation provides for the Strata Titles (Leasehold) Regulation 1989, as in force before the commencement of the amendments described above, to continue to apply to staged development schemes that are the subject of development statements certified by councils or lodged for registration before that commencement.

This Regulation is made under the Strata Titles (Leasehold) Act 1986, including sections 43 (3), 54 (4) and 196 (the general regulation-making power) and Part 2 of Schedule 5 to that Act.
