

**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)
AMENDMENT ACT 1993 No. 13**

NEW SOUTH WALES



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**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)
AMENDMENT ACT 1993 No. 13**

NEW SOUTH WALES



Act No. 13, 1993

An Act to amend the Strata Titles (Leasehold) Act 1986 to make more flexible provision for the staged development of land subject to a leasehold strata scheme and for other purposes; and to amend the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 consequentially. [Assented to 4 May 1993]

Strata Titles (Leasehold Staged Development) Amendment Act 1993 No. 13

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Leasehold Staged Development) Amendment Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Strata Titles (Leasehold) Act 1986 No. 219

3. The Strata Titles (Leasehold) Act 1986 is amended as set out in Schedule 1.

Amendment of other Acts

4. (1) The Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 (in each case, as amended by the Strata Titles (Staged Development) Amendment Act 1993) are amended as set out in Schedule 2.

(2) Amendments in Schedule 2 to this Act are taken to commence immediately after those in Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1993, if both of those Schedules commence on the same day.

**SCHEDULE 1—AMENDMENT OF STRATA TITLES
(LEASEHOLD) ACT 1986**

(Sec. 3)

**PART 1—AMENDMENTS RELATING TO STAGED
DEVELOPMENT**

(1) Section 4 (**Definitions (1973 Act, s. 5)**):

- (a) From the definitions of “development lot” and “development scheme” in section 4 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (b) From section 4 (1), omit the definition of “development statement”.

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(c) In section 4 (1), insert in alphabetical order the following definition:

“**strata development contract**” means a strata development contract, as in force for the time being, registered under Division 5 of Part 2;

(2) Section 7 (**Registration of strata plans (1973 Act, s. 8)**):

(a) From section 7 (2A), omit “and any proposed development lot”.

(b) Omit section 7 (2C), insert instead:

(2C) The schedule of unit entitlement for a leasehold strata scheme that does not include a development lot must show as whole numbers the aggregate unit entitlement of all lots and the proposed unit entitlement of each lot.

(2CA) The schedule of unit entitlement for a leasehold strata scheme that includes a development lot must show as whole numbers:

(a) the aggregate unit entitlement of all lots, whether or not development lots; and

(b) apportioned on the basis of land value (within the meaning of the Valuation of Land Act 1916) and so as to total that aggregate unit entitlement:

- the proposed unit entitlement of each development lot; and
- the proposed unit entitlement of all lots that are not development lots, being the unit entitlement attributable to the residue of the land in the proposed parcel; and

(c) apportioned on a market value basis and so as to total the proposed unit entitlement of all lots that are not development lots, the proposed unit entitlement of each lot that is not a development lot.

(c) From section 7 (2D) (a), omit “development statement”, insert instead “strata development contract”.

(d) From section 7 (2D) (b), omit “section 41 (4)”, insert instead “section 42 (2)”.

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(3) Section 10:

Omit the section, insert instead:

Subdivision of development lot (1973 Act, s. 8A)

10. (1) A development lot (which cannot be land within a stratum parcel) may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan of subdivision.

(2) A plan intended to be registered under this section as a strata plan of subdivision must include, as sheets of the plan:

- (a) a location plan; and
- (b) a floor plan; and
- (c) a schedule of unit entitlement.

(3) The location plan must be endorsed with:

- (a) a certificate issued by the local council under section 66 in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown; and
- (b) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met (but which need not certify any matter relating to a lot boundary that was certified in the strata plan or a previous strata plan of subdivision).

The location plan must also identify any encroachment by the building (whether or not on to a public place).

(4) The schedule of unit entitlement must show as whole numbers:

- (a) the current unit entitlement of the development lot intended to be subdivided; and
- (b) apportioned on a market value basis and so as to total that unit entitlement, the proposed unit entitlement of each lot intended to be created on registration of the strata plan of subdivision.

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(4) Section 16 (**Conversion of lots into common property (1973 Act, s. 13)**):

From section 16 (1), omit “Except as provided by section 45, one”, insert instead “One”.

(5) Section 32 (**Effect of dealings under this Division (1973 Act, s. 28)**):

After section 32 (4), insert:

(5) This section does not prevent the execution in accordance with section 54 of a dealing by a body corporate, or by a developer on behalf of the body corporate, to give effect to a decision about a development concern (within the meaning of section 55) or prevent the registration of a dealing so executed.

(6) Part 2, Division 5:

Omit the Division, insert instead:

Division 5—Staged Development

Explanation of staged development (1973 Act, s. 28A)

41. (1) The purpose of this Division is to facilitate the development of a parcel that is subject to a leasehold strata scheme.

(2) The development contemplated consists of:

- the progressive improvement of the parcel by the construction of buildings or the carrying out of works (or both) on a lot or lots reserved for future development (“**development lots**”); and
- the subsequent subdivision under this Act of each such lot and the consequential adjustment of unit entitlements within the scheme.

(3) Development lots may be situated wholly or partly above, below or alongside the building to which the leasehold strata scheme initially relates, but must be identified as such in the strata plan for the scheme when that plan is registered.

SCHEDULE 1—AMENDMENT OF STRATA TITLES
(LEASEHOLD)ACT 1986—*continued*

(4) The staged development of a parcel will be carried out subject to a strata development contract that describes separately:

- (a) any proposed development that the developer for the development lot concerned warrants will be carried out and may be compelled to carry out (“**warranted development**”); and
- (b) any other proposed development that the developer will be authorised but cannot be compelled to carry out (“**authorised proposals**”).

Warranted development and authorised proposals are referred to as “**permitted development**” because the body corporate or the leasehold strata scheme and other persons having estates or interests in lots included in the parcel must allow it to be carried out in accordance with the contract.

(5) This Division is not intended to prevent the development of a parcel otherwise than in accordance with this Division.

Obligations of consent authorities (1973 Act, s. 28B)

42. (1) A consent authority must not, at the same time, grant development consent for the subdivision of land by a strata plan and the subsequent subdivision of a lot in that plan by a strata plan of subdivision unless:

- (a) the lot intended to be subdivided is identified in the proposed strata plan as a development lot; and
- (b) the development application is accompanied by a proposed strata development contract.

(2) When a consent authority grants such a consent, it must certify in the approved form that carrying out the permitted development would not contravene:

- (a) any condition subject to which the consent was granted; or
- (b) the provisions of any environmental planning instrument that were in force when the consent was granted, except to the extent (if any) specified in the certificate.

SCHEDULE 1—AMENDMENT OF STRATA TITLES
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(3) A development consent that purports to have been granted in contravention of this section is invalid.

Form and content of strata development contract (1973 Act, s. 28C)

43. (1) A strata development contract and any amendment of such a contract must be in the approved form.

(2) A strata development contract must include a concept plan and a description:

- (a) of the land comprising the parcel, identifying separately the development lot or lots to which it relates; and
- (b) of any land proposed to be added to that parcel at a later time; and
- (c) of so much (if any) of the proposed development as 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”); and
- (d) of so much (if any) of the proposed development as 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 not subject to a warranty”).

(3) A strata development contract must include such other documents, particulars and information as may be required by the regulations.

(4) A strata development contract cannot provide for the subdivision of common property without the consent, by special resolution, of the body corporate.

Concept plan (1973 Act, s. 28D)

44. (1) A concept plan must illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of the buildings and works that would result from the carrying out of all permitted development under the strata development contract of which the plan forms part.

SCHEDULE 1—AMENDMENT OF STRATA TITLES
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(2) A concept plan must separately illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of such of those buildings and works (if any) as would result from the carrying out of all warranted development.

(3) The Registrar-General may refuse to register an amendment of a strata development contract if it does not include a revised concept plan so that this section will be complied with after the amendment has been registered.

Variation of liability for common property expenses (1973 Act, s. 28E)

45. (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of the common property of the leasehold strata scheme concerned differently from the way that liability would otherwise be apportioned by the schedule of unit entitlement applicable to lots under the scheme.

(2) An apportionment under this section has effect despite the current schedule of unit entitlement, but does not apply to any liability that relates to the use or maintenance of the common property after the development scheme is concluded.

Signing of strata development contract (1973 Act, s. 28F)

46. (1) The Registrar-General may register a strata development contract relating to a development lot in a strata plan or an amendment of such a contract only if the contract or amendment is signed by:

- (a) the developer for the development lot; and
- (b) the lessor under the leasehold strata scheme concerned; and
- (c) each registered mortgagee, chargee and covenant chargee of the lease of the development lot; and
- (d) each registered mortgagee and chargee of a sublease of the development lot.

(2) A strata development contract must be accompanied by the certificate (if any) required to be given by section 42 (Obligations of consent authorities).

SCHEDULE 1—AMENDMENT OF STRATA TITLES
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(3) The Registrar-General may refuse to register a strata development contract or an amendment of such a contract if there have not been lodged in the office of the Registrar-General written consents to the registration of the contract or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- (a) the judgment creditor under any writ recorded in the folio for the land comprised in the strata plan or for the lease or a sublease of the development lot Concerned;
- (b) the sublessee under any sublease of the common property of the leasehold strata scheme concerned;
- (c) the caveator under a caveat affecting any estate or interest of any person required to sign the contract because of that estate or interest or under a caveat affecting any such common property.

(4) Nothing prevents the same person from being more than one of the parties to a strata development contract.

Registration of strata development contract and amendments (1973 Act, s. 28G)

47. (1) The Registrar-General may register a strata development contract and any amendment of such a contract by making such recordings in the Register as the Registrar-General considers appropriate.

(2) The Registrar-General may refuse to register an amendment of a strata development contract if the certificate of title for the body corporate of the strata scheme concerned and the lease of the common property (if any) has not been produced to the Registrar-General.

(3) The Registrar-General must refuse to register a strata development contract and any amendment of such a contract that contravenes any requirement made of it by this Division.

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**Notice of strata development contract and amendments
(1973 Act, s. 28H)**

48. When a strata development contract is registered, the Registrar-General must record in the folio of the Register relating to the body corporate of the leasehold strata scheme concerned and the lease of the common property (if any):

- (a) the existence of the contract and of any subsequent amendment of it that is registered from time to time; and
- (b) such information relating to the contract and any amendment of the contract as the Registrar-General considers appropriate.

Effect of strata development contract (1973 Act, s. 28I)

49. (1) A strata development contract relating to a leasehold strata scheme has effect as an agreement under seal containing the covenants specified in Schedule 2AA entered into by the body corporate and each person who for the time being is:

- (a) the developer concerned; or
 - (b) the lessor under the scheme; or
 - (c) a lessee (other than that developer) or a sublessee of a lot; or
 - (d) a registered mortgagee, chargee or covenant chargee, or an occupier, of a lot or a registered or enrolled mortgagee or chargee of a lease of a lot.
- (2) The contract ceases to have effect:
- (a) in relation to a person described in subsection (1) (a), (b), (c) or (d), on that person ceasing to be a person so described; and
 - (b) in relation to all of the persons described in subsection (1), when the development scheme to which the contract relates is concluded.

This subsection does not affect any obligation that was incurred by a person, or any right that accrued to a person, under the contract before it ceased to have effect in relation to the person.

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(3) A strata development contract does not permit development to be carried out in contravention of this or any other Act or any other law.

(4) A sublessee entitled under a sublease to immediate possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned.

(5) A mortgagee, chargee or covenant chargee in possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned.

(6) A provision in any other contract or instrument under which a strata development contract is excluded, modified or restricted is void.

(7) A covenant entered into under a strata development contract does not merge on transfer of a lease of a lot.

(8) Nothing in this section affects any right or remedy a person may have apart from a right or remedy under a strata development contract, with the exception that Part 5 does not apply to matters arising under any such contract.

Amendment of strata development contract (1973 Act, s. 28J)

50. (1) A strata development contract may be amended by the developer, but any such amendment has effect only if:

- (a) this section has been complied with in relation to the amendment; and
- (b) the amendment is registered.

(2) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may be made only if it is:

- (a) approved by the consent authority (if any); and

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(b) except where the developer is the only lessee of lots in the leasehold strata scheme concerned, supported by a unanimous resolution of the body corporate of the leasehold strata scheme concerned.

(3) An amendment proposed in order to give effect to a change in the law or a change in the requirements of a consent authority (but that does not involve a change in the basic architectural or landscaping design of the development, or in its essence or theme) may be made only if it is:

(a) approved by the consent authority (if any); and

(b) notified to:

- the body corporate of the leasehold strata scheme concerned; and
- the lessee of each lot in that scheme (other than the developer); and
- each registered or enrolled mortgagee, chargee and covenant chargee of a lease of a lot in that scheme; and
- each registered or enrolled sublessee of a lot in that scheme.

(4) **Any** other proposed amendment that would require a change in the terms of a development consent may be made only if it is:

(a) approved by the consent authority; and

(b) supported by a special resolution of the body corporate of the leasehold strata scheme concerned.

(5) Any other proposed amendment that would not require a change in the terms of a development consent may be made only if:

(a) it is supported by an ordinary resolution of the body corporate of the leasehold strata scheme concerned; and

(b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the consent authority (if any), to the effect that a change in the terms of any development consent is not required.

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(6) A consent authority that approves an amendment of a strata development contract must provide the applicant for the approval with a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate in the approved form to the effect:

- (a) that the copy describes and illustrates the approved amendment; and
- (b) that the contract, if amended as approved by the authority, would not be inconsistent with any related development consent.

Approval of amendments by Land and Environment Court (1973 Act, s. 28K)

51. (1) An amendment of a strata development contract is not required to be supported by a resolution of a body corporate if the amendment is approved by the Land and Environment Court.

(2) Such an approval may be given only if the Court is satisfied:

- (a) that a motion supporting the amendment has been defeated; or
- (b) that the notice of intention to move such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice; or
- (c) that the consent to the amendment of a mortgagee, chargee or covenant chargee or of a sublessee has been sought but has been refused.

(3) An application for such an approval must be served on:

- (a) the consent authority; and
- (b) the body corporate; and
- (c) each person (other than the applicant) who is the lessee of a development lot; and
- (d) each registered or enrolled mortgagee, chargee, covenant chargee and sublessee of a lot in the leasehold strata scheme concerned.

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Use of common property and development lot by developer (1973 Act, s. 28L)

52. (1) When carrying out permitted development under a strata development contract, a developer is entitled to use any common property or development lot to which the contract relates:

- (a) to the extent necessary to carry out the development; or
- (b) to such other extent as may be specified in the contract, which may confer on the developer an exclusive (or any lesser) right to occupy specified common property.

(2) A right conferred by this section may be exercised despite any other provision of this Act or any provision of the by-laws or of an order under section 157, but must be exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot.

(3) Any provisions of a strata development contract that relate to the maintenance or upkeep of common property to which the contract relates have effect despite any provision of the by-laws or of an order under section 157.

Adding land to a parcel subject to a strata development contract (1973 Act, s. 28M)

53. (1) Land may be added to a parcel containing a development lot by registration of a strata plan of subdivision in accordance with the regulations.

(2) A strata plan of subdivision that adds land may be registered only if:

- (a) the land consisting of the former parcel and the additional land could be the subject of a strata plan had the land in the former parcel not already been subdivided under this Act; and
- (b) the strata development contract, as in force when the strata plan of subdivision is registered, provides for the land to be added to the parcel and states whether, on its being added to the parcel, the land will become common property, a further development lot or an addition to an existing development lot, or any specified combination of them; and

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(c) a plan showing as a single lot the additional land and the former parcel has been lodged for registration under the Conveyancing Act 1919.

(3) On registration of such a strata plan of subdivision, the land becomes common property, a further development lot or an addition to an existing development lot, or any specified combination of them, as provided by the strata development contract.

Right to complete permitted development (1973 Act, s. 28N)

54. (1) The vote of a developer who is permitted to carry out development because it is included in a strata development contract is sufficient to pass or defeat a motion included in the notice for a meeting of the body corporate or of the council of the body corporate if the passing or defeat of the motion would have the effect of making a decision about a development concern.

(2) It is not necessary for a decision about a development concern to be supported by a special or unanimous resolution of a body corporate, despite any other provision of this Act.

(3) A dealing, plan or other instrument may be executed either by the body corporate or by a developer on behalf of the body corporate for the purpose of giving effect to a decision about a development concern.

(4) The regulations may impose requirements for the execution of dealings, plans and other instruments by bodies corporate and developers and may require verification by statutory declaration of the circumstances in which they were executed.

What are “development concerns”? (1973 Act, s. 28O)

55. (1) The following are development concerns for the purposes of this Division:

- (a) erecting structures, carrying out works or effecting other improvements in accordance with the strata development contract;
- (b) creating easements, dedicating land, making by-laws or entering into covenants or management or other agreements in accordance with that contract;

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- (c) creating or using common property in accordance with that contract;
 - (d) creating or using a development lot in accordance with that contract;
 - (e) using water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone or other services available to the parcel, or installing additional services, in accordance with that contract;
 - (f) providing and using means of access or egress to or from a development lot, or to or from the common property, in accordance with that contract;
 - (g) subdivision of a development lot, or excising a development lot from the parcel, in accordance with that contract;
 - (h) carrying out any other development that is permitted to be carried out because it is included in that contract.
- (2) The following are not development concerns for the purposes of this Division:
- (a) subdivision of common property that has been created by a registered plan;
 - (b) amendment of a strata development contract, regardless of whether the subject-matter involved is, or relates to, a development concern.

Meetings of body corporate relating to development concerns (1973 Act, s. 28P)

56. (1) A motion, the passing or defeat of which at a meeting of the body corporate or of the council of the body corporate would have the effect of making a decision about a development concern, must be:

- (a) identified as relating to a development concern in the notice for the meeting; and
- (b) moved separately from any other kind of motion.

(2) An extraordinary general meeting of the body corporate for the purpose of making a decision about a development concern may be convened under Schedule 4 by the developer or the lessees of not fewer than one quarter of the lots in the leasehold strata scheme concerned that are not development lots.

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(3) In convening any such extraordinary general meeting, the developer or any of those lessees may give notice of the meeting on behalf of the council of the body corporate.

(4) The presence of the developer (or, if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the body corporate or of the council of the body corporate of which notice has been duly given, but only while business relating to a development concern is being dealt with.

(5) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or, if the developer is a corporation, the company nominee of the corporation) may exercise such of the other functions of a body corporate bound by the contract or of any other person having functions under the leasehold strata scheme concerned as may be prescribed by the regulations.

(6) This section has effect despite any other provision of this Act.

Conclusion of development scheme (1973 Act, s. 28Q)

57. (1) For the purposes of this Division, a development scheme to which a strata development contract relates is concluded when any of the following occurs:

- (a) any development consent required for carrying out the scheme is revoked;
- (b) a strata plan of subdivision is registered which subdivides the development lot to which the contract relates or subdivides the residue of that development lot after excision of part of that lot in accordance with the contract;
- (c) the time predicted by the contract for conclusion of the development scheme arrives;
- (d) a notice in the approved form, signed in accordance with subsection (3) and stating that the development scheme to which the contract relates has concluded, is registered by the Registrar-General;

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- (e) the development scheme is concluded under section 57AA by an order of the Land and Environment Court;
- (f) the leasehold strata scheme concerned is terminated under Part 3 by an order of the Supreme Court.

(2) A strata development contract must predict a time, being no later than the tenth anniversary of the day on which the contract was registered, as the time for conclusion of the development scheme to which it relates.

(3) A notice is signed in accordance with this subsection only if:

- (a) it is signed by the developer concerned; and
- (b) it is signed by the lessor under the scheme, except where the lessor is the developer; and
- (c) it is signed by each registered mortgagee, chargee, covenant chargee and sublessee of the development lot, and by each registered mortgagee and chargee of a lease of that lot; and
- (d) it is accompanied by a certificate, given in the approved form by the body corporate for the strata scheme concerned, certifying that the relevant agreement is supported by a unanimous resolution of the body corporate.

(4) The Registrar-General is required to make an appropriate record of the conclusion of a development scheme in the folio for the body corporate and the lease of the common property (if any) of the leasehold strata scheme concerned.

Order for extension or conclusion of development scheme (1973 Act, s. 28QA)

57AA. (1) On application made to it by any person bound by a strata development contract, the Land and Environment Court may, by its order, do either or both of the following:

- (a) defer (either generally or to a specified time) the time at which a development scheme would otherwise be concluded;
- (b) fix a time for the conclusion of a development scheme, whether it is an earlier or a later time than it would otherwise be.

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(2) Notice of such an application is to be served, in accordance with rules of court, on:

- (a) the developer concerned; and
- (b) the lessor under the scheme, except where the lessor is the developer; and
- (c) each lessee (other than that developer) of a lot, each registered or enrolled mortgagee, chargee, covenant chargee and sublessee of a lot and each registered mortgagee and chargee of a lease of a lot; and
- (d) the body corporate; and
- (e) the consent authority (if any) that granted the relevant development consent; and
- (f) the Registrar-General; and
- (g) such other persons (if any) as the Land and Environment Court may direct.

(3) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application.

(4) An order under this section may:

- (a) contain such provisions relating to the leasehold strata scheme as are, in the opinion of the Land and Environment Court, necessary because of the conclusion of the development scheme; and
- (b) require the payment of money to or by the body corporate or the lessees of lots to any one or more of them in addition to, or instead of, any award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the Land and Environment Court Act 1979; and
- (c) contain such other provisions and make such other requirements as, in the opinion of the Land and Environment Court, are just and equitable in the circumstances of the case.

(5) The Land and Environment Court may, from time to time, vary an order under this section on the application of any person entitled to apply for such an order.

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Application for assistance (1973 Act, s. 28QB)

57AB. (1) A body corporate or a lessee of a lot (other than the developer concerned) may apply in writing to the Commissioner for assistance in bringing or defending proceedings before the Land and Environment Court relating to:

- (a) a strata development contract or an amendment of such a contract; or
- (b) an agreement implied by section 49; or
- (c) a development consent granted in accordance with section 42 (1) or a modification of such a development consent.

(2) After receipt of such an application, the Commissioner may require the applicant to provide the Commissioner with such further information about the application as, in the opinion of the Commissioner, may assist investigation of the application and may refuse to proceed with the application until any such requirement for further information has been complied with.

(3) An application under this section is referred to in this Division as an **application for assistance**.

Investigation of application for assistance (1973 Act, s. 28QC)

57AC. (1) The Commissioner must decide whether to proceed with investigation of an application for assistance or, having proceeded with such an investigation, whether to discontinue that investigation.

(2) In so deciding, the Commissioner must have regard to whether, in the opinion of the Commissioner:

- (a) the application is frivolous, vexatious, misconceived or lacking in substance; or
- (b) the applicant has unreasonably delayed complying with a requirement for further information; or

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- (c) investigation, or further investigation, is a matter for a consent authority; or
- (d) the applicant has an alternative and better means of redress.

The Commissioner may have regard to such other matters as the Commissioner considers to be appropriate.

(3) If the Commissioner decides to investigate an application, the Commissioner must:

- (a) inform the applicant of the decision; and
- (b) except where the body corporate is the applicant—inform the body corporate of the decision and of the subject-matter of the investigation; and
- (c) inform the developer concerned and the relevant consent authority of the decision and of the subject-matter of the investigation; and
- (d) invite each of those persons (other than the applicant) to make within a specified period a written submission with respect to that subject-matter.

(4) If the Commissioner decides not to investigate an application or to discontinue an investigation, the Commissioner must so inform the applicant and, in the case of a discontinuance, each other person whom the Commissioner notified of the original decision to investigate the application.

(5) On completion of an investigation by the commissioner or a delegate of the Commissioner of an application, the Commissioner must report to the Commissioner for Consumer Affairs on the results of the investigation.

Power of entry (1973 Act, s 28QD)

57AD. (1) For the purpose of investigating an application for assistance, the Commissioner (or a delegate of the Commissioner) may enter any lot the subject of the leasehold strata scheme concerned at any reasonable time on notice given to any occupier of that lot and may enter the common property at any time whether or not on giving notice.

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(2) A person must not obstruct or hinder the Commissioner, or a delegate of the Commissioner, when exercising the powers conferred by this section.

Maximum penalty: 5 penalty units.

Application of Fair Trading Act 1987 to applications for assistance (1973 Act, s. 28QE)

57AE. Sections 20–22 of the Fair Trading Act 1987 apply to an investigation of an application for assistance as if:

- (a) references in those sections to information, documents or evidence included references to information, documents or evidence relating to an application for assistance; and
- (b) references in those sections to an investigator included references to the Commissioner and to any person to whom have been delegated under section 98 of the Strata Titles Act 1973 the powers conferred on the Commissioner with respect to an application for assistance; and
- (c) references in those sections to the Commissioner for Consumer Affairs included references to the Strata Titles Commissioner; and
- (d) references in those sections to that Act included references to this Act.

Grant of legal assistance (1973 Act, s. 28QF)

57AF. (1) Division 2 (sections 12 and 15 (6) excepted) of Part 2 of the Fair Trading Act 1987 applies to an application for assistance in the same way as it applies to an application under section 12 of that Act.

(2) Whether or not investigation of an application for assistance has been completed, the Commissioner may, with the consent of the Minister administering the Fair Trading Act 1987, seek an interim restraining order under section 124 of the Environmental Planning and Assessment Act 1979 in relation to the subject-matter of the application. The interim order may be granted without any undertaking being given by the Commissioner as to damages.

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(3) An interim restraining order so sought by the Commissioner is, for the purposes of subsection (1), taken to have been sought by the person who made the application for assistance and that person is taken to be an assisted person under Division 2 of Part 2 of the Fair Trading Act 1987.

Resolution authorising application by body corporate (1973 Act, s. 28QG)

57AG. (1) A body corporate authorised to do so by a resolution of the body corporate passed at a duly convened general meeting may:

- (a) make an application for assistance; or
- (b) bring proceedings referred to in section 123 of the Environmental Planning and Assessment Act 1979 or section 20 (1) (e) of the Land and Environment Court Act 1979 relating to:
 - a strata development contract or an amendment of such a contract; or
 - a development consent granted in accordance with section 42 (1) of this Act or a modification of such a development consent.

(2) Any vote cast by the developer concerned (whether as lessee of a lot or as mortgagee, covenant chargee or proxy) or by a mortgagee of the developer concerned (whether as a mortgagee, covenant chargee or proxy) is to be disregarded when determining whether such a resolution has been passed.

(3) The carrying out of development in contravention of a condition of a development consent granted under any other Act is taken to be a breach of the Environmental Planning and Assessment Act 1979 for the purposes of:

- (a) enabling proceedings referred to in section 123 of that Act to be brought pursuant to this section; and
- (b) the application of that Act to those proceedings.

Functions of Commissioner (1973 Act, s. 28QH)

57AH. The Commissioner may:

- (a) give advice as to the remedies available in relation to matters arising under this Division; and

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- (b) endeavour to bring the interested parties to an agreement which will settle any question, dispute or difficulty that arises from the operation of this Division; and
 - (c) advise the appropriate consent authority of any departure from the terms of a development consent or strata development contract,
- (7) Section 61 (**Readjustment of leasehold strata scheme for purposes of resumption (1973 Act, s. 32)**):
From section 61 (4) (c), omit “development statement”, insert instead “strata development contract”.
- (8) Section 66 (**Approval of proposed strata plans and strata plans of subdivision and of conversion of lots into common property (1973 Act, s. 37)**):
From section 66 (2) (b) (ii), omit “development statement”, insert instead “strata development contract”.
- (9) Section 69 (**Appeal against local council refusing approval (1973 Act, s. 40)**):
From section 69 (1) (d), omit “development statement”, insert instead “strata development contract”.
- (10) Section 70 (**Registration of plans and notices (1973 Act, s. 41)**):
- (a) Omit section 70 (3)–(5).
 - (b) From section 70 (7), omit “, building alteration plan, development statement or amendment of a development statement”, insert instead “or building alteration plan”.
- (11) Section 71 (**Provisions applying to strata plans etc. (1973 Act, s. 42)**):
From section 71 (2) and (3), omit “development statement” wherever occurring, insert instead “strata development contract”,
- (12) Section 72 (**Registrar-General’s power to adjust unit entitlements (1973 Act, s. 43)**):
From section 72 (1), omit “referred to in section 7 (1) (g), 10 (2) (c), 13 (1) or 14 (a)”, insert instead “of unit entitlement”.

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- (13) Section 79 (**Variation of leasehold strata scheme consequent on damage to or destruction of building (1973 Act, s 50)**):
From section 79 (6) (c), omit “development statement”, insert instead “strata development contract”.
- (14) Section 80 (**Termination of leasehold strata scheme (1973 Act, s. 51)**):
From section 80 (7) (c), omit “development statement”, insert instead “strata development contract”.
- (15) Section 82 (**Consequences of making an order under section 79 or 80 (1973 Act, s. 53)**):
From section 82 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (16) Section 96 (**Statutory restrictions on powers of body corporate (1973 Act, s. 66)**):
From section 96 (1) (b), omit “development statement”, insert instead “strata development contract”.
- (17) Section 98 (**Duties of body corporate (1973 Act, s 68)**):
From section 98 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (18) Section 111 (**Duties of lessees and other occupiers of lots (1973 Act, s. 80)**):
From section 111 (2), omit “section 48”, insert instead “section 52”.
- (19) Section 136 (**General powers of Commissioner to make orders (1973 Act, s. 105)**):
Omit section 136 (8), insert instead:
(8) Nothing in this Division authorises the Commissioner to make an order of the kind that may be made under section 61, 79, 80 or 97 by the Supreme Court.

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(20) Section 155:

Omit the section, insert instead:

Order for reallocation of unit entitlements (1973 Act, s. 119)

155. (1) A Board may make an order allocating unit entitlements among the lots that are subject to a leasehold strata scheme in the manner specified in the order.

(2) An order may be made only if the Board considers, after having regard to the respective values of the lots and (if a strata development contract is in force in relation to the leasehold strata scheme) to such other matters as the Board considers relevant, that the allocation of unit entitlements among the lots:

- (a) was unreasonable when the strata plan was registered or when a strata plan of subdivision was registered; or
 - (b) became unreasonable because of a change in the permitted land use, being a change (whether or not because of a rezoning) in the ways in which the whole or any part of the parcel could lawfully be used, whether with or without development consent.
- (3) An application for an order may be made:
- (a) by the lessor under the scheme; or
 - (b) by a lessee of a lot (whether or not a development lot) within the parcel; or
 - (c) by the body corporate; or
 - (d) by the local council, or by any other public or local authority constituted by or under an Act or any statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land.

(4) An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates.

(5) The certificate must have been given by the holder of a current certificate of registration under the Valuers

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Registration Act 1975 as a practising real estate valuer authorised under that Act to make such a valuation (a “**qualified valuer**”).

(6) A Board may, if it makes an order reallocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Board, were allocated unreasonably by a developer, also order:

- (a) despite section 152, the payment by the developer to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer; and
- (b) the payment by the developer of such amounts as may be assessed by the Board to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order to any one or more of the following:
 - the lessor under the scheme;
 - the lessees of lots;
 - the body corporate.

(7) An amount ordered to be paid under this section may be recovered as a debt in a court of competent jurisdiction.

(21) Schedule 1A (**Requirements for strata plans**):

From the heading, omit “(Sec. 7)”, insert instead “(Secs. 7, 10) .

(22) Schedule 2AA:

After Schedule 2, insert:

**SCHEDULE 2AA—COVENANTS IMPLIED IN
STRATA DEVELOPMENT CONTRACTS**

(Sec. 49)

Warranted development

1. The developer agrees with the other parties jointly, and with each of them severally:

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(LEASEHOLD) ACT 1986—*continued*

- that the developer must carry out the development (if any) described and identified as “**warranted development**—proposed development subject to a warranty” in the strata development contract; and
- that the developer must carry out any such development in accordance with the covenants set out and implied in the contract.

Permission to carry out warranted development and authorised proposals

2. The parties, other than the developer, jointly and severally agree with the developer that the developer is permitted to carry out, in accordance with the covenants set out or implied in the contract:

- the warranted development (if any); and
- such other development as is described and identified as “**authorised proposals**—proposed development *not* subject to a warranty” in the contract.

Body corporate expenses

3. The developer agrees with the body corporate that the developer will pay the reasonable expenses incurred by the body corporate:

- in repairing damage to the common property caused in carrying out the permitted development, except damage due to normal wear and tear; and
- for any water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air or telephone service (and any other service prescribed by the regulations) used in carrying out that development; and
- for additional administrative costs connected with that development, such as the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision.

Standard of development

4. The developer agrees with the other parties that:
- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths; and

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- the heights of buildings, other structures and works and the density of development,

in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, except to the extent (if any) that the contract specifies.

Unauthorised use of the parcel

5. The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used except:

- to the extent necessary to carry out the development permitted to be carried out by the strata development contract; or
- to such other extent as may be specified in the contract.

Restoration of common property

6. The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

Restoration of development lot

7. The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

For the purposes of this covenant, “**damage**” does not include damage necessarily resulting from having carried out (in accordance with the contract) development that is permitted by the contract to be carried out.

Additional covenants for vertical staged development

8. If the contract permits development to be carried out within a development lot that is wholly or partly directly above or below a part of the parcel that is not a development lot, the developer agrees with the other parties:

- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise; and

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- to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided such other parts of the parcel as capable of being sheltered or of enjoying that are support; and
- to keep the developer insured, while permitted development is being carried out, under a policy of indemnity (that complies with the regulations) with an insurer approved for the purposes of Division 5 of Part 4 against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development.

(23) Schedule 5 (**Transitional and savings provisions**):

After Part 1, insert:

**PART 2—PROVISIONS RELATING TO THE
STRATA TITLES (LEASEHOLD STAGED
DEVELOPMENT) AMENDMENT ACT 1993**

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Strata Titles (Leasehold Staged Development) Amendment Act 1993.

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to that Act or on a later date.

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication.

SCHEDULE 1—AMENDMENT OF STRATA TITLES
(LEASEHOLD) ACT 1986—*continued*

Transitional arrangements for certain development schemes

2. (1) This Act, as in force immediately before the commencement of Part 1 of Schedule 1 to the Strata Titles (Leasehold Staged Development) Amendment Act 1993, applies to a development scheme provided for, and represented by, a development statement:

- (a) that was certified under section 41 (4) before that commencement; or
- (b) that, not needing to be so certified, was duly lodged for registration before that commencement.

(2) The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Leasehold Staged Development) Amendment Act 1993, applies to any proceedings:

- (a) that are commenced after that commencement in the Land and Environment Court; and
- (b) that relate to any such development scheme or development statement.

Proceedings pending in Land and Environment Court

3. The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Leasehold Staged Development) Amendment Act 1993, applies to any proceedings that are, at that commencement, pending in the Land and Environment Court under this Act.

PART 2—OTHER AMENDMENTS

(24) Section 5 (**Construction of Act (1973 Act, s. 6)**):

In section 5 (4), after “strata plan” wherever occurring, insert “or strata plan of subdivision”.

(25) Section 6 (**Subdivision (1973 Act, s. 7)**):

After section 6 (1), insert:

(1A) For the purposes of this section, land is contiguous to other land even if it is divided by, or separated from the other land by, a natural feature (such as a watercourse), a railway, a public road, a public reserve or a drainage reserve.

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(26) Section 65 (Other Acts not to apply to subdivisions under Division 1 (1973 Act, s. 36)):

At the end of section 65, insert:

(2) This section does not affect any requirement to obtain development consent under the Environmental Planning and Assessment Act 1979 to a subdivision to be effected under Division 1.

(27) Section 80A:

After section 80, insert:

Termination of leasehold strata scheme and leases by Registrar-General (1973 Act, s. 51)

80A. (1) On receiving an application under this section, the Registrar-General may:

- (a) make an order terminating a leasehold strata scheme; or
- (b) refuse to terminate a scheme.

A refusal by the Registrar-General to terminate a leasehold strata scheme does not preclude an application to the Supreme Court under section 80 for termination of the scheme.

(2) An application must relate to a parcel that is not subject to a strata development contract.

(3) Except where the Registrar-General agrees otherwise, the application must be signed by:

- (a) the lessor under the scheme; and
- (b) each registered lessee and sublessee of a lot under the scheme; and
- (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease or sublease of a lot or of the common property (if any) under the scheme.

(4) The application must bear the consent of the consent authority (if any) for subdivision of the land to which it relates.

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(LEASEHOLD) ACT 1986—*continued*

(5) Details of the proposed termination, and a statement of intention to make the application, must, except where the Registrar-General otherwise agrees, be published at least 14 days before the application is made:

- (a) in a daily newspaper circulating generally in Sydney; and
- (b) in a local newspaper circulating generally in the area in which the parcel is situated; and
- (c) in the Gazette.

(6) The application must be accompanied by:

- (a) the certificates of title for all the leases of lots in the scheme, the registered leases of those lots and the lease of the common property (if any), except where the Registrar-General agrees otherwise; and
- (b) such other documents, consents and evidence as the Registrar-General may require; and
- (c) if the Registrar-General so requires, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of Part 23 of the Conveyancing Act 1919.

(7) An order terminating a leasehold strata scheme takes effect on being recorded by the Registrar-General in the folio for the land comprising the parcel.

(8) When an order terminating a leasehold strata scheme takes effect:

- (a) the body corporate is dissolved and the leasehold strata scheme is terminated; and
- (b) the former leases of each former lot and the former lease of the common property (if any) are determined; and
- (c) the persons who, immediately before the order took effect, were lessees or sublessees of the lots the subject of the leasehold strata scheme cease to be lessees or sublessees of the lots subject to that scheme; and
- (d) the former lessees of the lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots; and

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- (e) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees; and
 - (f) the assets of the former body corporate immediately before the order took effect vest in the former lessor under the scheme or, if the application so provides, in the former lessees as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former lessees or such other proportions as may be set out in the application); and
 - (g) the land that comprises the former parcel is vested in the former lessor under the scheme freed and discharged from any mortgage or charge registered, immediately before termination of the scheme, in the folio for a lease of a lot or the common property (if any) under the former scheme.
- (9) On recording an order terminating a leasehold strata scheme, the Registrar-General:
- (a) is to cancel the folios for the leases and any subleases of lots and the lease of the common property (if any) in the former parcel; and
 - (b) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences.
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SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

Environmental Planning and Assessment Act 1979 No. 203

Section 99 (Lapsing of consent):

In section 99 (5A) (a), after “1973”, insert “or the Strata Titles (Leasehold) Act 1986”.

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SCHEDULE 2— AMENDMENT OF OTHER ACTS—*continued*

Land and Environment Court Act 1979 No. 204

- (1) Section 18 (Class 2—local government and miscellaneous appeals and applications):

From section 18 (f), omit “sections 46, 49 and 51” , insert instead “sections 51 and 57AA”.

- (2) Section 20 (**Class 4—environmental planning and protection and development contract civil enforcement**):

From section 20 (5), omit “section 47”, insert instead “section 49”.

*[Minister’s second reading speech made in—
Legislative Assembly on 15 October 1992
Legislative Council on 21 April 1993]*