

Act 1993 No. 13

**STRATA TITLES (LEASEHOLD STAGED DEVELOPMENT)  
AMENDMENT BILL 1992\***

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Strata Titles (Staged Development) Amendment Bill 1992.

The Strata Titles (Leasehold) Act 1986 already contains rather restrictive provisions allowing the development by stages of part or parts of the land subject to a leasehold strata scheme. The object of this Bill is to amend the 1986 Act (and, as far as is practicable, to parallel the amendments intended to be made to the Strata Titles Act 1973 by the proposed Strata Titles (Staged Development) Amendment Act 1992) so as

- (a) to introduce a more flexible legislative scheme for the development by stages of land (called “development lots”) reserved under a leasehold strata scheme for future development and subdivision; and
- (b) to make other unrelated changes, the more important of which will allow:
  - the creation of leasehold strata schemes for land that is not strictly contiguous; and
  - the termination of leasehold strata schemes by the Registrar-General in limited circumstances without prior recourse to the Supreme Court.

The proposed Act also makes consequential amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

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\* Amended in committee—see table at end of volume.

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**Clause 3** gives effect to the Schedule of amendments to the 1986 Act.

**Clause 4** gives effect to the Schedule of amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

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

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

**Definitions**

**Schedule 1 (1)** amends section 4 (**Definitions**) because the instrument describing the development that is permitted to be carried out within a development lot will be called a *strata development contract* under the proposed scheme. Similar instruments are presently called “development statements”. The changes are aimed at avoiding confusion with the kinds of instruments referred to in the Community Land Development Act 1989.

**Strata plan registration**

**Schedule 1 (2)** amends section 7 (**Registration of strata plans**) which lists the requirements that presently must be met by strata plans.

**Schedule 1 (2) (a)** removes the requirement that a development lot be illustrated on a location plan.

**Schedule 1 (2) (b)** requires the initial schedule of unit entitlement for a strata plan that includes a development lot to show the unit entitlement of each development lot and of the residue of the parcel apportioned in accordance with their relative land values. The unit entitlement of each of the developed lots must also be shown in the initial schedule as a proportion (calculated on a market value basis) of the unit entitlement of that residue.

**Schedule 1 (2) (c) and (d)** make amendments consequential on the changes in terminology and numbering of provisions in Division 5 of Part 2.

**Subdivision after completion of a stage of development**

**Schedule 1 (3)** substitutes section 10 (**Subdivision of development lot**) so as to restate, with appropriate modifications, the requirements for registration of a strata plan of subdivision of a development lot after development permitted by the strata development contract has been carried out. The unit entitlement of each of the new lots into which the development lot will be divided must be shown in a schedule of unit entitlement as a proportion (calculated on a market value basis) of the unit entitlement of the development lot.

**Consequential amendments**

**Schedule 1 (4)** amends section 16 (**Conversion of lots into common property**) to remove a reference to a repealed provision.

**Schedule 1 (5)** amends section 32 (**Effect of dealings under this Division**) to make it clear that the restrictions in that section do not prevent instruments executed in accordance with the proposed amendments from being registered under the 1986 Act.

**Staged development schemes**

**Schedule 1** (6) substitutes Division 5 of Part 2 of the Principal Act with a new Division 5 (containing proposed sections 41–57AA). Of the proposed sections:

Section 41 (**Explanation of staged development**) describes in general terms the concept of staged development. As mentioned above, staged development consists of:

- the progressive development of reserve or development lots in a leasehold strata scheme (which may result in the construction of additional buildings and the carrying out of works such as landscaping); and
- the subdivision of those lots after that development has been carried out (which will create titles for each of the new lots, allowing them to be leased, and the residue of any lease transferred, separately); and
- the allocation of unit entitlements for the new lots. (Unit entitlements determine the proportions in which lessees of lots will be required to contribute to maintenance of the building and other common property.)

Section 42 (**Obligations of consent authorities**) forbids a consent authority from granting development consent for a subdivision under the 1986 Act that would create a lot reserved for development and for the subsequent subdivision under that Act of that lot unless the lot is identified as a development lot and the consent authority is supplied with a proposed strata development contract describing the intended development.

Section 43 (**Form and content of strata development contract**) sets out the requirements for strata development contracts. Such a contract must separately describe any “warranted development” (which the developer may be compelled to carry out) and all “authorised proposals” (which the developer may carry out but cannot, merely because of the contract, be forced to carry out).

A strata development contract must include a concept plan illustrating the buildings and works that will result from the proposed development.

Section 44 (**Concept plan**) sets out the requirements for concept plans and is aimed at ensuring that there will be an up-to-date concept plan filed at the Land Titles Office.

Section 45 (**Variation of liability for common property expenses**) allows a strata development contract to apportion the liability for common property expenses between the developer and other lessees of lots differently from how they would be apportioned on a unit entitlement basis.

Section 46 (**Signing of strata development contract and amendments**) lists the persons who will be required to sign a strata development contract and allows the Registrar-General to refuse to register such a contract until the consent of other persons has been obtained.

Section 47 (**Registration of strata development contract and amendments**) provides for the registration of strata development contracts by the Registrar-General and allows registration to be refused until the certificate of title for the body corporate and the lease of the common property (if any) has been produced.

Section 48 (**Notice of strata development contract and amendments**) requires the Registrar-General to record in the folio of the Real Property Act Register relating to the body corporate and the lease of the common property (if any) of a leasehold strata scheme particulars about any strata development contract affecting the scheme.

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Section 49 (**Effect of strata development contract**) declares that such a contract has effect as an agreement under seal containing covenants that are binding on the persons identified in the proposed section, which include the developer, the lessor under the leasehold strata scheme concerned and the lessees of the lots in the scheme. The implied covenants (set out in proposed Schedule 2AA) will bind any sublessee or mortgagee of a development lot (instead of the developer) while the sublessee or mortgagee is in possession of the development lot.

Section 50 (**Amendment of strata development contract**) sets out requirements for the amendment of a strata development contract similar to those for amendment of a development contract under the Community Land Management Act 1989.

Section 51 (**Approval of amendments by Land and Environment Court**) allows an amendment of a strata development contract to be made with the approval of the Land and Environment Court, instead of being supported by a resolution of the body corporate of the leasehold strata scheme concerned.

Section 52 (**Use of common property and development lot by developer**) authorises the developer to make such use of common property and the development lot as may be necessary to carry out all of the warranted development and authorised proposals contained in a strata development contract. That right must be exercised so as not to cause unreasonable inconvenience to the occupier of any lot in the leasehold strata scheme concerned

Section 53 (**Adding land to a parcel subject to a strata development contract**) provides for the addition of land to a parcel containing a development lot by registration of a strata plan of subdivision. Land may be added so as to become common property, a further development lot or an addition to a current development lot, or any combination of them.

Section 54 (**Right to complete permitted development**) confers on a developer a sufficient vote to make a body corporate decision about a “development concern” even though the decision might otherwise need to be supported by a special or unanimous resolution.

Section 55 (**What are “development concerns”?**) lists various matters that are, or are not, development concerns. In general terms, carrying out any warranted development or authorised proposal contained in a strata development contract is such a concern, but the subdivision of common property already created and any amendment of the contract itself are not.

Section 56 (**Meetings of body corporate relating to development concerns**) requires motions relating to development concerns to be dealt with at body corporate meetings separately from other kinds of motions.

Section 57 (**Conclusion of development scheme**) sets out the various circumstances in which a development scheme established by a strata development contract is concluded. Each strata development contract that does not specify a time for conclusion of the development scheme will be taken to fix the tenth anniversary of its registration as the time for completion.

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Section 57A4 (**Order for extension or conclusion of development scheme**) allows the Land and Environment Court to alter the time at which a strata development scheme would otherwise be concluded.

**Further consequential amendments**

**Schedule 1 (7)–(9), (11) and (13)–(17)** amend sections 61, 66, 69, 71, 79, 80, 82, 96 and 98, respectively, to change references to development statements to references to strata development contracts.

**Schedule 1 (10)** amends section 70 (**Registration of plans and notices**) to omit requirements relating to the registration of development statements and amendments to them. (Those kinds of requirements for strata development contracts are contained in the proposed Division 5.)

**Schedule 1 (12) and (19)** omit unnecessary cross-references from sections 72 and 136.

**Schedule 1 (18)** updates a cross-reference in section 111 (**Duties of proprietors and occupiers of lots**).

**Schedule 1 (21)** extends the cross-reference in the heading to Schedule 1A (**Requirements for strata plans**) because surveyors' certificates referred to in proposed new section 10 will certify compliance with the requirements set out in that schedule.

**Orders for the reallocation of unit entitlements**

**Schedule 1 (20)** substitutes section 155:

- to expand a Strata Titles Board's current power to order an adjustment of unit entitlements so as to include cases in which there has been a change in the uses to which the parcel may be put; and
- to allow applications for such orders to be made by rating and taxing authorities (such as local councils) whose rates or taxes are related to the value of land.

**Covenants implied in strata development contracts**

**Schedule 1 (22)** inserts proposed Schedule 2AA which sets out covenants implied in strata development contracts. Among the more important covenants are those:

- that require the standard of materials and the heights of buildings and the density of development in all development carried out under such a contract not to be inferior or substantially different from those of completed buildings forming part of the parcel; and
- that require shelter and subjacent and lateral support, consistent with proper engineering and building practices, and insurance to be provided where vertical staged development is carried out.

**Transitional provisions**

**Schedule 1 (23)** inserts proposed Part 2 into Schedule 5 (**Transitional and savings provisions**).

Any development scheme provided by a development statement certified by a consent authority or lodged for registration before the commencement of Part 1 of Schedule 1 to the amending Act will be subject to the provisions of the 1986 Act as in force immediately before that commencement.

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Any proceedings pending in the Land and Environment Court under the 1986 Act when amendments made to the Land and Environment Court Act 1979 by Schedule 2 to the amending Act commence will continue to be dealt with as if those amendments had not been made.

Power is conferred to make further savings and transitional provisions by regulations.

## **PART 2—OTHER AMENDMENTS**

### **Extension of provisions to additional encroachments**

**Schedule 1 (24)** amends section 5 (**Construction of Act**) which extends certain provisions of the 1986 Act relating to lots and common property to encroachments shown on proposed strata plans so that those provisions will also apply to encroachments shown on proposed strata plans of subdivision.

### **Contiguous land**

**Schedule 1 (25)** amends section 6 (**Subdivision**) to allow land that is divided by, or separated by, a natural feature (such as a watercourse), railway, public road, public reserve or drainage reserve to be the subject of a leasehold strata scheme.

### **Requirements for development consent to strata subdivisions**

**Schedule 1 (26)** amends section 65 (**Other Acts not to apply to subdivisions under Division 1**) to make it clear that the section does not prevent development consent from being required under the Environmental Planning and Assessment Act 1979 to a subdivision under the 1986 Act.

### **Termination of strata schemes**

**Schedule 1 (27)** inserts proposed section 80A (**Termination of strata scheme and leases by Registrar-General**) to empower the Registrar-General to terminate leasehold strata schemes in limited circumstances. A scheme that includes a development lot cannot be so terminated and an application for termination must be signed by the lessor under the scheme, all lessees and sublessees of lots and each registered mortgagee, chargee and covenant chargee, except where the Registrar-General agrees otherwise.

## **SCHEDULE 2—AMENDMENT OF OTHER ACTS**

### **Environmental Planning and Assessment Act 1979**

Section 99 (**Lapsing of consent**) is amended to supply a missing reference to a strata development contract under the 1986 Act, as amended by the proposed Act.

### **Land and Environment Court Act 1979**

Section 18 (which confers “Class 2” jurisdiction on the Land and Environment Court) is amended to update references to provisions of the 1986 Act, as amended by the proposed Act. (Section 18, as amended by the proposed Strata Titles (Staged Development) Amendment Act 1992, confers jurisdiction on the Court allowing it to approve amendments to strata development contracts or to dispense with consents to

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such amendments, as an alternative to obtaining the approval or consent of the body corporate, and to make orders relating to the conclusion of certain development schemes.)

Section 20 is amended to update provisions conferring “Class 4” jurisdiction on the Court relating to the enforcement of strata development contracts.

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