

Act 1993 No. 12

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

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Strata Titles (Leasehold Staged Development) Amendment Bill 1992 is cognate with this Bill.

The Strata Titles Act 1973 already contains rather restrictive provisions allowing the development by stages of part or parts of the land subject to a strata scheme. The object of this Bill is to amend the 1973 Act so as:

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

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

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.

Clause 3 gives effect to the Schedule of amendments to the 1973 Act.

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

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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 ACT 1973

PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT

Definitions

Schedule 1 (1) amends section 5 (**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 8 (**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 2A of Part 2.

Subdivision after completion of a stage of development

Schedule 1 (3) substitutes section 8A (**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 13 (**Conversion of lots into common property**) to remove a reference to a repealed provision.

Schedule 1 (5) amends section 28 (**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 1973 Act.

Staged development schemes

Schedule 1 (6) substitutes Division 2A of Part 2 with a new Division 2A (containing proposed sections 28A–28QA). Of the proposed sections:

Section 28A (**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 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 sold, leased or mortgaged separately); and
- the allocation of unit entitlements for the new lots. (Unit entitlements determine the proportions in which lot owners, or proprietors, will be required to contribute to maintenance of the building and other common property.)

Section 28B (**Obligations of consent authorities**) forbids a consent authority from granting development consent for a subdivision under the 1973 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 28C (**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 28D (**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 28E (**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 lot proprietors differently from how they would be apportioned on a unit entitlement basis.

Section 28F (**Signing of strata development contract and amendments**) lists the persons who will be required to sign a strata development contract (and any amendment of it) and allows the Registrar-General to refuse to register such a contract or amendment until the consent of other persons has been obtained.

Section 28G (**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 common property (if any) has been produced.

Section 28H (**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 common property (if any) of a strata scheme particulars about any strata development contract affecting the strata scheme.

Section 28I (**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 and the proprietors, lessees and mortgagees of the lots in the strata scheme concerned. The implied covenants (set out in proposed Schedule 1BA) will bind any lessee or mortgagee of a development lot (instead of the developer) while the lessee or mortgagee is in possession of the development lot.

Section 28J (**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 28K (**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 strata scheme concerned.

Section 28L (**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 strata scheme concerned.

Section 28M (**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 28N (**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 28O (**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 28P (**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 28Q (**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 predict a time for conclusion of the development scheme will be taken to predict the tenth anniversary of its registration as the time for its conclusion.

Section 28QA (**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 32, 37, 40, 42, 50, 51, 53, 66 and 68, respectively, to change references to development statements to references to strata development contracts.

Schedule 1 (10) amends section 41 (**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 2A.)

Schedule 1 (12) and (19) omit unnecessary cross-references from sections 43 and 105.

Schedule 1 (18) updates a cross-reference in section 80 (**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 8A will certify compliance with the requirements set out in that schedule.

Orders for the reallocation of unit entitlements

Schedule 1 (20) substitutes section 119:

- 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 1BA which sets out covenants implied in strata development contracts. Among the more important covenants are those:

- that require the standard of materials, 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 3 into Schedule 4 (**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 1973 Act as in force immediately before that commencement.

Any proceedings pending in the Land and Environment Court under the 1973 Act, the Strata Titles (Leasehold) Act 1986 or the Community Land Management Act 1989 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 6 (**Construction of Act**) which extends certain provisions 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 7 (**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 strata scheme.

Requirements for development consent to strata subdivisions

Schedule 1 (26) amends section 36 (**Other Acts not to apply to subdivisions under Division 1**) to make it clear that the section does not prevent development consent to a subdivision under the 1973 Act from being required under the Environmental Planning and Assessment Act 1979.

Termination of strata schemes

Schedule 1 (27) inserts proposed section 51A (**Termination of strata scheme by Registrar-General**) to empower the Registrar-General to terminate 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 all proprietors of lots and each registered mortgagee, chargee, covenant chargee and lessee of a lot, 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 substitute a reference to a development statement with a reference to a strata development contract.

Land and Environment Court Act 1979

Section 17 (**Class 1—environmental planning and protection appeals**) is amended to remove from that class of appeals applications for dispensing with certain consents or

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approvals otherwise required by the 1973 Act, the Strata Titles (Leasehold) Act 1986 of the Community Land Management Act 1989 because:

- in the case of the 1973 Act, the need for such a consent is abolished by amendments in the proposed Act; and
- in the case of the 1986 and 1989 Acts, such a consent or approval does not necessarily relate to environmental planning or protection.

Section 18 (which currently confers “Class 2” jurisdiction relating to local government appeals and applications) is amended to confer jurisdiction on the Court allowing it to approve amendments to strata development contracts (as an alternative to approval of such an amendment by the body corporate) and to make orders relating to the conclusion of development schemes. The opportunity is taken to add other appropriate proceedings arising under the 1986 and 1989 Acts to this class of the court’s jurisdiction.

Section 20 is amended to simplify and update provisions conferring “Class 4” jurisdiction on the Court relating to the enforcement of strata development contracts and other development contracts under the 1986 Act and the Community Land Management Act 1989.

Section 71 is replaced so as to make it clear that the Supreme Court has only an appellate jurisdiction concerning the enforcement of strata development contracts.
