

# Strata Schemes (Freehold Development) Act 1973 No 68

[1973-68]



New South Wales

## Status Information

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The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Strata Titles Act 1973  
Strata Titles (Freehold Development) Act 1973
- **Does not include amendments by**  
[Conveyancing Legislation Amendment \(e-plan\) Act 2002 No 2](#) (not commenced)

### Authorisation

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# Strata Schemes (Freehold Development) Act 1973 No 68



New South Wales

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# Strata Schemes (Freehold Development) Act 1973 No 68



New South Wales

An Act to facilitate the subdivision of land into cubic spaces and the disposition of titles thereto; to amend the *Real Property Act 1900*, the *Conveyancing Act 1919*, the *Local Government Act 1919*, the *Land Tax Management Act 1956* and certain other Acts in certain respects; to repeal the *Conveyancing (Strata Titles) Act 1961* and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Strata Schemes (Freehold Development) Act 1973*.

### 2 Commencement

This Act shall commence upon such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Act binds Crown

This Act binds the Crown.

### 4 (Repealed)

### 5 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**accredited certifier**, in relation to a strata certificate, means a person who is accredited under section 37E in relation to those certificates.

**administrative fund**, in relation to a body corporate, means the fund established by that body corporate under section 66 of the *Strata Schemes Management Act 1996*.

**aggregate unit entitlement**, in relation to lots the subject of a strata scheme, means the sum of the unit entitlements of those lots.

**body corporate** means an owners corporation constituted under section 11 of the [Strata Schemes Management Act 1996](#).

**building**, in relation to a strata scheme or a proposed strata scheme, means a building containing a lot or proposed lot or part of a lot or of a proposed lot the subject of that scheme or proposed scheme.

**by-laws**, in relation to a strata scheme, means the by-laws in force in respect of that strata scheme.

**certificate of compliance**, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority in accordance with the Act under which the water supply authority is constituted.

**common property** means so much of a parcel as from time to time is not comprised in any lot.

**company nominee**, in relation to a corporation, means the individual, if any, for the time being authorised under section 80A (1) by the corporation.

**consent authority** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**council**, in relation to a body corporate, means the executive committee of that body corporate appointed in accordance with the [Strata Schemes Management Act 1996](#).

**current plan** means a current plan as defined in section 7 (1) of the [Conveyancing Act 1919](#), which is registered in the office of the Registrar-General, but does not include a strata plan, a strata plan of subdivision or a strata plan of consolidation.

**developer**, in relation to the strata scheme constituted upon registration of the strata plan proposed under a development scheme, means the person who, for the time being, is:

- (a) the original proprietor, or
- (b) a person, other than the original proprietor, who is the proprietor of a development lot within the strata plan.

**development** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**development application** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).

**development consent** has the same meaning as it has in the [Environmental Planning and Assessment Act 1979](#).



**development lot** means a lot in a strata plan that is identified by a strata development contract as a lot that is to be the subject of a strata plan of subdivision under the development scheme.

**development scheme** means the scheme of development provided for, and represented by, a strata development contract.

**Director-General** means the Director-General of the Department of Fair Trading.

**enrolled mortgagee**, in relation to a lot the subject of a strata scheme, means a person notice of whose mortgage has been given to the body corporate for that strata scheme and whose name has been entered on the strata roll for that strata scheme as a mortgagee of that lot, but does not include such a person:

- (a) during any period during which his rights as mortgagee, under that mortgage are, by reason of a sub-mortgage, suspended, or
- (b) whose rights, as mortgagee, under that mortgage have, by reason of any other instrument, terminated,

if particulars of that sub-mortgage or other instrument have been entered on the strata roll for that strata scheme.

**floor area**, in relation to a cubic space, means the area occupied on a horizontal plane by the base of that cubic space.

**floor** includes a stairway or ramp.

**floor plan** means a plan, consisting of one or more sheets, which:

- (a) defines by lines (in paragraph (c) of this definition referred to as **base lines**) the base of each vertical boundary of every cubic space forming the whole of a proposed lot, or the whole of any part of a proposed lot, to which the plan relates,
- (b) shows:
  - (i) the floor area of any such cubic space, and
  - (ii) where any such cubic space forms part only of a proposed lot, the aggregate of the floor areas of every cubic space that forms part of the proposed lot, and
- (c) where proposed lots or parts thereof to which the plan relates are superimposed on other proposed lots or parts thereof to which the plan relates:
  - (i) shows the base lines in respect of the proposed lots or parts thereof that are so superimposed separately from those in respect of the other proposed lots or parts thereof upon which they are superimposed, and
  - (ii) specifies, by reference to floors or levels, the order in which that

superimposition occurs.

**initial period**, in relation to a body corporate, means the period commencing on the day on which that body corporate is constituted and ending on the day on which there are proprietors of lots the subject of the strata scheme concerned (other than the original proprietor) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement.

**local council**, in relation to land, means the council of the area under the [Local Government Act 1993](#) in which the land is situated.

**location plan** means a plan, consisting of one or more sheets, which relates to land the subject of a proposed strata scheme, and:

- (a) if the scheme does not relate to a proposed stratum parcel, which delineates the perimeter of the land and, in relation to that perimeter, delineates the location:
  - (i) of any building erected on that land, and
  - (ii) of any proposed lots or part of proposed lots not within any such building, or
- (b) if the scheme relates to a proposed stratum parcel, which delineates the perimeter of the site of the building, being the building of which the proposed stratum parcel forms part, and, in relation to that perimeter, delineates the location:
  - (i) of the building, and
  - (ii) of the proposed stratum parcel,

and, in relation to the perimeter of the proposed stratum parcel, delineates the location:

- (iii) of the part of the building which will be the subject of the proposed strata scheme, and
- (iv) of any proposed lots or part of proposed lots not within the building,

and which shows such other particulars as may be required by the regulations.

**lot** means one or more cubic spaces forming part of the parcel to which a strata scheme relates, the base of each such cubic space being designated as one lot or part of one lot on the floor plan forming part of the strata plan, a strata plan of subdivision or a strata plan of consolidation to which that strata scheme relates, being in each case cubic space the base of whose vertical boundaries is as delineated on a sheet of that floor plan and which has horizontal boundaries as ascertained under subsection (2), but does not include any structural cubic space unless that structural cubic space has boundaries described as prescribed and is described in that floor plan as part of a

lot.

**mortgage** means a charge, other than a statutory interest or a covenant charge, on a lot for securing money or money's worth.

**non-strata land** means land that is not subject to a strata scheme.

**notice of resumption** means a notice, notification or other instrument publication of which effects a vesting of the land described therein in a resuming authority by way of resumption.

**occupier**, in relation to a lot, means any person in lawful occupation of that lot.

**original proprietor**, in relation to a strata scheme, means the person by whom the parcel the subject of that scheme was held in fee simple at the time of registration of the strata plan to which the scheme relates.

**parcel** means:

- (a) except as provided in paragraph (b), the land from time to time comprising the lots and common property the subject of a strata scheme, and
- (b) in relation to a plan lodged for registration as a strata plan, the land comprised in that plan.

**positive covenant** means a positive covenant imposed on land under section 88D or 88E of the [Conveyancing Act 1919](#).

**proprietor**, in relation to a lot, means:

- (a) except as provided in paragraph (b), a person for the time being recorded in the Register as entitled to an estate in fee simple in that lot, or
- (b) a person whose name has been entered on the strata roll as a proprietor pursuant to section 98 of the [Strata Schemes Management Act 1996](#).
- (c) (Repealed)

**public place** means land that is dedicated as a public reserve or set aside as a drainage reserve, under section 49 of the [Local Government Act 1993](#), or land that is a public road (within the meaning of the [Roads Act 1993](#)).

**registered** means registered in the office of the Registrar-General in accordance with this Act.

**registered mortgagee** means a mortgagee registered as such under the [Real Property Act 1900](#).

**registered surveyor** means a surveyor registered under the [Surveyors Act 1929](#).

**regulations** means regulations made under this Act.

**relevant development consent**—see section 37B.

**Residential Tribunal** means the Residential Tribunal established by the [Residential Tribunal Act 1998](#).

**resumption** means the compulsory acquisition of land under the provisions of any Act or Act of the Parliament of the Commonwealth authorising compulsory acquisition of land.

**schedule of unit entitlement**, in relation to a strata scheme, means:

- (a) except as provided in paragraph (b) and (c), the schedule recorded as the schedule of unit entitlement in the folio of the Register comprising the common property the subject of that strata scheme, or
- (b) where a plan referred to in section 30 (3) relating to the parcel the subject of that strata scheme has been registered by the Registrar-General and the resumption of the land referred to in that plan has taken effect:
  - (i) if that plan is a strata plan of subdivision—the schedule of unit entitlement which accompanied that plan when it was registered, or
  - (ii) if that plan is a current plan—the schedule of unit entitlement, if any, which the Supreme Court, on making an order under section 32 or, pursuant to an application made under section 32 (7), under section 50, ordered to be substituted for a previous schedule of unit entitlement, or
- (c) if a revised schedule of unit entitlement has been recorded under section 28Q (5) as the schedule of unit entitlement in substitution for a schedule of unit entitlement referred to in paragraph (a) or (b), the schedule so recorded.

**sinking fund**, in relation to a body corporate, means the fund established by that body corporate under section 69 of the [Strata Schemes Management Act 1996](#).

**special resolution** means a resolution which is passed at a duly convened general meeting of a body corporate and against which not more than one-quarter in value, ascertained in accordance with clause 11 (3) and (4) of Part 1 of Schedule 2 or clause 12 (3) and (4) of Part 2 of that Schedule, of votes is cast.

**statutory interest** means a charge or other proprietary interest, created by this or any other Act or by any Act of the Parliament of the Commonwealth, affecting a lot or common property and enforceable against a proprietor for the time being or the body corporate, whether or not it has been recorded in the Register.

**strata certificate** means a certificate issued under Division 4 of Part 2 that authorises the registration of a strata plan, strata plan of subdivision or notice of

conversion.

**strata development contract** means a strata development contract, as in force for the time being, registered under Division 2A of Part 2.

**strata roll**, in relation to a strata scheme or a strata scheme which has been terminated, means the roll referred to in section 96 of the [Strata Schemes Management Act 1996](#) which relates to that scheme.

**strata scheme** means:

- (a) the manner of division under this Act, from time to time, of a parcel into lots or into lots and common property and the manner of the allocation under this Act, from time to time, of unit entitlements among the lots, and
- (b) the rights and obligations, between themselves, of proprietors, other persons having proprietary interests in or occupying the lots and the body corporate, as conferred or imposed by this Act or by anything done under the authority of this Act and as in force from time to time.

**stratum parcel** means a parcel created by a subdivision permitted by section 7 (2A).

**structural cubic space** means:

- (a) cubic space occupied by a vertical structural member, not being a wall, of a building,
- (b) any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one lot and:
  - (i) are in a building in relation to which a plan for registration as a strata plan was lodged with the Registrar-General before the day appointed and notified under section 2 (3) of the [Strata Titles \(Development Schemes\) Amendment Act 1985](#), or
  - (ii) in any other case—are in a building or in a part of a parcel that is not a building,
- (c) any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts.

**Supreme Court** means the Supreme Court of New South Wales.

**unanimous resolution** means a resolution which is passed at a duly convened general meeting of a body corporate and against which no vote is cast.

**unit entitlement**, in relation to a lot, means the unit entitlement of that lot shown on the schedule of unit entitlement.

**wall** includes a door, window or other structure dividing a lot from common property or from another lot.

**water supply authority** means:

- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority constituted under the *Water Supply Authorities Act 1987*, or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

- (1A) For the purposes of this Act, 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 road, a public reserve or a drainage reserve.
- (2) The boundaries of any cubic space referred to in paragraph (a) of the definition of **floor plan** in subsection (1):
  - (a) except as provided in paragraph (b):
    - (i) are, in the case of a vertical boundary, where the base of any wall corresponds substantially with any line referred to in paragraph (a) of that definition—the inner surface of that wall, and
    - (ii) are, in the case of a horizontal boundary, where any floor or ceiling joins a vertical boundary of that cubic space—the upper surface of that floor and the under surface of that ceiling, or
  - (b) are such boundaries as are described on a sheet of the floor plan relating to that cubic space (those boundaries being described in the prescribed manner by reference to a wall, floor or ceiling in a building to which that plan relates or to structural cubic space within that building).
- (3) A reference in this Act to cubic space includes a reference to space contained in any three-dimensional geometric figure which is not a cube.
- (4) The fact that any boundary is defined in a plan in terms of or by reference to:
  - (a) a wall that is not vertical, or
  - (b) a floor or ceiling that is not horizontal,does not prevent that plan from being a floor plan.
- (5) A reference in this Act:
  - (a) to a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan is a reference to a plan registered as such, or

(b) to a notice of conversion is a reference to a notice registered as such, together with any endorsements required to be made on or any plans and documents required to accompany the plan or notice so registered before it may be registered.

(6) (Repealed)

(7) A reference in this Act to a subdivision of a lot or common property is a reference to the alteration of the boundaries of:

(a) one or more lots so as to create only two or more different lots,

(b) one or more lots so as to create one or more different lots and common property,

(c) one or more lots and common property that are not part of a community scheme so as to create one or more different lots or one or more different lots and common property, or

(d) common property that is not part of a community scheme so as to create one or more lots,

but does not include a reference to the consolidation of two or more lots into one lot or the conversion of one or more lots into common property.

(8) Except in so far as the context or subject-matter otherwise indicates or requires, it is a sufficient compliance with any provision of this Act requiring an instrument to be accompanied by another instrument if that other instrument is endorsed on that firstmentioned instrument.

(9) Where, in any provision of this Act, reference is made to any person, body, matter or thing (including land) and that provision has effect in relation to a strata scheme, a reference in that provision to any other person, body, matter or thing (including land) is a reference to that other person, body, matter or thing (including land) in connection with that strata scheme.

(10) In this section:

**community scheme** means a community scheme under the *Community Land Development Act 1989*.

## 5A Notes in text

Notes in the text of this Act are explanatory notes and do not form part of this Act.

## 6 Construction of Act

(1) This Act shall be read and construed with the *Real Property Act 1900* as if it formed part thereof.

- (2) The *Real Property Act 1900* applies to lots and common property in the same way as it applies to other land except in so far as any provision of that Act is inconsistent with this Act or is incapable of applying to lots or common property.
- (3) The provisions of this Act, other than those relating to ownership and the certification of title, apply:
  - (a) to so much of an encroachment (other than on a public place) shown on a proposed strata plan or strata plan of subdivision as is designated for use with a lot—as if it were part of the lot, or
  - (b) to the remainder (if any) of such an encroachment and to any other encroachment (other than on a public place) shown on a proposed strata plan or strata plan of subdivision—as if it were common property.

## Part 2 Land in strata schemes

### Division 1 Creation of lots and common property

#### 7 Subdivision

- (1) In this section:

**current plan lot** means an existing lot within the meaning of the *Conveyancing Act 1919* (not being a lot as defined in section 5 (1) of this Act or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*).

**land** means land under the *Real Property Act 1900* held in fee simple (other than land comprised in a qualified or limited folio of the Register) being, except as provided by subsection (2A):

- (a) land consisting of one current plan lot or of two or more contiguous current plan lots,
  - (b) land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, being land of which every part is contiguous with another part, or
  - (c) land part of which comprises land, as defined in paragraph (a), and the remainder of which comprises land, as defined in paragraph (b), contiguous to that firstmentioned part.
- (1A) (Repealed)
- (2) Land including the whole of a building may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan.
- (2A) Land including part only of a building, being:
- (a) land consisting of one current plan lot or of two or more current plan lots, whether



contiguous or not, or

(b) land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or

(c) land part of which comprises land, as defined in paragraph (a), and the remainder of which comprises land, as defined in paragraph (b),

may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan, but only if the building is erected on a site of land held in fee simple.

(2B) Land that is a development lot under this Act cannot be subdivided under this section.

**Note—**

See section 8A for subdivision of land that is a development lot.

(2C) Land that is a development lot under the *Community Land Development Act 1989* can be subdivided under this section.

(3) The provisions of section 88B of the *Conveyancing Act 1919* apply to a strata plan and a strata plan of subdivision in the same way as they apply to a plan referred to in that section relating to land under the provisions of the *Real Property Act 1900*, except in so far as that section authorises the creation or release of easements, or the creation of restrictions on the use of land or positive covenants burdening or benefiting land not under those provisions.

## **8 Registration of strata plans**

(1) A plan intended to be registered as a strata plan must include, as sheets of the plan:

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

(2) The location plan must be endorsed with:

- (a) the address at which documents may be served on the proposed body corporate, and
- (b) a strata certificate issued by the local council under section 37 or an accredited certifier under section 37A in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown, and
- (c) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met.

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

- (3) The floor plan for a strata scheme that does not provide for common property must show that at least one (or part of one) of the proposed lots is superimposed on another (or part of another) of the proposed lots.
- (4) The schedule of unit entitlement for a 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.
- (4A) The schedule of unit entitlement for a 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.
- (4AA) The schedule of unit entitlement for a strata scheme that includes a development lot must indicate that the schedule may, on conclusion of the development scheme, be revised under section 28QAA.
- (4B) A plan intended to be registered as a strata plan must indicate in the relevant panel of the approved form:
  - (a) that specified model by-laws prescribed by the regulations made under the [Strata Schemes Management Act 1996](#) are proposed to be adopted for the strata scheme and, if those model by-laws contain one or more alternative versions of any by-law, that the specified version of that by-law is proposed to be adopted, or
  - (b) that other specified by-laws are proposed to be adopted for the scheme.
- (4C) If a strata plan indicates that by-laws other than the model by-laws prescribed by the regulations made under the [Strata Schemes Management Act 1996](#) are proposed to be adopted for the strata scheme, the plan must be accompanied by the by-laws specified. The by-laws must be in the form approved under the [Real Property Act 1900](#) and must be signed by the persons required to sign the strata plan under section 16

(1).

- (4D) The proposed by-laws for a strata scheme have no effect until the strata plan (and any proposed by-laws that are required to accompany it) are registered. However, registration does not operate to give effect to by-laws that have not been lawfully made.
- (5) A plan intended to be registered as a strata plan that creates a development lot must (unless the plan is lodged by the Crown or a statutory body representing the Crown) be accompanied by:
- (a) a copy of the relevant strata development contract, and
  - (b) the certificate of the consent authority provided under section 28B (2).
- (6) The Registrar-General may refuse to register a plan as a strata plan:
- (a) if a plan of survey, within the meaning of the *Survey Practice Regulation 1990*, of the proposed parcel requested by the Registrar-General and such number of copies of the plan of survey as have been so requested have not been lodged in the office of the Registrar-General, or
  - (b) if any requisition made by the Registrar-General concerning the registration of a by-law that confers a right of exclusive use and enjoyment of, or special privileges in respect of, common property has not been complied with.
- (7) The plan of survey must show, should the Registrar-General so request, the relationship by measurement of the building to the perimeter of the proposed parcel and, in the case of a proposed stratum parcel, to the perimeter of the site.

**8AA Effect of registration of a strata plan creating a stratum parcel**

- (1) On registration of a plan as a strata plan that creates a stratum parcel, there is implied (despite section 88 of the *Conveyancing Act 1919*):
- (a) as appurtenant to the lots and common property (if any) comprising that stratum parcel, being lots and common property which are situated within a building, an easement for their subjacent and lateral support by such other parts of the building as are capable of affording support, and
  - (b) as affecting those lots and that common property, an easement for the subjacent and lateral support of such other parts of the building as are capable of enjoying support, and
  - (c) as appurtenant to those lots and that common property, an easement for their shelter by all such other parts of the building as are capable of affording shelter, and

- (d) as affecting those lots and that common property, an easement for the shelter of such other parts of the building as are capable of being sheltered by those lots and that common property.
- (2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of an easement created by this section.
- (3) An easement for support or shelter created by this section:
  - (a) entitles the owner of the dominant tenement to enter the servient tenement to replace, renew or restore any support or shelter, and
  - (b) subsists until the strata scheme is terminated or the easement is otherwise extinguished.
- (4) The Registrar-General must make in the Register such recordings in respect of the easements as the Registrar-General considers appropriate.

#### **8AB Easements in certain strata schemes**

- (1) In this section:

**drainage** includes the product of rain, a storm, soakage, a spring or seepage.

**service** means a water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air or telephone, television or radio impulses or signals service or any other prescribed service.

- (2) If:

- (a) a stratum parcel is the subject of a strata scheme, and
- (b) an instrument has created or has had the effect of creating after the commencement of this section a right of vehicular access, a right of personal access or an easement for a specified service, over or through or as appurtenant to the stratum parcel, or the land comprised in that parcel, and
- (c) the site of the easement is identified on a plan lodged in the office of the Registrar-General,

the rights and obligations conferred or imposed by the easement created by the instrument are as specified in Schedule 1B, except in so far as those rights or obligations may have been varied or negated under this section or in the instrument.

- (3) Nothing in section 88 of the [Conveyancing Act 1919](#) or in subsection (2) (c) requires the site of an easement for a service, being an easement to which this section applies, to be identified on a plan lodged in the office of the Registrar-General.
- (4) The terms of an easement created pursuant to subsection (2) in so far as they relate

to:

- (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement, or
- (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things,

may be varied by memorandum of variation in the approved form and registered under the *Real Property Act 1900* as if it were a dealing.

- (5) A variation of the terms of an easement referred to in subsection (4) must be executed by every person having an estate or interest registered under the *Real Property Act 1900* in the land benefited or burdened by the easement.
- (6) On the application of any person who has an estate or interest in any land which has the benefit or burden of an easement to which this section applies, the Supreme Court may, by order, vary the terms of the easement in so far as they relate to:
  - (a) responsibility for maintaining in good order or repairing the access or other things required for enjoyment of the easement, or
  - (b) the proportions in which the persons having the benefit or burden of the easement are liable to contribute towards the cost of maintaining in good order or repairing that access or those things.
- (7) An order under subsection (6), when registered as provided by subsection (8), is binding on all persons, whether of full age or capacity or not, then entitled or later becoming entitled to the easement, and whether those persons are parties to the proceedings or have been served with notice or not.
- (8) The Registrar-General must, on application made in the approved form, make all necessary recordings in the Register for giving effect to the order.

#### **8A Subdivision of development lot**

- (1) A development lot 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 strata certificate issued by the local council under section 37 or an accredited certifier under section 37A 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.

## **9 Subdivision of lots and common property**

- (1) Lots (other than development lots) or common property, or lots (other than development lots) and common property, may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (3).
- (2) A reference in subsection (1) to common property does not include a reference to:
  - (a) common property the subject of a lease accepted under section 19 (2), or
  - (b) common property in a strata scheme that is part of a community scheme under the [Community Land Development Act 1989](#).
- (3) A plan complies with this subsection if:
  - (a) it consists of a floor plan and, if required by the Registrar-General, a location plan,
  - (b) that floor plan is accompanied by a strata certificate issued by the local council or an accredited certifier:
    - (i) where the plan is a plan illustrating a proposed subdivision referred to in section 5 (7) (a)—in accordance with section 37 (3) or section 37A (4), or
    - (ii) where the plan is a plan illustrating a proposed subdivision referred to in section 5 (7) (b), (c) or (d)—in accordance with section 37 (4) or section 37A (5),

- (c) that floor plan is endorsed with a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met (with the exception that the certificate need not certify any matter relating to a lot boundary that was certified in the strata plan or a previous strata plan of subdivision), and
- (c1) any location plan identifies any encroachment by the building (whether or not on to a public place), and
- (d) in the circumstances set out in subsection (3A)—that floor plan is accompanied by:
  - (i) a certificate under the seal of the body corporate certifying that the certificate referred to in paragraph (b) was given after the expiration of the initial period, or
  - (ii) a certified or office copy of the minute of an order made under section 182 of the *Strata Schemes Management Act 1996* authorising the registration of the plan.

(3A) A floor plan is required to be accompanied by a certificate or certified or office copy if:

- (a) the land comprised in the plan is held by the original proprietor (not being an original proprietor who holds all lots forming part of the parcel to which the strata scheme concerned relates), and
- (b) a certificate under subsection (3) (d) or section 13 (2) (b) or 28 (4) (b) has not previously been lodged in the office of the Registrar-General.

(4) The provisions of section 8 (2) and (3) apply to the registration, as a strata plan of subdivision, of a plan illustrating a proposed subdivision referred to in section 5 (7) (c) or (d) in the same way as they apply to the registration of a plan as a strata plan.

(5) Subsections (3) (b) and (3) (d) do not apply to or in respect of a plan lodged for registration as a strata plan of subdivision by a person or body who or which, but for section 3, would not be bound by this Act.

(6) (Repealed)

## **10 Unit entitlement of lots created by subdivision of lots**

- (1) A plan illustrating a proposed subdivision altering the boundaries of one or more lots so as to create only two or more different lots, other than a plan referred to in section 8A (1), shall not be registered as a strata plan of subdivision unless it is accompanied by a schedule showing as a whole number, in respect of:
  - (a) each lot comprised in the parcel other than the lot or lots the subject of the proposed subdivision, and

(b) each proposed lot,

the proposed unit entitlement of that lot or proposed lot, and showing the proposed aggregate unit entitlement.

- (2) A number shown as referred to in subsection (1) in respect of a lot other than a proposed lot shall bear to the proposed aggregate unit entitlement so shown the same proportion as the unit entitlement of that lot bore, immediately before the plan was registered, to the aggregate unit entitlement.
- (3) The sum of the numbers shown as referred to in subsection (1) in respect of the proposed lots shall bear to the proposed aggregate unit entitlement so shown the same proportion as the unit entitlement or the sum of the unit entitlements of the lot or lots the subject of the proposed subdivision bore, immediately before the plan was registered, to the aggregate unit entitlement.

### **11 Unit entitlements of lots in subdivisions involving common property**

A plan illustrating a proposed subdivision, other than a plan referred to in section 8A (1) or 10 (1), shall not be registered as a strata plan of subdivision unless it is accompanied by:

(a) a schedule showing as a whole number, in respect of:

(i) each lot comprised in the parcel other than any lot or lots the subject of the proposed subdivision, and

(ii) each proposed lot,

the proposed unit entitlement of that lot or proposed lot, and showing the proposed aggregate unit entitlement, and

(b) a certificate under the seal of the body corporate concerned certifying that it has, by the special resolution referred to in section 37 (4) (a) or section 37A (5) (b), agreed to each proposed unit entitlement and the proposed aggregate unit entitlement shown in the schedule referred to in paragraph (a).

### **12 Consolidation of lots**

Two or more lots may be consolidated into one lot by the registration of a plan as a strata plan of consolidation.

### **13 Conversion of lots into common property**

(1) One or more lots may be converted into common property by the registration, as a notice of conversion, of a notice in the form approved under the [Real Property Act 1900](#), being a notice executed by the proprietor or proprietors of that lot or those lots and by the body corporate.

(2) A notice shall not be registered as a notice of conversion unless:



- (a) it is accompanied by a strata certificate in respect of the lot or lots to which it relates given by the local council in accordance with section 37 (5) or by an accredited certifier in accordance with section 37A (6),
  - (b) in the circumstances set out in subsection (3A)—it is accompanied by:
    - (i) a certificate under the seal of the body corporate certifying that the certificate referred to in paragraph (a) was given after the expiration of the initial period, or
    - (ii) a certified or office copy of the minute of an order made under section 182 of the *Strata Schemes Management Act 1996* authorising the registration of the notice, and
  - (c) every mortgage, charge, covenant charge, current lease, caveat or writ recorded in the folio of the Register comprising the lot, or each lot, to which the notice relates has, in so far as it affects any such lot, been discharged or surrendered, or withdrawn or otherwise disposed of, as the case may be.
- (3) Subsections (2) (a) and (2) (b) do not apply to or in respect of a notice lodged for registration as a notice of conversion by a person or body who or which, but for section 3, would not be bound by this Act.
- (3A) A notice is required to be accompanied by a certificate or certified or office copy if:
- (a) the land to which the notice relates is held by the original proprietor (not being an original proprietor who holds all lots in the strata scheme concerned), and
  - (b) a certificate under subsection (2) (b) or section 9 (3) (d) or 28 (4) (b) has not previously been lodged in the office of the Registrar-General.

#### **14 Alteration of building affecting lot boundary**

- (1) Where:
- (a) a building is altered by demolishing any wall, floor, ceiling or structural cubic space, and any boundary of a lot was, immediately before the alteration, the inner surface or any part of that wall, the upper surface or any part of that floor or the under surface or any part of that ceiling or was defined in terms of or by reference to that wall, floor, ceiling or structural cubic space, or
  - (b) a building is altered by constructing any wall, floor or ceiling so that a boundary of a lot coincides with the inner surface or any part of that wall, the upper surface or any part of that floor or the under surface or any part of that ceiling,
- the proprietor of that lot shall, within one month after the completion of the demolition or construction, lodge in the office of the Registrar-General for registration as a building alteration plan a plan which:

- (c) defines by lines the base of each vertical boundary of that lot after the alteration of the building, and
- (d) is accompanied by a certificate given by a registered surveyor certifying:
  - (i) that the wall, floor, ceiling or structural cubic space has been demolished or constructed, as the case may be,
  - (ii) that any wall, floor or ceiling referred to in paragraph (b) is wholly within the perimeter of the parcel except to the extent of any encroachment referred to in section 38 or, if any part of the building encroaches on land other than a public place, that an appropriate easement exists, and
  - (iii) that any such encroachment and its nature and extent are shown on the plan.

Maximum penalty: 5 penalty units.

- (2) Upon registration as a building alteration plan of a plan showing an encroachment on a public place, the Registrar-General shall forward two copies of the plan to the local council.
- (3) A copy of a plan forwarded under subsection (2) may be on a scale the same as or different to the original.
- (4) If an encroachment referred to in subsection (1) (d) (ii) is shown on a building alteration plan, the provisions of this Act, other than those relating to ownership and certification of title, apply:
  - (a) in the case of so much of an encroachment as is designated for use with a lot—as if it were part of the lot, or
  - (b) in any other case—as if it were common property.

**15 Certificates of title to be lodged with plans of subdivision or consolidation, notices of conversion and building alteration plans**

- (1) Where:
  - (a) a plan is lodged in the office of the Registrar-General for registration as a strata plan of subdivision or a strata plan of consolidation,
  - (b) a notice is lodged in that office for registration as a notice of conversion, or
  - (c) a plan is lodged in that office for registration as a building alteration plan,and the body corporate either:
  - (d) has not, within a period of twenty-one days after notice in writing served on it by the person so lodging the plan or notice, lodged in the office of the Registrar-General the certificate of title comprising the common property, or

(e) has not, within that period, made due application under section 111 of the *Real Property Act 1900*, and does not thereafter duly prosecute that application,

the certificate of title comprising the common property shall, for the purposes of Part 15 of that Act, be deemed to be wrongfully retained.

(2) The Registrar-General may refuse to register any plan or notice lodged as referred to in subsection (1) unless it is accompanied by:

(a) the certificate of title comprising the common property, or

(b) evidence to the satisfaction of the Registrar-General of the service of the notice referred to in subsection (1) (d).

#### **16 Strata plans to be signed or consented to**

(1) The Registrar-General shall not register as a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan a plan lodged in the office of the Registrar-General unless the plan is signed:

(a) by the registered proprietor of the land comprised in the plan, and

(b) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in the folio of the Register kept under the *Real Property Act 1900* relating to that land.

(2) Without limiting the effect of subsection (1), the Registrar-General may refuse to register a plan referred to in that subsection unless consents in writing to the registration of the plan signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:

(a) the lessee under any lease, or the judgment creditor under any writ, recorded in the folio of the Register kept under the *Real Property Act 1900* relating to the land comprised in the plan,

(b) the caveator under a caveat affecting any estate or interest in that land,

are lodged in the office of the Registrar-General.

(3) In relation to any particular plan lodged for registration as referred to in subsection (1), the Registrar-General may, without giving notice to any person, dispense with the requirement for a person mentioned in that subsection to sign the plan.

#### **17 Provisions prohibiting registration to operate cumulatively**

A provision of this Division prohibiting the registration of a plan or a notice of conversion in circumstances specified in that provision is in addition to any other provision of this Division prohibiting the registration of a plan or a notice of conversion in circumstances specified in that other provision.

## Division 2 Common property

### 18 Vesting of common property on registration of strata plan

- (1) Upon registration of a strata plan any common property in that plan vests in the body corporate for the estate or interest evidenced by the folio of the Register comprising the land the subject of that plan but freed and discharged from any mortgage, charge, covenant charge, lease, writ or caveat affecting that land immediately before registration of that plan.
- (2) The Registrar-General shall, upon registration of a strata plan, create a folio of the Register for the estate or interest of the body corporate in any common property in that strata plan.
- (3) Upon registration of a strata plan of subdivision creating common property, the common property so created vests in the body corporate for the estate or interest evidenced by the folio of the Register comprising the land the subject of that plan but freed and discharged from any mortgage, charge, covenant charge, lease, writ or caveat affecting that land immediately before registration of that plan.
- (4) Upon registration of a notice of conversion, any lot thereby converted into common property vests in the body corporate for the estate or interest evidenced by the folio of the Register comprising the land the subject of that notice at the time when the notice is registered but freed and discharged from any mortgage, charge, covenant charge, lease, writ or caveat affecting that land before registration of that notice.
- (5) Nothing in subsection (1), (3) or (4) affects any right or remedy that may be exercised otherwise than in relation to common property by a person who is a mortgagee, chargee, covenant chargee, lessee, judgment creditor or caveator, even though the person may have signed or consented to the registration of the plan or signed the notice creating the common property.
- (6) In this section (other than this subsection), **lease** does not include a lease granted to the provider of an electricity, telephone or telecommunication service that is required by that provider for the provision of the service. In relation to land the subject of such a lease, the lessor is taken to be the body corporate and the land leased is taken to be common property on registration of the plan or notice.

### 19 Acquisition of additional common property

- (1) In this section, **land** means land under the [Real Property Act 1900](#) (other than land comprised in a qualified or limited folio of the Register or a perpetual lease from the Crown) but does not include a leasehold interest in land evidenced by a lease not registered under that Act.
- (2) A body corporate may, pursuant to a special resolution, accept a transfer or lease of land, not being a lot within the parcel, which is contiguous to the parcel but which is

not subject to a mortgage, charge or writ, for the purpose of creating, or creating additional, common property and upon so doing shall forthwith cause the dealing evidencing the transaction to be registered under the *Real Property Act 1900*.

- (2A) Subsection (2) does not authorise acceptance of a transfer by the body corporate under a strata scheme that is part of a community scheme under the *Community Land Development Act 1989*.
- (3) The Registrar-General may refuse to register under the *Real Property Act 1900*, a transfer or lease referred to in subsection (2), if:
- (a) it is not accompanied by:
    - (i) the certificate of title or Crown grant comprising the land described in the transfer or lease, and
    - (ii) the certificate of title comprising the common property,
  - (b) it is not accompanied by a certificate under the seal of the body corporate certifying that the resolution authorising the acceptance of the transfer or lease was a special resolution, or
  - (c) in the case of a transfer, other than a transfer of a lease, where any land (in this paragraph referred to as **the original parcel**) comprised in the parcel before the registration of the transfer was held in fee simple and is contiguous to the land comprised in the transfer there has not been lodged in the office of the Registrar-General for registration under the *Conveyancing Act 1919*, a plan showing as a single lot the land comprised in the transfer and the original parcel.
- (4) Upon the registration under the *Real Property Act 1900* of any such transfer, other than a transfer of a lease:
- (a) the land comprised therein becomes common property and is subject to the provisions of this Act relating to common property, and
  - (b) the Registrar-General shall make in the Register such recordings with respect to the land that becomes common property as he considers appropriate.
- (5) Upon the registration under the *Real Property Act 1900* of any such lease, transfer of a lease or sub-lease:
- (a) the leasehold interest becomes common property and thereupon is subject to such of the provisions of this Act relating to common property as are applicable to a leasehold interest,
  - (b) the body corporate is responsible for all payments and the performance of all duties required of the lessee by the terms of the lease or sub-lease, as the case may be, and

- (c) the Registrar-General shall make in the Register such recordings with respect to the leasehold interest that becomes common property as he considers appropriate.
- (6) A body corporate may, pursuant to a special resolution and with the concurrence of the lessor, surrender a lease accepted by it under this section.
- (7) Upon the registration under the *Real Property Act 1900* of any such surrender the Registrar-General shall make in the Register such recordings with respect to the surrender as he considers appropriate.

## **20 Body corporate to hold common property as agent for proprietors**

The estate or interest of a body corporate in common property vested in it or acquired by it shall be held by the body corporate as agent:

- (a) where the same person or persons is or are the proprietor or proprietors of all of the lots the subject of the strata scheme concerned—for that proprietor or those proprietors, or
- (b) where different persons are proprietors of each of two or more of the lots the subject of the strata scheme concerned—for those proprietors as tenants in common in shares proportional to the unit entitlements of their respective lots.

## **21 Common property to be dealt with only under this Act**

Common property shall not be capable of being dealt with except in accordance with the provisions of this Act.

## **22 Folio where no common property**

- (1) Where a strata plan that does not contain common property is registered, the Registrar-General shall create a folio of the Register and record therein, in such manner as he thinks fit:
  - (a) a statement that the strata scheme concerned does not contain common property,
  - (b) the name of the body corporate and the address for service of notices on it, and
  - (c) the schedule of unit entitlement in force in respect of the strata scheme concerned.
- (2) During any period for which a folio of the Register created under subsection (1) or section 18 (2) does not contain common property, the Registrar-General shall, in that folio:
  - (a) record any change, from time to time, in the address for service of notices on the body corporate, evidenced by a notice lodged in accordance with section 239 of

the *Strata Schemes Management Act 1996*,

- (b) record particulars of any amendment or addition to, or repeal of, the by-laws from time to time in force with respect to the strata scheme concerned, notification of which has been lodged in accordance with section 48 of the *Strata Schemes Management Act 1996*, and
- (c) make any other recording which, by or under this or any other Act, he is required or authorised to make in the folio.

(3) A reference:

- (a) in this Act to a folio of the Register or a certificate of title comprising common property includes respectively a reference to a folio of the Register created under subsection (1) or section 18 (2) during any period for which it does not contain common property or to a certificate of title issued under section 22A (2) in respect of any such folio, and
- (b) in the *Real Property Act 1900* to a folio of the Register or a certificate of title includes respectively a reference to a folio of the Register referred to in paragraph (a) during any period for which it does not contain common property or to a certificate of title referred to in that paragraph, except in so far as the provision of that Act in which the reference occurs is incapable of applying to a folio of the Register or a certificate of title so referred to.

## **22A Folios for bodies corporate, generally**

- (1) Upon any common property being vested in, acquired by or divested from, a body corporate for a strata scheme in respect of which a folio of the Register has been created under section 18 (2) or 22 (1), the Registrar-General shall make such recordings in the Register with respect to the common property so vested, acquired or divested as he considers appropriate.
- (2) The Registrar-General may, if he thinks fit, and shall, upon the written request of the body corporate, issue to a body corporate in respect of which a folio of the Register has been created under section 18 (2) or 22 (1), a certificate of title setting forth the information contained in that folio.

## **23 Folio where there is common property**

- (1) In any folio of the Register for common property it shall be sufficient that the land therein comprised be described as the common property in a designated strata plan without definition of its area or dimensions, and a folio of the Register comprising common property shall be construed as certifying title to the common property, other than common property the subject of a lease accepted or acquired under section 19, in the strata scheme concerned as that common property may exist from time to time.

- (2) When creating a folio of the Register for common property the Registrar-General shall record therein, in such manner as he thinks fit:
- (a) the name of the body corporate,
  - (b) the address for service of notices on the body corporate,
  - (c) the schedule of unit entitlement in force in respect of the strata scheme concerned, and
  - (d) any easement benefiting or burdening the parcel, any restriction on the use of land or positive covenant burdening the parcel and any right of exclusive use and enjoyment, or any privilege, created by a by-law of the kind to which Division 4 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996* applies,
- and shall, subsequently, in that folio:
- (e) record any change from time to time in the address for service of notices on the body corporate, evidenced by a notice prepared and lodged in accordance with section 239 of the *Strata Schemes Management Act 1996*,
  - (f) record particulars of any amendment, addition or repeal of or to the by-laws from time to time in force notification of which has been lodged in accordance with section 48 of the *Strata Schemes Management Act 1996*, and
  - (g) make any other recording which, by or under this or any other Act, he is required or authorised to make in the folio.
- (3) Notwithstanding the provisions of the *Real Property Act 1900*, the Registrar-General shall not record any easement of the description contained in section 26 (1) (a) or (b), any easement acquired by resumption to the extent that it affects common property or any restriction on the use of land or positive covenant of the description contained in section 26 (1) (a) (whether or not the easement, restriction or positive covenant was created after the commencement of this Act or under section 26 (1)) in the folio of the Register comprising a lot the subject of the strata scheme concerned but shall record the easement, restriction or positive covenant in the folio of the Register comprising the common property, and any such easement, restriction or positive covenant shall affect any such lot to the extent that it is capable of affecting that lot and as if it were recorded by the Registrar-General in the folio of the Register comprising that lot.
- (4) Notwithstanding any provision of the *Real Property Act 1900*, the Registrar-General shall not record any mortgage, charge, covenant charge or writ in the folio of the Register comprising the common property but any such mortgage, charge, covenant charge or writ recorded in the folio of the Register comprising a lot the subject of the strata scheme concerned affects the beneficial interest of the proprietor of that lot in the estate or interest in the common property held by the body corporate as agent for



that proprietor in the same way as if that mortgage, charge, covenant charge or writ were recorded by the Registrar-General in the folio of the Register comprising that common property.

#### **24 Dealings with lots include common property**

- (1) In any dealing or caveat relating to a lot, a reference to that lot includes a reference to any estate or interest in common property which is vested in the body corporate as agent for the proprietor of that lot without express reference to the common property and without that dealing or caveat being recorded in the folio of the Register comprising the common property.
- (2) The beneficial interest of a proprietor of a lot in the estate or interest in the common property, if any, held by the body corporate as agent for that proprietor shall not be capable of being severed from, or dealt with except in conjunction with, the lot.

#### **25 Transfer or lease of common property**

- (1) A body corporate may, pursuant to a special resolution, execute a transfer or lease of common property other than common property the subject of a lease accepted or acquired by the body corporate under section 19 (2).
- (1A) Subsection (1) does not authorise a transfer by the body corporate under a strata scheme that is part of a community scheme under the [Community Land Development Act 1989](#).
- (2) A body corporate, pursuant to a special resolution, may, if not prevented by the terms of the lease, transfer a lease of common property accepted or acquired by the body corporate under section 19 (2) or grant, by way of sub-lease, a lease of its estate or interest in common property the subject of a lease so accepted or acquired.
- (3) A body corporate may, pursuant to a special resolution, accept a surrender of a lease, or, if otherwise empowered so to do, re-enter under a lease, granted under subsection (1) or (2).
- (4) The Registrar-General shall register a dealing referred to in subsection (1), (2) or (3) by making in the Register such recordings with respect to the dealing as he considers appropriate.
- (5) (Repealed)

#### **26 Creation or variation of easements, restrictions and positive covenants**

- (1) A body corporate may, pursuant to a special resolution:
  - (a) execute a dealing creating an easement which burdens the common property or a restriction on the use of land or a positive covenant which burdens the common property or the whole parcel,

- (b) accept a dealing creating an easement which, or a restriction as to user which, benefits the common property or the whole parcel,
  - (c) execute a dealing releasing or varying an easement which, or a restriction as to user which, benefits the common property or the whole parcel, or
  - (d) accept a dealing releasing or varying an easement which burdens the common property or a restriction as to user which burdens the common property or the whole parcel.
- (2) Subsection (1) does not authorise a body corporate to execute or accept a dealing relating to common property the subject of a lease accepted or acquired by the body corporate under section 19 (2) that, apart from subsection (1), it is not entitled to execute or accept as a lessee or, by the terms of the lease, it is prevented from executing or accepting.
- (3) A body corporate may, pursuant to a special resolution, join in or consent to the execution or acceptance of a dealing referred to in subsection (1) relating to common property under section 19 (2).

## 27 Dedication of common property

- (1) In this section:

**common property** does not include common property in a strata scheme that is part of a community scheme under the [Community Land Development Act 1989](#).

**drainage reserve** means land that is set aside as a drainage reserve, under section 49 of the [Local Government Act 1993](#).

**public reserve** has the same meaning as it has in the [Local Government Act 1993](#).

**public road** has the same meaning as it has in the [Roads Act 1993](#).

- (2) A body corporate may, pursuant to a special resolution, affix its seal to a plan which bears a statement of intention in respect of designated common property:
- (a) to open or widen a public road,
  - (b) to create a public reserve, or
  - (c) to create a drainage reserve.
- (2A) The seal may not be affixed to a plan dedicating common property as a public reserve unless there is an adjoining public road or other public place giving access to the reserve by the public.
- (3) A body corporate shall affix its seal to a plan referred to in subsection (2) which relates to common property the subject of a lease accepted or acquired by the body

corporate under section 19 (2) only if:

- (a) the plan has been signed in accordance with Division 3 of Part 23 of the *Conveyancing Act 1919*, and
  - (b) the seal is affixed pursuant to a special resolution of the body corporate.
- (4) Upon registration, under the *Conveyancing Act 1919*, of a plan referred to in subsection (2), the Registrar-General shall make in the Register such recordings, with respect to the effect of that registration, as he considers appropriate.
- (5) (Repealed)

## **28 Effect of dealings under this Division**

- (1) In this section **dealing** includes a plan referred to in section 27 (2).
- (2) A dealing executed by a body corporate for the purposes of the exercise of any of its powers under this Division shall be as valid and effective as it would be if it were also executed by the proprietors of all the lots the subject of the strata scheme concerned and the receipt of the body corporate for purchase money, rent, premium or other moneys payable to the body corporate in respect of the dealing shall be a sufficient discharge and shall exonerate every person paying any such moneys from any responsibility for their application.
- (3) A body corporate shall not execute a dealing for the purposes of this Division:
- (a) whereby the estate or interest of the body corporate or of the proprietors or any of them in the parcel or in any part thereof is diminished unless:
    - (i) all persons (other than the body corporate and the proprietors) having interests recorded in the Register in the parcel or that part, as the case may be, have released them in so far as they affect the land the subject of the dealing or the dealing may properly be, and has been, made subject to those interests, and
    - (ii) all persons having interests (other than interests referred to in subparagraph (i) or statutory interests) in the parcel or that part, as the case may be, being interests which have been notified to the body corporate, have released them as against the person taking under the dealing, not being a plan, or benefiting by the registration of the dealing, being a plan, or
  - (b) unless any by-law to which Division 4 of Part 5 of Chapter 2 of the *Strata Schemes Management Act 1996* applies and relating to the land the subject of the dealing has been:
    - (i) repealed, or

(ii) amended in so far as it would, but for the amendment, have detracted from the interest passing under the dealing.

(4) A dealing lodged for registration under the *Real Property Act 1900* or the *Conveyancing Act 1919* for the purposes of this Division shall not be registered under either such Act unless it is accompanied by a certificate under the seal of the body corporate:

(a) certifying that:

(i) the resolution authorising the execution of the dealing was a special resolution, and

(ii) the requirements of subsection (3) (a) (ii) were complied with, and

(b) except where all lots concerned are held by the original proprietor or where a certificate under this paragraph or section 9 (3) (d) or 13 (2) (b) has been previously lodged in the office of the Registrar-General, or a certified or office copy of the minute of an order made under section 182 of the *Strata Schemes Management Act 1996* authorising the registration of the dealing is so lodged, certifying that the resolution referred to in paragraph (a) was passed after the expiration of the initial period,

and the certificate under the seal of the body corporate given for the purposes of this subsection shall be conclusive evidence of the facts stated therein in favour of the Registrar-General and any person taking under the dealing, not being a plan, or benefiting by the registration of the dealing, being a plan.

(5) This section does not prevent the execution in accordance with section 28N 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 28O) or prevent the registration of a dealing so executed.

## **Division 2A Staged development**

### **28A Explanation of staged development**

(1) The purpose of this Division is to facilitate the development in stages of a parcel that is subject to a strata scheme (whether or not the parcel is developed together with development of non-strata land adjoining or adjacent to the parcel).

(2) The development of the parcel 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 development 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 strata scheme initially relates, but must be identified as such in the strata plan for the scheme when that plan is registered.
- (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 for the 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.

## **28B Obligations of consent authorities**

- (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.
- (3) A development consent that purports to have been granted in contravention of this section is invalid.

### **28C Form and content of strata development contract**

- (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 and any non-strata land adjoining or adjacent to the parcel that is proposed to be developed together with the parcel 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”).
- (2A) If a strata development contract relates to development of a parcel together with any non-strata land adjoining or adjacent to the parcel, it must:
  - (a) include a description of the non-strata land, and
  - (b) indicate that a strata management statement will (unless the requirement for a statement is dispensed with under section 28R) govern both the non-strata land and the parcel, and
  - (c) indicate that, if the strata management statement is registered in accordance with Division 2B, a copy of it may be obtained from the Registrar-General.
- (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.

### **28D Concept plan**

- (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.
- (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.

### **28E Variation of liability for common property expenses**

- (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of the common property of the 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.

### **28F Signing of strata development contract and amendments**

- (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) each registered mortgagee, chargee, covenant chargee and lessee of the development lot, and
  - (c) each registered mortgagee and chargee of a lease of the development lot.
- (2) A strata development contract must be accompanied by the certificate (if any) required to be given by section 28B (Obligations of consent authorities).
- (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 development lot concerned or for any lease of that lot,
  - (b) the lessee under any lease of the common property of the 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.

### **28G Registration of strata development contract and amendments**

- (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 common property (if any) has not been produced to the Registrar-General.
- (3) The Registrar-General must refuse to register a strata development contract or any amendment of such a contract that contravenes any requirement made of it by this Division.

### **28H Notice of strata development contract and amendments**

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 strata scheme concerned and 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.

### **28I Effect of strata development contract**

- (1) A strata development contract relating to a strata scheme has effect as an agreement under seal containing the covenants specified in Schedule 1BA entered into by the body corporate and each person who for the time being is:
  - (a) the developer concerned, or
  - (b) a proprietor of a lot (other than that developer), or
  - (c) a registered or enrolled mortgagee, chargee, covenant chargee or lessee, or an occupier, of a lot.
- (2) The contract ceases to have effect:
  - (a) in relation to a person described in subsection (1) (a), (b) or (c), 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.

- (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 lessee entitled under a lease 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 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.

**Note—**

A strata development contract has no effect to the extent that it is inconsistent with a strata management statement for the strata scheme concerned—see section 28W (6A).

**28J Amendment of strata development contract**

- (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, and
  - (c) the amendment is not inconsistent with a strata management statement for the strata scheme concerned.
- (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
  - (b) except where the developer is the only proprietor of lots in the strata scheme concerned, supported by a unanimous resolution of the body corporate of the 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 strata scheme concerned, and
    - the proprietor of each lot in that scheme (other than the developer), and
    - each registered or enrolled mortgagee, chargee, covenant chargee and lessee 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 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 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.
- (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.

**28K Approval of amendments by Land and Environment Court**

- (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 lessee 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 proprietor of a development lot, and
  - (d) each registered or enrolled mortgagee, chargee, covenant chargee and lessee of a lot in the strata scheme concerned.
- (4) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application.

**28L Use of common property and development lot by developer**

- (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 144 of the *Strata Schemes Management Act 1996*, 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 144 of the *Strata Schemes Management Act 1996*.

#### **28M Adding land to a parcel subject to a strata development contract**

- (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
  - (c) a plan showing as a single lot the additional land and the former parcel has been lodged in the office of the Registrar-General 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.

#### **28N Right to complete permitted development**

- (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.

**280 What are “development concerns”?**

- (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,
  - (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.

**28P Meetings of body corporate relating to development concerns**

- (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 2 to the

*Strata Schemes Management Act 1996* by the developer or the proprietors of not fewer than one quarter of the lots in the strata scheme concerned that are not development lots.

- (3) In convening any such extraordinary general meeting, the developer or any of those proprietors 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 strata scheme concerned as may be prescribed by the regulations.
- (6) This section has effect despite any other provision of this Act.

#### **28Q Conclusion of development scheme**

- (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 last remaining unsubdivided 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,
  - (e) the development scheme is concluded under section 28QA by an order of the Land and Environment Court,
  - (f) the 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 each registered mortgagee, chargee, covenant chargee and lessee of the development lot, and
  - (c) 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 common property (if any) of the strata scheme concerned.
- (5) If, after the conclusion of a development scheme, a revised schedule of unit entitlement for a strata scheme is lodged with the Registrar-General in accordance with section 28QAA, the Registrar-General must record it as the schedule of unit entitlement in substitution for the existing schedule of unit entitlement for the scheme.

#### **28QAA Revised schedule of unit entitlements**

- (1) If, at the conclusion of a development scheme, a body corporate considers that the schedule of unit entitlement in force for the strata scheme concerned does not apportion the unit entitlements so as to reflect the market value of the lots in the strata scheme, the body corporate may lodge a revised schedule of unit entitlement for the strata scheme with the Registrar-General.
- (2) The revised schedule of unit entitlement must be lodged within the period of 2 years after the conclusion of the development scheme.
- (3) A revised schedule of unit entitlement that is lodged with the Registrar-General must:
  - (a) be in a form approved by the Registrar-General, and
  - (b) be clearly identified as a revised schedule, and
  - (c) show, as a whole number apportioned on a market value basis and so as to total the unit entitlements, the unit entitlement of each lot, and
  - (d) be accompanied by a certificate signed by a registered valuer certifying that the unit entitlements of the lots are apportioned on a market value basis, and
  - (e) be accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, agreed to the substitution of the existing schedule of unit entitlements with the revised schedule.

(4) In this section:

**registered valuer** means a practising real estate valuer registered under the *Valuers Registration Act 1975*.

**28QA Order for extension or conclusion of development scheme**

- (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.
- (2) Notice of such an application is to be served, in accordance with rules of court, on:
  - (a) the developer concerned, and
  - (b) each proprietor, and each registered or enrolled mortgagee, chargee, covenant chargee and lessee, of a lot, and
  - (c) the body corporate, and
  - (d) the consent authority (if any) that granted the relevant development consent, and
  - (e) the Registrar-General, and
  - (f) 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 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 proprietors 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.

### **28QB Application for assistance**

- (1) A body corporate or a proprietor of a lot (other than the developer concerned) may apply in writing to the Director-General 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 28I, or
  - (c) a development consent granted in accordance with section 28B (1) or a modification of such a development consent.
- (2) After receipt of such an application, the Director-General may require the applicant to provide the Director-General with such further information about the application as, in the opinion of the Director-General, 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***.

### **28QC Investigation of application for assistance**

- (1) The Director-General 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 Director-General must have regard to whether, in the opinion of the Director-General:
  - (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
  - (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 Director-General may have regard to such other matters as the Director-General considers to be appropriate.

- (3) If the Director-General decides to investigate an application, the Director-General 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 Director-General decides not to investigate an application or to discontinue an investigation, the Director-General must so inform the applicant and, in the case of a discontinuance, each other person whom the Director-General notified of the original decision to investigate the application.
- (5) On completion of an investigation by a delegate of the Director-General of an application, the delegate must report to the Director-General on the results of the investigation.

#### **28QD Power of entry**

- (1) For the purpose of investigating an application for assistance, the Director-General (or a delegate of the Director-General) may enter any lot the subject of the 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.
- (2) A person must not obstruct or hinder the Director-General, or a delegate of the Director-General, when exercising the powers conferred by this section.

Maximum penalty: 5 penalty units.

#### **28QE Application of [Fair Trading Act 1987](#) to applications for assistance**

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 Director-General and to any person to whom have been delegated the powers conferred on the Director-General with respect to an application for assistance, and
- (c) (Repealed)
- (d) references in those sections to that Act included references to this Act.

### **28QF Grant of legal assistance**

- (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 Director-General 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 Director-General as to damages.
- (3) An interim restraining order so sought by the Director-General 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*.

### **28QG Resolution authorising application by body corporate**

- (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 28B (1) of this Act or a modification of such a development consent.
- (2) Any vote cast by the developer concerned (whether as proprietor 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.

### **28QH Functions of Director-General**

The Director-General may:

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

## **Division 2B Strata management statements**

### **28R Requirement for strata management statement**

- (1) The Registrar-General must not register a plan as a strata plan creating a stratum parcel unless the Registrar-General also registers a strata management statement for the building and site concerned.
- (2) The Registrar-General may dispense with compliance with the requirement for a strata management statement:
  - (a) if:
    - (i) the building concerned is erected on a lot in a community scheme, and
    - (ii) part only of the building and site is to be subdivided by a strata plan, and
    - (iii) all of the remainder of the building and site concerned is to be community property, or
  - (ab) if:
    - (i) the plan relates to part of a building that includes one or more stratum parcels, and
    - (ii) a strata management statement has already been registered for the building and the site concerned, or
  - (b) on the direction of the Minister given on such grounds as the Minister considers sufficient.

### **28S Formal requirements**

- (1) A strata management statement and any amendment of such a statement must be in the approved form.
- (2) A strata management statement as in force from time to time must comply with Schedule 1C and that Schedule applies to any such statement.
- (3) The Registrar-General may register a strata management statement and an amendment of such a statement by making such recordings in the Register as the Registrar-General considers appropriate.
- (4) The Registrar-General may refuse to register a strata management statement or any amendment of such a statement if the application for registration fails to comply with any requirement made by this Act or the regulations or is not accompanied by the

prescribed fee.

### **28T Registration of strata management statement**

- (1) If a strata management statement has been registered in accordance with this Division, the Registrar-General must record in the folio of the Register relating to the body corporate of the strata scheme concerned and the common property (if any):
  - (a) the existence of the statement and of any subsequent amendment of it that is registered from time to time, and
  - (b) such information relating to the statement and any amendment of it as the Registrar-General considers appropriate.
- (2) The Registrar-General must make a like record in the folio of the Register:
  - (a) for each of the bodies corporate for a strata scheme for part of the building concerned, and
  - (b) for each part of the building or site concerned that does not form part of a stratum parcel.

### **28U Amendment of strata management statement**

- (1) A registered strata management statement may be amended only if the amendment is:
  - (a) supported by a special resolution of the body corporate for each strata scheme for part of the building concerned and by each person in whom is vested an estate in fee simple in any part of that building or its site that is not included in a stratum parcel, or
  - (b) ordered under this or any other Act by a court, or
  - (c) consequential on the revocation or modification, under section 103 of the [Environmental Planning and Assessment Act 1979](#), of a development consent.
- (2) An amendment of a strata management statement does not have effect under this Division unless it is recorded in the folio of the Register:
  - (a) for each of the bodies corporate for a strata scheme for part of the building concerned, and
  - (b) for each part of the building or site concerned that does not form part of a stratum parcel.

### **28V Signing of strata management statement**

- (1) The Registrar-General may register a strata management statement or any amendment of such a statement only if the statement or amendment is:

- (a) accompanied by a certificate given by the secretary of the body corporate for each strata scheme (if any) for a part of the building concerned certifying that the statement is supported by a special resolution of the body corporate, and
  - (b) signed by each person in whom is vested an estate in fee simple, recorded in a folio of the Register kept under the *Real Property Act 1900*, in a part of the building or its site that is not included in a stratum parcel (whether or not it is included in a proposed stratum parcel), and
  - (c) signed by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in a folio of that Register recording such an estate.
- (2) In addition, the Registrar-General may refuse to register a strata management statement or an amendment of such a statement unless there have been lodged in the office of the Registrar-General written consents to the registration of the statement or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:
- (a) the lessee under any lease, or the judgment creditor under any writ, recorded in any such folio or in the folio of the Register relating to any common property affected by the statement or amendment,
  - (b) the caveator under a caveat affecting any estate or interest of any such registered proprietor, mortgagee, chargee or covenant chargee or under a caveat affecting any such common property.
- (3) The Registrar-General may, in a particular case, dispense with any signature required by or under this section without giving notice to any person.

#### **28W Effect of strata management statement**

- (1) A registered strata management statement, as in force for the time being, relating to the management of a building has effect as an agreement under seal containing the covenants referred to in subsection (2) entered into by each person who for the time being is:
- (a) a body corporate of a strata scheme for part of the building, or
  - (b) a proprietor, mortgagee in possession or lessee for the time being of any of the lots in such a strata scheme, and
  - (c) any other person in whom the fee simple of any part of that building or its site (being a part affected by the statement) is vested for the time being, or the mortgagee in possession or lessee of any such part.
- (2) The covenants referred to in this section are:

- (a) a covenant by which those persons jointly and severally agree to carry out their obligations under the registered strata management statement as from time to time in force, and
  - (b) a covenant by which those persons jointly and severally agree to permit the carrying out of those obligations.
- (3) The agreement ceases to have effect under this Division:
- (a) in relation to a person who is described in subsection (1) (b) or (c), on that person ceasing to be a person so described, and
  - (b) in relation to all of the persons described in subsection (1), on termination of all strata schemes to which the strata management statement relates.
- (4) Subsection (3) does not prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement while the agreement was in force.
- (5) A strata management statement has no effect to any extent to which it is inconsistent with any condition imposed on a development consent relating to the site of the building to which the statement relates, with a by-law or an order under Chapter 5 of the *Strata Schemes Management Act 1996* or with any other Act or other law.
- (6) Except as may be provided otherwise by this Act or the regulations, a provision in any instrument under which the agreement is excluded, modified or restricted is void.
- (6A) Without limiting subsection (6), a provision of a strata development contract relating to a strata scheme is void to the extent (if any) that it is inconsistent with any provision of a strata management statement relating to that scheme.
- (7) A covenant entered into under the agreement does not merge in a transfer of a lot.
- (8) Chapter 5 of the *Strata Schemes Management Act 1996* applies to or in relation to matters arising under the agreement.
- (9) Except as provided by subsection (8), nothing in this section affects any right or remedy that a person may have under a strata management statement apart from a right or remedy under this Division.

## **Division 3 Compulsory acquisition of lots and common property**

### **29 Application of Division**

This Division does not apply to:

- (a) an easement, or
- (b) land the subject of a strata scheme that is part of a community scheme under the

*Community Land Development Act 1989.*

**30 Resumptions affecting parcels**

- (1) Notwithstanding the provisions of any other Act, it shall not be competent for a resuming authority to resume land:
  - (a) comprising solely common property unless the resumed land is defined in the notice of resumption as a lot in a current plan,
  - (b) comprising or including all the lots the subject of a strata scheme unless the resumed land also includes all common property the subject of that scheme and the notice of resumption contains a statement referred to in subsection (2) (a) or (b) in respect of the resumed land and, where that notice contains a statement referred to in subsection (2) (a), unless the resumed land is defined in that notice as a lot in a current plan, or
  - (c) in a parcel where some part of the resumed land does not consist of common property and the resumed land does not comprise or include all the lots and all the common property the subject of the strata scheme concerned unless the notice of resumption contains a statement referred to in subsection (2) (a) or (b) in respect of that part and:
    - (i) where that notice contains a statement referred to in subsection (2) (a), unless the resumed land is defined in that notice as a lot in a current plan, or
    - (ii) where that notice contains a statement referred to in subsection (2) (b), unless any part of the resumed land that is common property is defined in that notice as a lot in a current plan and any part of the resumed land that is not common property is defined in that notice as one or more lots in a strata plan, a strata plan of subdivision or a strata plan of consolidation.
- (2) For the purposes of subsection (1) (b) or (c), the statement to be included in a notice of resumption is a statement that the part of the resumed land that is not common property:
  - (a) is excluded from the strata scheme concerned, or
  - (b) remains subject to that strata scheme.
- (3) A plan relating to a parcel and lodged by a resuming authority in the office of the Registrar-General for the purpose of effecting a resumption referred to in subsection (1) shall not be registered unless there is endorsed on it a statement that registration of the plan is required for that purpose and:
  - (a) in the case of a plan lodged for registration as a strata plan of subdivision, it is accompanied by a statement that it is intended that any part of the land to be resumed which does not consist of common property will remain subject to the



strata scheme concerned, or

- (b) in the case of a plan lodged for registration as a current plan which does not relate solely to common property, it is accompanied:
  - (i) by a statement that it is intended that the land to be resumed will be excluded from the strata scheme concerned, and
  - (ii) except in the case of a current plan relating to all the lots and all the common property the subject of a strata scheme, by a certified or office copy of the minute of an order made by the Supreme Court under section 32, 50 or 51 in respect of the resumption or of an order so made dismissing the application for the order in respect of the resumption or, in the case of a current plan relating to all the lots and all the common property the subject of a strata scheme, by a certified or office copy of the minute of an order made by the Supreme Court under section 51 in respect of the resumption.

(4) A plan lodged in the office of the Registrar-General for registration as:

- (a) a strata plan of subdivision, being a plan bearing a statement referred to in subsection (3) (a), may be registered notwithstanding section 16, or
- (b) a current plan, being a plan bearing a statement referred to in subsection (3) (b), may be registered notwithstanding section 195D (1) of the *Conveyancing Act 1919*,

if the plan has been signed or sealed by or on behalf of the resuming authority.

### **31 Effect of resumption**

- (1) Except in the case of a resumption referred to in section 30 (1) (b) the notice of which contained a statement referred to in section 30 (2) (b), upon the resumption of any land which immediately before the resumption was common property, that land ceases to be common property and the provisions of this Act cease to apply thereto.
- (2) Where a notice of resumption referred to in section 30 (1) (b) contains a statement referred to in section 30 (2) (a) or a notice of resumption referred to in section 30 (1) (c) contains such a statement in respect of that part of the resumed land which does not consist of common property (either such statement corresponding to the statement referred to in section 30 (3) (b) (i)), the part of the resumed land that does not consist of common property ceases to be subject to the strata scheme concerned and the provisions of this Act cease to apply thereto.
- (3) Where a notice of resumption referred to in section 30 (1) (b) contains a statement referred to in section 30 (2) (b), the provisions of this Act apply, notwithstanding the provisions of any other Act, to and in respect of the resuming authority and the resumed land in all respects, except as to the recording by the Registrar-General of

the resumption, as if the resuming authority had acquired the lots comprised in the resumed land by registration under the *Real Property Act 1900* of a transfer.

- (4) Where a notice of resumption referred to in section 30 (1) (c) contains a statement referred to in section 30 (2) (b), the provisions of this Act apply, notwithstanding the provisions of any other Act, to and in respect of the resuming authority and any part of the resumed land which, immediately before the resumption, did not consist of common property in all respects, except as to the recording by the Registrar-General of the resumption, as if the resuming authority had acquired that part by registration under the *Real Property Act 1900* of a transfer.

### **32 Readjustment of strata scheme for purposes of resumption**

- (1) Where:

- (a) a resuming authority proposes to resume land in a parcel and that land does not consist solely of common property or of all the lots and all the common property comprised in that parcel, and
- (b) the resuming authority intends that that land will be excluded from the strata scheme concerned,

the resuming authority may make an application to the Supreme Court for an order under subsection (4).

- (2) Notice of an application under subsection (1) shall be served, in accordance with the rules of court:

- (a) on every registered proprietor and registered mortgagee of a lot the subject of the strata scheme concerned,
- (b) on the body corporate,
- (c) where part of a lot is intended to be resumed and the local council has not approved of a plan referred to in section 30 (3) (b) relating to that part, on that local council,
- (d) on the Registrar-General, and
- (e) on such other persons as the Supreme Court may direct.

- (3) Any person referred to in subsection (2) (whether or not he has been served with a notice of the application), the resuming authority and any proprietor or enrolled mortgagee shall be entitled to appear and be heard on the hearing of the application.
- (4) The Supreme Court may, on application made under subsection (1), make an order for or with respect to any one or more of the following matters:

- (a) the substitution for the existing schedule of unit entitlement of a new schedule of

unit entitlement,

- (b) where part of a lot is intended to be resumed and the resuming authority intends that that part will be excluded from the strata scheme concerned, the designation as a lot of the residue of any such lot,
  - (b1) the amendment of any strata development contract that relates to the parcel,
  - (c) requiring the resuming authority, when resuming the land referred to in its application under subsection (1), also to resume any residue referred to in paragraph (b) so that that residue will either be excluded from the strata scheme concerned or remain subject to that strata scheme, according to the terms of the order,
  - (d) with the consent of the proprietor of a lot part of which is intended to be resumed, the vesting, freed and discharged from any mortgage, charge, covenant charge or writ, of any other part of that lot in the body corporate as common property, and
  - (e) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order.
- (5) An order made under subsection (4) shall take effect upon the day on which the resumption referred to in the order takes effect.
- (6) An order made under subsection (4) shall have effect according to its tenor.
- (7) Where, on an application made under subsection (1), the Supreme Court is of the opinion that an order should not be made under subsection (4):
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application under subsection (1) be treated as an application for an order under section 50 or 51, and
  - (b) where it makes such a direction:
    - (i) the application the subject of the direction shall be deemed to be an application made under section 50 (1) or 51 (1), as the case may be, by a person entitled to make the application, and
    - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 50 (1) or 51 (1), as the case may be, is entitled to appear and be heard on the hearing of the application.
- (8) The costs of any proceedings under this section shall be payable by the resuming authority, unless the Supreme Court otherwise orders.

### **33 Common property not to pass with lot or part of lot in certain circumstances**

A resuming authority does not acquire any interest in common property the subject of a strata scheme by reason only of its resuming the whole or part of a lot which immediately before the resumption was the subject of that scheme if the notice of resumption contains a statement referred to in section 30 (2) (a).

### **34 Severance of lots by resumption**

For the purposes of any Act relating to the payment of compensation upon the resumption of land:

- (a) where any part of a lot is resumed that part shall be deemed to be severed from every other part of that lot, whether or not that part and any such other part are contiguous, and
- (b) where the resumed land or any part of the resumed land is common property, the beneficial interests of the proprietors in that common property shall, for the purposes of any claim for or the payment of compensation in respect of the resumption of those interests, be deemed to be vested in the body corporate to the exclusion of the proprietors.

### **34A Resumptions where resuming authority is bound by this Act**

- (1) Despite section 8 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#), a resumption of land to which both this Division and that Act apply must comply with this Division and that Act. This Division prevails to the extent of any inconsistency.
- (2) A resumption of land to which this Division applies and to which Part 12 of the [Roads Act 1993](#) applies must comply with this Division and that Part. This Division prevails to the extent of any inconsistency.

### **35 Resumptions where resuming authority not bound by this Act**

Where any part of a parcel is resumed by a resuming authority which is not bound by the provisions of this Act and does not comply with the provisions of this Division, the body corporate or a person affected by the resumption may apply to the Supreme Court for an order under section 50, as if the building had been damaged or destroyed, or under section 51.

## **Division 4 Strata certificates**

### **36 Other Acts not to apply to subdivisions under Division 1**

- (1) Except as otherwise provided in this Act, any provision contained in the [Conveyancing Act 1919](#), the [Environmental Planning and Assessment Act 1979](#) or any other Act, being a provision relating to the manner of dividing land or any matter incidental thereto, does not apply to a subdivision effected under Division 1.

- (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.

**37 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property**

- (1) Subject to this Division, a local council shall, on application made to it for a strata certificate in respect of a proposed strata plan that does not include a development lot or lots, issue to the applicant a strata certificate in respect of that plan if it is satisfied as to the matters specified in either of the following paragraphs:

(a) that:

- (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* with respect to the erection of any building containing any proposed lots to which that plan relates, and
- (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation, and
- (iii) any such building was completed not more than twelve months, or such longer period as the local council may in any particular case fix, before the application for the strata certificate under this subsection was lodged with the local council, and
- (iv) if the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, or

(b) that:

- (i) separate occupation of the proposed lots illustrated by that plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act, and
- (ii) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan, and
- (iii) having regard to the circumstances of the case and the public interest, the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood, and
- (iv) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision

referred to in subsection (1B), and

- (v) if the local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 180 of that Act and the Land and Environment Court has refused to confirm the order, and
- (vi) if the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision.

(1AA), (1AB) (Repealed)

(1A) Subject to this Division, a local council shall, on application made to it for a strata certificate in respect of a proposed strata plan that includes a development lot or lots, or of a proposed strata plan of subdivision of a development lot, issue to the applicant a strata certificate in respect of that plan if it is satisfied:

- (a) as to either of the matters referred to in subsection (1) (a) and (b), and
- (b) that the plan and any building containing proposed lots to which the plan relates:
  - (i) satisfy any development consent conditions applicable thereto, and
  - (ii) give effect to the stage of the strata development contract to which they relate.

(1B) For the purposes of subsection (1) (b) (iv), the orders and provisions referred to in this subsection are as follows:

- (a) any order of the kind referred to in Orders Nos 2, 4, 8 or 9 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,
- (b) any order of the kind referred to in Orders Nos 21, 22, 23, 24 or 25 in the Table to section 124 of the *Local Government Act 1993*,
- (c) provisions of regulations made under the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979* that are prescribed for the purposes of this subsection.

(2) A local council on application made to it for a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (a), shall, unless the application was accompanied by a certificate under the seal of the body corporate certifying that by resolution passed at a general meeting it agrees to the proposed subdivision, send, by certified mail, notice of the proposed subdivision to the body corporate concerned inviting it to express its

views upon the proposed subdivision within a time (being not less than twenty-one days after the notice was sent) specified in the notice.

(3) A local council may after the expiration of the time specified in the notice sent under subsection (2) and after taking into consideration:

(a) any representations made to the local council by the body corporate to which the notice was sent,

(b) whether the proposed subdivision would be likely:

(i) to detract from the external appearance of the building containing the lot the subject of the proposed subdivision,

(ii) to render inadequate existing services to other lots the subject of the strata scheme concerned, or

(iii) by increasing the number and decreasing the size of lots within that building, to detract from the amenity or value of any other lot the subject of the strata scheme concerned, and

(c) the matters specified in subsection (1) (b) (i), (ii) and (iii), as if the reference in subsection (1) (b) to a proposed strata plan were a reference to the plan to which the notice relates,

issue a strata certificate in respect of the plan to which the notice relates.

(4) A local council, on application made to it for a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (b), (c) or (d), may:

(a) if that plan, upon lodgment with the local council, was accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, consented to the proposed subdivision, and

(b) after taking into consideration the matters specified in subsection (1) (b) (i), (ii) and (iii), as if the reference in subsection (1) (b) to a proposed strata plan were a reference to the plan illustrating the proposed subdivision,

issue the strata certificate applied for.

(5) A local council, on application made to it for a strata certificate in respect of a proposed notice of conversion, may:

(a) if that notice, upon lodgment with the local council, was accompanied by a certificate under the seal of the body corporate concerned certifying that it has, by special resolution, consented to the proposed conversion, and

(b) if, having regard to the circumstances of the case and the public interest, it is

satisfied that the proposed conversion will not interfere with the existing or likely future amenity of the neighbourhood,

issue the certificate applied for.

(6) Despite any other provision of this section, a council, in considering an application for a strata certificate where there is a relevant development consent in force, is not required to satisfy itself of the following matters:

(a) the matters set out in subsection (1) (b) (iii) (as required by subsections (1), (1A) (a), (3) (c) and (4) (b)),

(b) the matters set out in subsection (3) (b),

(c) the matters set out in subsection (5) (b).

(7) Despite any other provision of this section, a local council must not grant a strata certificate in respect of a proposed strata plan, strata plan of subdivision or notice of conversion for which no relevant development consent is in force or is required unless it has considered the following:

(a) whether the following will be appropriate to the building's proposed use:

(i) the structural strength and load-bearing capacity of the building the subject of the plan or notice,

(ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire,

(iii) the measures to restrict the spread of fire from the building to other buildings nearby,

(b) whether the building complies, or will, when completed, comply, with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.

(8) In subsection (7):

**Category 1 fire safety provisions** means the provisions prescribed for the purposes of this section by the regulations.

### **37A Approvals by accredited certifiers**

(1) An accredited certifier may issue a strata certificate in respect of a proposed strata plan, proposed strata plan of subdivision or proposed notice of conversion in accordance with this section.

(2) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that does not include a development lot or lots if the certifier is satisfied as to each of the following matters:



- (a) that there is a relevant development consent in force,
  - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
  - (c) the matters specified in section 37 (1) (a) or (1) (b) (i), (ii), (iv), (v) and (vi).
- (3) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that includes a development lot or development lots, or in respect of a proposed strata plan of subdivision of a development lot, if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
  - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
  - (c) the matters specified in section 37 (1) (a) or (1) (b) (i), (ii), (iv), (v) and (vi),
  - (d) the matters specified in section 37 (1A) (b).
- (4) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (a) if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
  - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
  - (c) that the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision,
  - (d) the matters specified in section 37 (1) (b) (i) and (ii) (as if the reference in section 37 (1) (b) to a plan were a reference to the plan to which the application for certification relates).
- (5) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (b), (c) or (d) if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
  - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied

with,

- (c) that the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision,
  - (d) the matters specified in section 37 (1) (b) (i) and (ii) (as if the reference in section 37 (1) (b) to a plan were a reference to the plan illustrating the proposed subdivision).
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
  - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
  - (c) that the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed conversion.
- (7) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless the certifier is satisfied that the requirements of any regulations with respect to the provision of such certificates have been complied with.
- (8) For the purposes of being satisfied of the matters in section 37 (1) (a) (iii), an accredited certifier must be satisfied that the building was completed not more than 12 months before the application for the strata certificate was made.

### **37B Relevant development consents**

- (1) For the purposes of this Act, a relevant development consent is in force in relation to a proposed strata plan or strata plan of subdivision if:
- (a) development consent is required to the subdivision the subject of the proposed strata plan or strata plan of subdivision and the development consent has been granted, or
  - (b) such development consent is not required but development consent is required with respect to the building concerned and development consent has been granted to building work in respect of a building, or a change of use of a building, having proposed lots designed for separate occupation as illustrated by the plan, and the development consent has not lapsed.
- (2) For the purposes of this Act, a relevant development consent is in force in relation to a notice of conversion if:
- (a) development consent is required to the conversion the subject of the notice and

the development consent has been granted, or

- (b) such development consent is not required but development consent is required with respect to a change of use or building work associated with the conversion and the development consent has been granted,

and the development consent has not lapsed.

### **37C Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) applications for and the issue of strata certificates,
- (b) the matters to be notified by accredited certifiers to local councils with respect to strata certificates,
- (c) the records to be kept by accredited certifiers and local councils with respect to strata certificates issued, or refused, by accredited certifiers.

### **37D Satisfaction as to compliance with conditions precedent to issue of strata certificates**

- (1) A person who exercises functions under this or any other Act in reliance on a strata certificate issued under this Act is entitled to assume:
  - (a) that the certificate has been duly issued, and
  - (b) that all conditions precedent to the issue of the certificate have been duly complied with, and
  - (c) that all things that are stated in the certificate as existing or having been done do exist or have been done,

and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.

- (2) This section does not apply to an accredited certifier in relation to any strata certificate that he or she has issued.

### **37E Accreditation of certifiers**

- (1) Part 4B of the *Environmental Planning and Assessment Act 1979* applies, with any necessary modifications and any modifications prescribed by the regulations, in respect of the following:
  - (a) the appointment and accreditation of accredited certifiers for the purposes of this Act,
  - (b) accredited certifiers,

- (c) the authorisation of accreditation bodies,
  - (d) accreditation bodies,
  - (e) the exercise of functions under this Act by accredited certifiers.
- (2) Without limiting subsection (1), Part 4B of the *Environmental Planning and Assessment Act 1979* applies to a strata certificate in the same way as it applies to a Part 4A certificate under that Act.

### **37F Insurance of accredited certifiers**

Division 3 of Part 4C of the *Environmental Planning and Assessment Act 1979* applies, with any necessary modifications and any modifications prescribed by the regulations, to accredited certifiers exercising functions under this Act in the same way that it applies to accredited certifiers exercising the functions of a certifying authority in relation to any building work or subdivision work.

### **38 Encroachments**

- (1) The local council may refuse to issue a strata certificate in respect of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on to a public place but may issue a strata certificate in respect of such a plan if it is satisfied that:
- (a) the plan clearly indicates the existence of the encroachment and its nature and extent, and
  - (b) (Repealed)
  - (c) retention of the encroachment in its existing state will not endanger public safety or unreasonably interfere with the amenity of the neighbourhood.
- (1A) An accredited certifier must refuse to issue a strata certificate in respect of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on to a public place unless the certifier is satisfied as to the matters set out in paragraph (a) or (b) and the matters set out in paragraph (c):
- (a) that the building complies with any relevant development consent in force with respect to the building with the encroachment,
  - (b) that any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment,
  - (c) that the plan clearly indicates the existence of the encroachment and its nature and extent.
- (2) Where a local council or an accredited certifier issues a strata certificate in respect of a proposed strata plan or a strata plan of subdivision illustrating a building referred to

in subsection (1) or (1A):

- (a) in the case of an approval by a local council, the council must not issue a strata certificate under section 37 (1), (1A), (3) or (4) unless the certificate refers to the existence of the encroachment and indicates that the local council does not object thereto, and
- (a1) in the case of an approval by an accredited certifier, the accredited certifier must not issue a strata certificate under section 37A (2), (3), (4) or (5) unless the certificate refers to the existence of the encroachment and indicates that:
  - (i) the local council has granted a relevant development consent that is in force for the building with the encroachment, or
  - (ii) the local council has granted a relevant development consent that is in force for the subdivision the subject of the plan specifying the existence of the encroachment, and
- (b) the provisions of this Act, other than those relating to ownership and certification of title, apply:
  - (i) in the case of so much of the encroachment as is designated on the plan for use with a lot—as if it were part of the lot, or
  - (ii) in any other case—as if it were common property.

### **39 Utility lots**

- (1) Where the registration of a plan submitted to a local council for the issue of a strata certificate would result in the creation of one or more utility lots (being lots designed to be used primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or the like), the local council may qualify any strata certificate issued under section 37 in respect of that plan by attaching a condition restricting the use of that utility lot or those utility lots to use by a proprietor or occupier of a lot or proposed lot, not being such a utility lot, the subject of the strata scheme concerned.
- (1A) If the registration of a plan submitted to an accredited certifier for issue of a strata certificate would result in the creation of one or more utility lots as referred to in subsection (1) and the relevant development consent contains a condition restricting the use of that utility lot or those utility lots to use by a proprietor or occupier of a lot or proposed lot, not being such a utility lot, the certifier must note the restriction on the strata certificate.
- (2) A restriction on use imposed pursuant to subsection (1) or noted under subsection (1A):
  - (a) shall designate each utility lot burdened by the restriction, and

(b) shall describe the restriction by reference to this section.

- (3) Section 88 of the *Conveyancing Act 1919* does not apply to a restriction imposed pursuant to subsection (1) or in a development consent referred to in subsection (1A).
- (4) The local council, upon an application made by the proprietor or a registered mortgagee of a utility lot the subject of a restriction referred to in subsection (1) or (1A), may execute an instrument, in the form approved under the *Real Property Act 1900*, which provides that the lot is released from that restriction.

#### **40 Notices of and appeals against refusal of approval**

- (1) In this section **application** means an application to a local council or an accredited certifier for a strata certificate in respect of:
- (a) a proposed strata plan,
  - (b) a proposed strata plan of subdivision,
  - (c) a notice of conversion, or
  - (d) a proposed amendment of a strata development contract.
- (2) A local council or an accredited certifier to which an application is made shall cause notice of the decision on the application to be given to the applicant.
- (2A) A notice of refusal by an accredited certifier to approve of an application must specify the grounds of refusal.
- (3) A notice of refusal by a local council to approve of an application shall:
- (a) specify the grounds of refusal, and
  - (b) indicate that the applicant has a right to appeal under subsection (4) against the refusal.
- (4) Upon any refusal by a local council to approve of an application, upon approval by a local council of an application subject to a condition referred to in section 39 (1) or upon failure by a local council to notify its approval of an application to the applicant within a period of 14 days:
- (a) except as provided in paragraph (b), after receiving the application, or
  - (b) in the case of an application for a strata certificate referred to in section 37 (2) where a notice was sent under section 37 (2), after the expiration of the time referred to in the notice,
- the applicant may:
- (c) within twelve months after the date on which he received notice of the local

council's decision or after the expiration of that period of 14 days, as the case may be or within such longer period as the Land and Environment Court may in special circumstances allow,

(d) (Repealed)

appeal to the Land and Environment Court.

- (5) The decision of the Land and Environment Court upon any appeal under subsection (4) shall be deemed to be the final decision of the local council and shall be given effect to accordingly.

## **Division 5 Powers and duties of Registrar-General**

### **41 Registration of plans and notices**

- (1) The Registrar-General may, subject to and for the purposes of this Act, register under this Act a plan or other instrument lodged for registration in his office.
- (2) A plan is registered as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan when the Registrar-General makes on the plan, in the Register or in another record maintained by him, such recordings with respect to the plan as he considers appropriate.
- (2A)-(2C) (Repealed)
- (3) A notice is registered as a notice of conversion when the Registrar-General makes in the Register such recordings with respect to the notice as he considers appropriate.
- (4) (Repealed)
- (5) Notwithstanding any other provision of this Act, a plan shall not be registered as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan and a notice shall not be registered as a notice of conversion unless it is accompanied by such other plans and documents, if any, as may be prescribed.

### **42 Provisions applying to strata plans etc**

- (1) The provisions of sections 195F, 195H, 195J (2) and 196 (1) of the [Conveyancing Act 1919](#) apply to and in respect of a plan lodged in the office of the Registrar-General for registration as a strata plan, strata plan of subdivision, strata plan of consolidation or building alteration plan in the same way as they apply to plans referred to in those provisions.
- (2) (Repealed)
- (3) The Registrar-General may cause a true copy of any plan, strata development contract or amendment of a strata development contract registered under this Act, or

of a copy of such a plan, strata development contract or amendment prepared under this subsection, to be prepared and a copy so prepared and certified by the Registrar-General as a true copy shall, for all purposes, have the like validity and effect as the original plan to which it relates.

- (4) The Registrar-General may destroy any plan, strata development contract or amendment of a strata development contract, or copy of a plan, strata development contract or amendment, a copy of which he has caused to be made under subsection (3).
- (5) Subsections (1), (2), (3) and (4) apply to and in respect of a strata plan, and a strata plan of resubdivision, within the meaning of the *Conveyancing (Strata Titles) Act 1961*, in the same way as they apply to and in respect of:
  - (a) plans lodged in the office of the Registrar-General for registration as strata plans or strata plans of subdivision, and
  - (b) strata plans or strata plans of subdivision,as the case may require.

#### **43 Registrar-General's power to adjust unit entitlements**

- (1) Where a quotient that is a whole number is obtained by dividing by a whole number the unit entitlements of the lots and proposed lots shown on a schedule of unit entitlement which accompanies a plan lodged in the office of the Registrar-General for registration or on a revised schedule of unit entitlements lodged under section 28QAA, the Registrar-General may, of his own motion when registering the plan, record in the folio of the Register comprising the common property:
  - (a) as the unit entitlement of each lot, the quotient obtained in respect of that lot, and
  - (b) as the aggregate unit entitlement, the appropriate aggregate unit entitlement.
- (2) Where a quotient that is a whole number is obtained by dividing by a whole number the unit entitlement of each lot the subject of a strata scheme, the Registrar-General may, of his own motion, amend the schedule of unit entitlement recorded in the folio of the Register comprising the common property or revised schedule of unit entitlements recorded under section 28QAA:
  - (a) by substituting for the unit entitlement of each lot a unit entitlement equal to the quotient obtained in respect of that lot, and
  - (b) by substituting for the aggregate unit entitlement the appropriate aggregate unit entitlement.
- (3) The Registrar-General shall, upon making a recording pursuant to subsection (1) or an amendment pursuant to subsection (2), notify the body corporate concerned of the



unit entitlements and aggregate unit entitlement recorded.

#### **44 Recording of condition restricting use imposed by local council**

- (1) Where a strata certificate issued by a local council under section 37 is qualified by attaching, in accordance with section 39, a condition restricting use of a lot, the Registrar-General shall, when creating a folio of the Register for the lot, suitably record the condition therein.
- (1A) If a strata certificate issued by an accredited certifier under section 37A is qualified by noting, in accordance with section 39, a condition restricting the use of a lot, the Registrar-General must, when creating a folio of the Register for the lot, suitably record the condition in the folio.
- (2) A condition recorded pursuant to subsection (1) or (1A) is an interest within the meaning of section 42 of the *Real Property Act 1900*.
- (3) Upon lodgment in his office of an instrument referred to in section 39 (4), the Registrar-General shall make such recordings in the Register with respect to it as he considers appropriate and thereupon the utility lot to which the instrument relates is released from the restriction referred to in it.

#### **45 Prohibition on recordings in the Register in certain circumstances**

Where the Registrar-General registers a strata plan of subdivision or a current plan relating to a parcel on which are endorsed or which is accompanied by the relevant statements referred to in section 30 (3), he shall not:

- (a) create a folio of the Register for any lot comprised in that strata plan of subdivision or any current plan lot, as defined in section 7 (1), in that current plan, or
- (b) make any recording in the Register by reference to any such lot or current plan lot,

until he makes a recording in the Register under section 31A (3) of the *Real Property Act 1900* with respect to that lot or any other lot in that strata plan of subdivision or with respect to that current plan lot or any other such current plan lot in that current plan.

#### **46 Certain recordings to be made by Registrar-General**

- (1) Where the Registrar-General registers a strata plan of subdivision that is not a plan referred to in section 45, or where he registers a strata plan of consolidation, he shall:
  - (a) cancel the folio of the Register comprising any former lot subdivided or consolidated by the registration of the plan,
  - (b) create a folio of the Register for each new lot created by the subdivision or consolidation, and
  - (c) amend the schedule of unit entitlement recorded in the folio of the Register

comprising the common property the subject of the strata scheme concerned by making such recordings in that folio as he thinks fit.

- (2) Where the Registrar-General registers a notice of conversion of a lot into common property, he shall:
  - (a) (Repealed)
  - (b) cancel the folio of the Register comprising the converted lot, and
  - (c) amend the schedule of unit entitlement recorded in the folio of the Register comprising the common property the subject of the strata scheme concerned by making such recordings in that folio as he thinks fit.
- (3) (Repealed)

#### **47 Duties of Registrar-General where resumed land remains subject to strata scheme**

- (1) Where the whole of a lot (not being a lot in a strata plan of subdivision referred to in section 45) is resumed and the notice of resumption contains a statement referred to in section 30 (2) (b), any recording in the Register that the Registrar-General is, under section 31A (3) of the *Real Property Act 1900*, authorised or required to make with respect to the resumption shall be made in the folio of the Register comprising the resumed lot.
- (2) Where the whole of a lot in a strata plan of subdivision referred to in section 45 is resumed and the notice of resumption contains a statement referred to in section 30 (2) (b) corresponding to the statement referred to in section 30 (3) (a), the Registrar-General shall, after making a recording in the Register under section 31A (3) of the *Real Property Act 1900*, with respect to that resumption:
  - (a) cancel the folio of the Register comprising the subdivided lot,
  - (b) create a folio of the Register for each new lot, and
  - (c) amend the schedule of unit entitlement recorded in the folio of the Register comprising the common property the subject of the strata scheme concerned by making such recordings in that folio as he thinks fit.

#### **48 Duties of Registrar-General where resumed land is excluded from strata scheme**

- (1) Where land consisting solely of common property is resumed, any recording in the Register that, under section 31A (3) of the *Real Property Act 1900*, the Registrar-General is authorised or required to make shall be made in the folio of the Register comprising the common property.
- (2) Where the whole of a parcel or any part of a parcel that does not consist of common property is resumed and the notice of resumption contains a statement referred to in

section 30 (2) (a) corresponding to the statement referred to in section 30 (3) (b) (i), the Registrar-General shall, where he makes a recording in the Register under section 31A (3) of the *Real Property Act 1900* with respect to the resumption, make such recordings in the Register and create such folios of the Register as appear to him to be necessary or proper to give effect to the order of the Supreme Court made under section 32, 50 or 51 with respect to the land resumed and the strata scheme concerned.

#### **49 Documents to be forwarded by Registrar-General to certain authorities**

- (1) Upon registration of a strata plan, a strata plan of subdivision (not being a strata plan of subdivision referred to in section 45) or a strata plan of consolidation, the Registrar-General shall forward two copies of the plan to the valuing authority referred to in section 89, to each rating authority so referred to which is authorised to make and levy rates on the land the subject of the strata scheme concerned and to the Chief Commissioner of Land Tax.
- (2) The Registrar-General shall, upon making a recording in the Register under section 31A (3) of the *Real Property Act 1900* with respect to the resumption of a lot in a strata plan of subdivision referred to in section 45, forward two copies of the plan to each authority referred to in subsection (1) and to the Chief Commissioner of Land Tax.
- (3) Upon recording a schedule of unit entitlement in a folio of the Register comprising common property or upon amending any such schedule, the Registrar-General shall forward in duplicate to:
  - (a) each authority referred to in subsection (1),
  - (b) the Chief Commissioner of Land Tax, and
  - (c) the body corporate,particulars of the schedule of unit entitlement or of the amended schedule of unit entitlement, as the case may be.
- (4) A copy of a plan forwarded under this section may be on a scale the same as or different from the original.

### **Part 3 Variation or termination of strata schemes**

#### **50 Variation of strata scheme consequent on damage to or destruction of building**

- (1) Where a building is damaged or destroyed:
  - (a) any proprietor of a lot the subject of the strata scheme concerned,
    - (a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee

or covenant chargee, or

(b) the body corporate,

may make an application to the Supreme Court for an order under subsection (4).

- (2) Notice of an application under subsection (1) shall be served, in accordance with the rules of court, on:
- (a) every person referred to in subsection (1), other than the applicant,
  - (b) the local council,
  - (c) the Registrar-General, and
  - (d) such other persons as the Supreme Court may direct.
- (3) The applicant and any person referred to in subsection (2) (whether or not he has been served with a notice of the application) shall be entitled to appear and be heard on the hearing of the application.
- (4) The Supreme Court may, on an application made under subsection (1), make an order for or with respect to the variation of the existing strata scheme or the substitution for the existing strata scheme of a new strata scheme.
- (5) An order made under subsection (4) shall take effect:
- (a) except as provided in paragraph (b), on such day as may be specified in the order, and
  - (b) where it is made pursuant to an application made under section 32 which, under section 32 (7) or under sections 32 (7) and 51 (8), is treated as an application for an order under this section or pursuant to an application authorised by section 35, on the day on which the resumption referred to in the order takes effect.
- (6) Without limiting the generality of subsection (4), an order made under that subsection may include directions for or with respect to any one or more of the following matters:
- (a) the substitution for the existing schedule of unit entitlement of a new schedule of unit entitlement,
  - (b) the reinstatement in whole or in part of the building or, in the case of a stratum parcel, of the part of the building subject to the scheme,
  - (b1) the amendment of any strata development contract that relates to the parcel,
  - (c) the transfer to or vesting in the body corporate, free from mortgages, charges, covenant charges and writs, of the interests of proprietors of lots which have been wholly or partly destroyed,

- (d) the application of any insurance moneys received by the body corporate in respect of the damage to or destruction of the building,
  - (e) the payment of moneys to or by the body corporate or the proprietors or any one or more of them,
  - (f) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order,
  - (g) where the order is made pursuant to an application made under section 32 which, under section 32 (7) or under sections 32 (7) and 51 (8), is treated as an application for an order under this section, any matter referred to in section 32 (4), and
  - (h) where the application for the order is authorised by section 35, any matter referred to in section 32 (4) (a), (b) or (d).
- (7) An order made under subsection (4) shall have effect according to its tenor.
- (8) Where the Supreme Court is of the opinion that an order should not be made under subsection (4):
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 51, and
  - (b) where it makes such a direction:
    - (i) the application the subject of the direction shall be deemed to be made under section 51 by a person entitled to make the application, and
    - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 51, is entitled to appear and be heard on the hearing of the application.
- (9) The costs of any proceedings under this section pursuant to an application made under section 32 which, under section 32 (7) or under sections 32 (7) and 51 (8), is treated as an application for an order under this section shall be payable by the resuming authority, unless the Supreme Court otherwise orders.
- (10) The Supreme Court may, from time to time, vary any order made under subsection (4) on the application of any person entitled to appear and be heard on the hearing of the application for that order.

## **51 Termination of strata scheme**

- (1) An application to the Supreme Court for an order under subsection (4) may be made

by:

(a) any proprietor of a lot the subject of the strata scheme concerned,

(a1) where any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee, or

(b) the body corporate.

(1A) An application for an order under subsection (4) may be made by an authority having the benefit of a positive covenant only when the authority applies under section 88I of the *Conveyancing Act 1919* for an order that the land the subject of the strata scheme concerned be transferred to the authority.

(2) Notice of an application under subsection (1) shall be served, in accordance with the rules of court, on:

(a) every person referred to in subsection (1), other than the applicant,

(b) the local council,

(c) the Registrar-General, and

(d) such other persons (including creditors of the body corporate) as the Supreme Court may direct.

(3) The applicant and any person referred to in subsection (2) (whether or not he has been served with a notice of the application) shall be entitled to appear and be heard on the hearing of the application.

(4) The Supreme Court may, on an application made under subsection (1), make an order terminating the strata scheme concerned.

(5) An order made under subsection (4) shall take effect:

(a) except as provided in paragraph (b), on such day as may be specified in the order, or

(b) where it is made pursuant to an application made under section 32 which, under section 32 (7) or under sections 32 (7) and 50 (8), is treated as an application for an order under this section, pursuant to an application under subsection (1) in relation to a proposed resumption of all the lots and all the common property the subject of a strata scheme or pursuant to an application authorised by section 35, on the day on which the resumption referred to in the order takes effect.

(6) An order made under subsection (4) shall include directions for or with respect to the following matters:

(a) the sale or disposition of any property of the body corporate,

- (b) the discharge of the liabilities of the body corporate,
  - (b1) the termination of any development scheme that relates to the parcel and the cancellation of the strata development contract concerned,
  - (b2) the termination or amendment of any strata management statement that relates to the parcel or the amendment of any other strata management statement that relates to the building concerned,
  - (c) the persons liable to contribute moneys required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person,
  - (d) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution,
  - (e) the administration, powers, authorities, duties and functions of the body corporate,
  - (f) the voting power at meetings of the body corporate of persons referred to in paragraph (c) or (d),
  - (g) any matter in respect of which it is, in the opinion of the Supreme Court, just and equitable, in the circumstances of the case, to make provision in the order, and
  - (h) the winding up of the body corporate (including the appointment, powers, authorities, duties and functions of any person to carry out the winding up).
- (7) Upon an order under this section taking effect:
- (a) the estate or interest of the former proprietors in that part of the former parcel which consisted of common property vested in the body corporate as agent for the former proprietors vests in the body corporate as principal, subject only to any estate or interest recorded in the folio of the Register, or on any registered lease or registered sub-lease, evidencing the estate or interest of the body corporate in that common property or in the relevant folio of the Register created under section 22 (1),
  - (b) the estates or interests of every person in that part of the former parcel which did not consist of common property vest in the body corporate as principal, subject only to any estate or interest recorded in:
    - (i) the folio of the Register evidencing the estate or interest of the body corporate in the common property comprised in that former parcel, or
    - (ii) the relevant folio of the Register created under section 22 (1),to the extent that the estate or interest so recorded was capable of affecting any former lot,

- (c) the persons who, immediately the order took effect, were proprietors of lots the subject of the strata scheme concerned cease to be proprietors of lots the subject of that scheme, and
  - (d) the persons whose estates or interests are divested by paragraph (b) have instead such rights and liabilities as are conferred or imposed upon them by the order.
- (8) The provisions of an order made under this section shall have effect notwithstanding any provision of this Act, other than this section.
- (9) An order made under subsection (4) shall have effect according to its tenor.
- (10) Where the Supreme Court is of the opinion that an order should not be made under subsection (4):
- (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (1) or of its own motion, direct that the application be treated as an application for an order under section 50, and
  - (b) where it makes such a direction:
    - (i) the application the subject of the direction shall be deemed to be an application made under section 50 by a person entitled to make the application, and
    - (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 50, is entitled to appear and be heard on the hearing of the application.
- (11) The costs of any proceedings under this section:
- (a) pursuant to an application made under section 32 which, under section 32 (7) or under sections 32 (7) and 50 (8), is treated as an application for an order under this section, or
  - (b) pursuant to an application under subsection (1) in relation to a proposed resumption of all the lots and all the common property the subject of a strata scheme,
- shall be payable by the resuming authority, unless the Supreme Court otherwise orders.
- (12) The Supreme Court may, from time to time, vary any order made under subsection (4) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.



### **51A Termination of strata scheme by Registrar-General**

- (1) On receiving an application for termination of a strata scheme under this section, the Registrar-General may:
  - (a) make an order terminating a strata scheme, or
  - (b) refuse to terminate a scheme.

A refusal by the Registrar-General to terminate a strata scheme does not preclude an application to the Supreme Court under section 51 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) each proprietor of a lot under the scheme, and
  - (b) each registered lessee of a lot under the scheme, and
  - (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease 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.
- (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 lots in the scheme and 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 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 strata scheme takes effect:
- (a) the body corporate is dissolved and the strata scheme is terminated, and
  - (b) the land in the former parcel immediately before the scheme was terminated and the assets of the former body corporate at that time vest in the former proprietors as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former proprietors or such other proportions as may be set out in the application), and
  - (c) the estate or interest of the former proprietors in land vested by this section is subject to any estate or interest registered or recorded, immediately before termination of the scheme, in the folios for the lots and the common property (if any) in the former parcel, and
  - (d) the former proprietors of lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots, and
  - (e) any legal proceedings begun by or against the body corporate may be completed by or against the former proprietors.
- (9) On recording an order terminating a strata scheme, the Registrar-General:
- (a) is to cancel the folios for the lots and common property (if any) in the former parcel, and
  - (b) is to create a folio or folios of the Register for the land in the former parcel, and
  - (c) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences.

## **52 Interchangeability of notices**

Any notice served under section 32, 50 or 51 shall, where it relates to an application which is required to be treated as an application under another of those sections, be deemed to be a notice served under that other section.

## **53 Consequences of making an order under section 50 or 51**

- (1) Except as provided in section 48 (2), upon receipt of a certified or office copy of the minute of an order made under section 50 or 51, the Registrar-General shall make appropriate recordings in the Register (including orders relating to amendments of any strata development contract or, in the case of an order under section 51, orders relating to cancellation of a strata development contract) to give effect to the order.
- (1A) If the certificate of approval of a strata plan given under section 37 for a strata

scheme terminated under section 51 includes approval of a dedication to widen a public road, the Registrar-General:

- (a) may require a certified or office copy lodged under subsection (1) to be accompanied by a plan defining the residue of the original parcel after the road widening for registration as a current plan, and
  - (b) may refuse to make recordings under subsection (2) until the requirement has been complied with.
- (2) Where, by reason of his receipt of a certified or office copy of the minute of an order made under section 51, the Registrar-General is required by subsection (1) to make recordings in the Register, he shall:
- (a) cancel the folios of the Register which evidence title to the lots and common property the subject of the former strata scheme, and
  - (b) create a folio of the Register for the estate or interest in the former parcel, being the estate or interest vested in the body corporate upon the order taking effect.

## Part 4 Rating and taxation

### 54-88 (Repealed)

### 89 Definitions

In this Division:

**appropriate valuing Act** means the [Valuation of Land Act 1916](#).

**area** has the same meaning as it has in the [Local Government Act 1993](#).

**rating authority** means an authority authorised to make and levy rates on land.

**value**, in relation to a parcel or a lot, means land value, improved value, improved capital value or assessed annual value, as the case may be.

**valuing authority** means the Valuer-General.

### 90 Valuation of parcel

- (1) Where a valuing authority causes a parcel to be valued under and subject to the appropriate valuing Act, the parcel shall, notwithstanding the provisions of that or any other Act, be valued as a single parcel of land and as if it were owned by a single owner and, for the purposes of any such valuation and all purposes incidental thereto (including objection to a valuation) but not otherwise, the parcel and all improvements thereon shall be deemed to be owned by the body corporate and by no other person.
- (2) During the period from the registration of a strata plan and until a valuation of the

parcel showing the body corporate as owner becomes effective for rating and taxing purposes the valuation in force during that period shall be deemed to be a valuation of the parcel made by the valuing authority as if the body corporate were shown thereon as owner.

- (3) A valuing authority is not, for the purposes of the making, levying, imposition, assessment or recovery of rates or taxes referred to in this Division, required to make separate valuations of any parts of a parcel otherwise than if the parcel were owned by a single owner.

#### **90A Valuation of parcels that form part of the site of a building**

- (1) If the site of a building is subdivided into separate parcels of land (as referred to in section 26A of the *Valuation of Land Act 1916*), and one or more of those parcels of land is a parcel within the meaning of this Act, the value of any such parcel is to be determined in accordance with that section.
- (2) A reference in that section to the Valuer-General is to be read, for the purposes of this section, as a reference to a valuing authority.

#### **Note—**

Section 26A of the *Valuation of Land Act 1916* provides that if the site of a building is subdivided into separate parcels of land, the value of each separate parcel is to be determined firstly by valuing all of those separate parcels together as if they comprised a single parcel and then by apportioning the value so obtained between the separate parcels.

#### **91 Particulars of unit entitlements furnished to rating or taxing authority to be conclusive**

For all purposes in relation to the making, levying, imposition, assessment or recovery of rates or taxes referred to in this Division in relation to the parcel or any part thereof the particulars of the unit entitlements of the lots the subject of a strata scheme shown on any copy of a schedule last furnished to a rating authority and the Chief Commissioner of Land Tax under section 49 (3) shall be conclusive evidence of those particulars.

#### **92 Rating of lots**

- (1) A reference in this section to a ratable parcel, or a ratable part of a parcel, in relation to any rate, is a reference respectively to a parcel or part of a parcel that is ratable as to that rate or would be so ratable but for any exemption or concession applicable to any portion of that parcel or part, as the case may be (not being, in the case of a rate for water, sewerage or drainage services, an exemption or concession applicable to that portion by reason of its situation in relation to any such services).
- (2) A rate on a ratable parcel or a ratable part of a parcel shall not be made or levied on the body corporate but, subject to this section, shall be made and levied in respect of each lot comprised in the parcel as if:
  - (a) the proprietor of each such lot were the owner in fee simple in possession of the

lot and it were a separate parcel of land having a value equal to the appropriate value apportioned to it under paragraph (c),

- (b) that proprietor were, subject to any exemptions or concessions that may be applicable to him or to the lot of which he is the proprietor, liable for any rate made and levied by the rating authority on the owners of land, and
- (c) the value of any such lot were an amount that bears to the corresponding value ascertained in accordance with section 90 of the ratable parcel or the ratable part of the parcel, as the case may be (after deducting therefrom any allowance applicable under Division 3 of Part 1B of the *Valuation of Land Act 1916*) the same proportion as the unit entitlement of that lot bears to the aggregate unit entitlement.

- (3) Where part only of a lot is ratable for any rate, the rate in respect of that lot shall be made and levied on the ratable part as if the value of that part were an amount that bears to the appropriate value of the lot, as ascertained under subsection (2) (c), the same proportion as the rental value of the ratable part bears to the rental value of the lot.

### **93 Charges for services**

Charges or fees for water, sewerage, drainage or effluent services rendered in respect of a parcel or part of a parcel (otherwise than in respect of a lot exclusively for its use and benefit) shall be calculated as if any rates payable in respect of the lots comprised in that parcel were payable by the body corporate as the ratable person in respect of the parcel and shall be payable by the body corporate.

### **94 Certain lots not ratable**

Where:

- (a) a strata plan of subdivision has been registered, or
- (b) a plan has been registered in the office of the Registrar-General under the *Conveyancing Act 1919*,

for the purpose of effecting a resumption as referred to in Division 3 of Part 2, a rate shall not be made or levied on:

- (c) a lot in that strata plan of subdivision, or
- (d) a lot in the plan so registered,

unless that resumption has been effected, but nothing in this section prevents a rate from being made or levied on land of which such a lot forms part.

### **95 (Repealed)**

## **96 Certain valuations of interests in parcel not to be used for purposes of this Division**

Where a parcel is situated in an area or part of an area in respect of which area or part the Valuer-General has furnished a valuation list to the local council in accordance with the *Valuation of Land Act 1916*, nothing in this Division prevents the Valuer-General from making and entering on the Register of Land Values a valuation of any estate or interest in the parcel and the improvements thereon, but the valuation shall not be included in a valuation list or supplementary list and shall not be used for any purpose of this Division.

## **Part 5**

### **97-145 (Repealed)**

## **Part 6 General**

### **146-151 (Repealed)**

### **152 Notice of application for order under section 32, 50 or 51**

- (1) The Supreme Court may, in respect of any proceedings on an application for an order under section 32, 50 or 51, make either or both of the following orders:
  - (a) order that public notice, by advertisement or otherwise, be given of the proceedings, or
  - (b) order that service of notice of the application upon any person be dispensed with.
- (2) Subject to the *Supreme Court Act 1970*, the Supreme Court shall not make an order referred to in subsection (1) (b) in respect of any person unless the Supreme Court is satisfied that:
  - (a) that person cannot be found in New South Wales,
  - (b) it is uncertain whether that person is living, or
  - (c) service cannot be effected upon that person without expense disproportional to the value, if any, of his interest.

### **153-156 (Repealed)**

### **157 Proceedings for offences**

Proceedings for an offence against any provision of this Act may only be taken before a Local Court constituted by a Magistrate sitting alone.

### **158 Regulations—general**

- (1) The Governor may make regulations not inconsistent with this Act for or with respect to:

- (a) the preparation of plans and documents for the purposes of this Act,
  - (b) the plans and documents that under this Act may be lodged in the office of the Registrar-General,
  - (c) the registration in that office of plans and documents,
  - (d) the fees to be paid in respect of the lodgment and registration in that office of plans and documents and the supply by that office of copies of registered or other plans and documents,
  - (e) the forms to be used for the purposes of this Act,
  - (f), (g) (Repealed)
  - (h) any matter which by this Act is required or permitted to be prescribed or is necessary or convenient to be prescribed for carrying out or giving effect to any provision of this Act.
- (2) A regulation made under subsection (1) may impose a penalty not exceeding 2 penalty units for an offence against this regulation.
- (3) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.

**159 (Repealed)**

**160 Transitional and savings provisions**

- (1) Schedule 4 has effect.
- (2) (Repealed)

**Schedule 1A Requirements for strata plans**

(Sections 8, 8A and 9)

**1 Floor plans**

- (1) Each wall, the inner surface or any part of which corresponds substantially to a line shown on the floor plan as a boundary of a proposed lot, must exist.

- (2) Each floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, must exist.
- (3) Each wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is determined, must exist.

## **2 Location plans—no stratum parcel**

- (1) This clause applies if the proposed parcel will not be a stratum parcel.
- (2) The building erected on the land comprising the proposed parcel and each proposed lot shown on the location plan must be wholly within the perimeter of that land.
- (3) This clause does not apply to so much of any encroachment as is an encroachment referred to in section 38 or an encroachment by the building on to land other than a public place.

## **3 Location plans for stratum parcels**

- (1) This clause applies if the proposed parcel will be a stratum parcel.
- (2) The proposed parcel must include part of a building and another part of the building must be outside the proposed parcel.
- (3) The proposed parcel and that building must be wholly within the perimeter of the site of the building.
- (4) Each part of that building and so much (if any) of the site as constitute the proposed lots and common property (if any) must be wholly within the proposed parcel.
- (5) Subclauses (3) and (4) do not apply to so much of any encroachment as is an encroachment referred to in section 38 or an encroachment by the building on to land other than a public place.

## **4 Location plans—encroachments on private land**

If the building encroaches on to land other than a public place, an appropriate easement must exist or be created in accordance with section 88B of the [Conveyancing Act 1919](#) on registration of the proposed strata plan.

## **5 (Repealed)**

# **Schedule 1B Rights and obligations implied in certain easements**

(Section 8AB)

## **1 Definitions**

- (1) In this Schedule:



**pipes** includes cables, tubes, wires and conduits of all kinds.

**service** has the same meaning as in section 8AB.

- (2) For the purposes of this Schedule, a reference to a person entitled to the benefit of a right of vehicular or personal access or of an easement for a specified service:
- (a) if a stratum parcel is the dominant tenement, is a reference to:
    - (i) a proprietor of a lot within the parcel, or
    - (ii) the body corporate of the strata scheme concerned, or
    - (iii) any person authorised by either of them, or
    - (iv) any person who is, under any Act, entitled to immediate possession of the lot,  
or
  - (b) if a stratum parcel is the servient tenement, is a reference to:
    - (i) any person entitled to an estate or interest in possession in the dominant tenement, or
    - (ii) any person authorised by such a person.

## **2 Right of vehicular access**

Each person entitled to the benefit of a right of vehicular access has at all times an unrestricted right:

- (a) to pass and repass, with or without vehicles, machinery, implements and other equipment of every kind, over the roadways, ramps and land over which the right of access is created, and
- (b) to carry out an inspection of those roadways and ramps and that land.

## **3 Right of personal access**

Each person entitled to the benefit of a right of personal access has at all times an unrestricted right:

- (a) to pass and repass, without vehicles but with or without hand tools, hand implements and other equipment capable of being carried by hand, over the stairs, escalators, lifts, passages, corridors, shafts and other areas over which the right of access is created, and
- (b) to carry out an inspection of those stairs, escalators, lifts, passages, corridors, shafts and other areas.

#### **4 Obligations relating to rights of access**

- (1) If a right of vehicular or personal access is created over or appurtenant to a stratum parcel, the roadways, ramps, land, stairs, escalators, lifts, passages, corridors, shafts and other areas to which the right relates shall be maintained in good order and repaired:
  - (a) by the body corporate concerned, or by another person indicated (in the instrument by which the right is created or in any instrument in an approved form by which the instrument is varied) as having responsibility for those matters, or
  - (b) if any such instrument does not indicate who is responsible for those matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.
- (2) If a body corporate or other person:
  - (a) has failed to carry out a responsibility imposed by subclause (1), and
  - (b) at least 7 days have passed since that failure first arose,any other of them may take all lawful steps necessary to ensure that the responsibility is carried out.

#### **5 Easements for services**

- (1) Each person entitled to the benefit of an easement for a specified service has at all times an unrestricted right:
  - (a) (except when it is necessary to halt the service for any essential maintenance or repairs relating to the service) to the passage of the service, to any extent consistent with the rights of other persons having the same or similar rights, along or through any existing line of pipes or any existing apparatus that is for the time being within the burdened land, and
  - (b) to carry out an inspection of the pipes or apparatus to which the easement relates, and
  - (c) in order to maintain the efficiency of any such pipes or apparatus:
    - (i) to enter the part of the burdened land in respect of which the easement is created by such route as is reasonable in the circumstances, and
    - (ii) to remain there for such reasonable time as may be necessary for the purpose of replacing, inspecting, cleaning, repairing, maintaining or renewing the pipes or apparatus or any part of the pipes or apparatus and of making such excavations as may be reasonably necessary,subject to the conditions that:

- (iii) the burdened land is disturbed as little as possible, and
- (iv) any excavated surface is restored as nearly as possible to its original state, and
- (v) any other damage attributable to the operations referred to in this clause is repaired.

(2) In this clause, a reference to burdened land:

(a) if a stratum parcel is the dominant tenement, is a reference to so much of:

- (i) the building, part of which is subject to the strata scheme concerned, and
- (ii) the site of that building,

as is not part of the parcel, or

(b) if a stratum parcel is the servient tenement, is a reference to the parcel.

## **6 Obligations relating to an easement for the provision of services**

(1) If an easement for services is created over or appurtenant to a stratum parcel, the pipes or apparatus to which the easement relates shall be maintained in good order and repaired:

(a) by the body corporate concerned, or by another person (indicated in the instrument by which the easement is created or in any instrument in the approved form by which that easement is varied) as having responsibility for those matters, or

(b) if any such instrument does not indicate who is responsible for those matters, by the person or, if more than one, jointly by the persons entitled to an estate or interest in possession in the dominant tenement.

(2) Where a body corporate or other person:

(a) has failed to carry out a responsibility imposed by subclause (1), and

(b) at least 7 days have passed since that failure first arose,

any other of them may take all lawful steps necessary to ensure that the responsibility is carried out.

## **7 Sharing of costs of maintenance and repair**

(1) The costs of maintenance and repair in respect of a right of vehicular or personal access or an easement for services to which this Schedule applies are to be borne by the body corporate or other person concerned:

- (a) in the proportions specified in the instrument by which the easement was created or, if the proportions so specified have been varied, those proportions as varied, or
  - (b) where no such proportions are so specified—in equal proportions.
- (2) If a person (whether or not the body corporate) incurs costs referred to in subclause (1), the person may demand in writing the amount that the body corporate or other person referred to in that subclause is liable to contribute to those costs.
  - (3) A demand made under subclause (2) must be accompanied by receipts or invoices or copies of receipts or invoices which evidence the expenditure to which the demand relates.
  - (4) If the body corporate or other person fails to comply with any such demand within 7 days after it has been made, the amount demanded may be recovered in a court of competent jurisdiction as a debt due to the body corporate or other person.

## 8 Ancillary rights and powers

All easements to which this Schedule applies carry with them such ancillary rights and powers as may be necessary to render them effective.

## Schedule 1BA Covenants implied in strata development contracts

(Section 28I)

### 1 Warranted development

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

- 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.

### 2 Permission to carry out warranted development and authorised proposals

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.

### **3 Body corporate expenses**

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, and
- for any amounts due under the strata management statement that are connected with the carrying out of the permitted development.

### **4 Standard of development**

The developer agrees with the other parties that:

- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths, and
- 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.

### **5 Unauthorised use of the parcel**

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.

### **6 Restoration of common property**

The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property or any part of the building and its site that is not subject to the strata scheme arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

## **7 Restoration of development lot**

The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot or any part of the building and its site that is not subject to the strata scheme 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.

## **8 Additional covenants for vertical staged development**

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, or the building or site, that is not a development lot, the developer agrees with the other parties:

- to minimise any disruption caused to other occupiers of the parcel or other occupiers of a building of which the development lot forms part by the carrying out of permitted development or otherwise, and
- 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 to such other parts of the parcel, or such other parts of the building and its site, as are capable of being sheltered or of enjoying that 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.

## **Schedule 1C Strata management statements**

(Section 285)

### **1 Form of strata management statement**

A strata management statement must include any information required by the regulations and must not be inconsistent with:

- (a) the conditions imposed on a development consent relating to the site of the building to which the statement relates, or
- (b) with this or any other Act or any other law.

### **2 Matters that must be included**

- (1) A strata management statement must provide for:

- (a) the establishment and composition of a building management committee and its office bearers, and
  - (b) the functions of that committee and those office bearers in managing the building and its site, and
  - (c) the manner in which the statement may be amended, and
  - (d) the settlement of disputes, or the rectification of complaints, concerning the management of the building or its site, whether by requiring reference of disputes or complaints to the Director-General or the Residential Tribunal or (with the consent of the person) to any other person for a recommendation or decision or otherwise, and
  - (e) the manner in which notices and other documents may be served on the committee.
- (2) Each body corporate for a strata scheme for part of the building and any other person in whom is vested an estate in fee simple in any part of the building or its site that does not form part of a stratum parcel must be members of the building management committee.
- (3) Despite subclause (2), any such body corporate or other person may be excluded from membership, but only with the consent of the body corporate supported by a special resolution or with the written consent of the other person.
- (4) A body corporate or other corporation that is a member of a building management committee may be represented for the purposes of the committee by a person appointed by, or selected in accordance with, a special resolution or by-law made by the body corporate or a resolution made by the other corporation.
- (5) A person who has been so appointed or selected and whose term of office as such a representative has not expired or been terminated by the body corporate or other corporation is, while representing the body corporate or other corporation for those purposes, taken to be the body corporate or other corporation.
- (6) Nothing in a strata management statement requires the Director-General or the Residential Tribunal to do anything without the consent of the Director-General or the Residential Tribunal.

### **3 Other matters**

- (1) A strata management statement may include provisions regulating (or providing for the regulation of) any one or more of the following:
- (a) the location, control, management, use and maintenance of any part of the building or its site that is a means of access,

- (b) the storage and collection of garbage on and from the various parts of the building,
  - (c) meetings of the building management committee,
  - (d) the keeping of records of proceedings of the committee.
- (2) A strata management statement may include particulars relating to any one or more of the following:
- (a) safety and security measures,
  - (b) the appointment of a managing agent,
  - (c) the control of unacceptable noise levels,
  - (d) prohibiting or regulating trading activities,
  - (e) service contracts,
  - (f) an architectural code to preserve the appearance of the building.
- (3) This clause does not limit the matters that may be included in a strata management statement.
- (4) A strata management statement may incorporate plans and other instruments as part of the statement.

#### **4 Implied provisions**

Each strata management statement is taken to include the following provisions, except to the extent that it provides otherwise:

- (a) The building management committee must meet at least once each year.
- (b) At least 7 days' notice of a meeting must be given to each person who is a member of the committee. Notice may be given personally or by post or in any way any other notice may be given to the person under this Act.
- (c) The quorum for a meeting of the committee is a majority of the members.
- (d) The decision of a majority of the members present and voting at a meeting of the committee is the decision of the committee.



## Schedules 1-3 (Repealed)

### Schedule 4 Transitional and savings provisions

(Section 160)

#### Part 1 Provisions relating to repeal of the former Act

##### 1 Definitions

- (1) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires:

**appointed day** means the day appointed and notified under section 2.

**former Act** means the [Conveyancing \(Strata Titles\) Act 1961](#).

**former by-law** means a by-law within the meaning of the former Act as that by-law was in force immediately before the appointed day.

**former common property** means so much of a former parcel as, immediately before the appointed day, was not comprised in any former lot.

**former lot** means a lot under the former Act as it existed immediately before the appointed day.

**former parcel** means land which, immediately before the appointed day, comprised the former lots and the former common property the subject of a former strata scheme.

**former proprietor** means a person who, immediately before the appointed day, was a proprietor, within the meaning of the former Act, of a former lot.

**former strata scheme** means:

- (a) the manner of division, immediately before the appointed day, of a former parcel into former lots or into former lots and former common property and the manner of allocation, immediately before that day, of unit entitlements under the former Act among the former lots, and
- (b) the rights and obligations, between themselves, immediately before the appointed day, of former proprietors, other persons having property interests in or occupying former lots and the body corporate,

as conferred or imposed by the former Act or by anything done under the authority of the former Act or the [Real Property Act 1900](#).

- (2) For the purposes of the application of any provision of this Act to or in respect of a scheme to which the provisions of this Act apply by reason of clause 6:

- (a) the initial period in relation to the body corporate for that scheme shall be deemed to have expired if on the appointed day the original proprietor within the meaning of paragraph (c) is not the proprietor of any lots the subject of that scheme or is the proprietor of lots the subject of that scheme the sum of whose unit entitlements is less than two-thirds of the aggregate unit entitlement,
  - (b) except where the initial period in relation to the body corporate for that scheme has, under paragraph (a), expired, a reference to the initial period in relation to that body corporate is a reference to the period commencing on the appointed day and ending on the day on which there are proprietors of lots the subject of that scheme (other than the original proprietor within the meaning of paragraph (c)) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement, and
  - (c) a reference to an original proprietor, in relation to that scheme, is a reference to the person by whom the parcel (being the parcel comprised in the strata plan, within the meaning of the former Act, the registration of which under the former Act initiated the scheme to which the provisions of this Act apply by reason of clause 6) was held in fee simple or under a perpetual lease from the Crown at the time of that registration.
- (3) The express application of any provision of this Act (whether unamended or deemed to be amended) by any provision of this Schedule to or in respect of any act, matter or thing referred to in this Schedule shall not, except in so far as a contrary intention appears, be construed as preventing or limiting the application of any other provision of this Act to that or any other act, matter or thing.
- (4) Where any provision of this Act is deemed to be amended by this Schedule by inserting in that provision any words, those words shall be construed as if they were contained in this Schedule.

## **2 Registration of unregistered former strata plans**

- (1) Notwithstanding section 8 or 9, a strata plan, or a strata plan of resubdivision, within the meaning of the former Act, may be registered as a strata plan or as a strata plan of subdivision, as the case may be, but shall not be so registered unless:
- (a) it illustrates a division of a building into different parts,
  - (b) the requirements of the former Act have been or are complied with in so far as those requirements relate to the registration of a strata plan, or a strata plan of resubdivision, as the case may be, and
  - (c) except in the case of such a strata plan of resubdivision, the certificate referred to in section 4 (3) (b) of the former Act states that the approval given under Part 11 of the *Local Government Act 1919* by the local council to the erection of that

building was given not earlier than two years before the appointed day.

- (2) Without limiting the generality of subclause (1) (b), for the purpose of enabling a person to comply, as referred to in subclause (1) (b), with the requirements of the former Act, the provisions of section 20 (subsection (4) (a), (c), (d), (e), (f) and (g) excepted) of the former Act apply to and in respect of an application for a certificate referred to in section 4 (3) (b) of the former Act relating to the proposed subdivision illustrated by a strata plan or strata plan of resubdivision referred to in subclause (1), as if the former Act had not been repealed.
- (3) Where a plan is registered under subclause (1), the land comprised in the plan shall be deemed to have been subdivided under this Act into lots or into lots and common property in the same manner as that land would have been subdivided if that plan had been registered under the former Act, except that:
  - (a) where a boundary of any such lot would, if that plan had been validly registered under the former Act, have been, under section 4 (2) of the former Act, the centre of a floor, wall or ceiling, that boundary shall upon the registration of the plan and until it is altered in accordance with this Act be the upper surface of that floor, the inner surface of that wall or the under surface of that ceiling, as the case may be, and
  - (b) where a boundary of any lot is adjusted under paragraph (a), the boundaries of the common property are adjusted reciprocally,and any such lots or common property shall, for the purposes of this Act, be deemed to be lots or common property, or to be lots or common property with boundaries adjusted as referred to in paragraph (a) or (b), as the case may be.
- (4) A lot created by the registration of a plan under subclause (1) does not include any structural cubic space unless that structural cubic space was stipulated in that plan as forming part of that lot.
- (5) For the purposes of the registration of a plan under subclause (1), the reference in:
  - (a) section 10 (1) to a plan illustrating a proposed subdivision referred to in section 5 (7) (a) shall be construed as a reference to a strata plan of resubdivision within the meaning of section 20 (4) of the former Act,
  - (b) section 10 (2) and (3) to subsection (1) shall be construed as a reference to subsection (1) construed in accordance with paragraph (a),
  - (c) section 38 (2) (a) to a certificate of approval under section 37 (1) (3) or (4) shall be construed as a reference to a certificate issued under section 20 (2) of the former Act,
  - (d) section 39 (1) to any certificate of approval issued under section 37 shall be

construed as a reference to any certificate issued under section 20 (2) of the former Act, and

- (e) section 39 (2), (3) and (4) to subsection (1) shall be construed as a reference to section 39 (1) construed in accordance with paragraph (d).
- (6) Where, under any provision of this Act, any act, matter or thing depends on or results from (either directly or indirectly) the registration of a strata plan, that provision operates in relation to the registration of a plan under subclause (1) in the same way as it operates in relation to the registration of a strata plan.
- (7) Subject to this clause, a reference in this Act to a strata plan or a strata plan of subdivision includes a reference to a plan registered under subclause (1) as a strata plan or a strata plan of subdivision, as the case may be.
- (8) The address endorsed, as referred to in section 4 (1) (g) of the former Act, upon a plan registered under subclause (1) shall, for the purposes of this Act, be deemed to be the address for the service of notices on the body corporate concerned until that address is altered in accordance with this Act.
- (9) The schedule endorsed, as referred to in section 18 of the former Act, upon a plan (not being a strata plan of resubdivision within the meaning of section 20 (4) of the former Act) registered under subclause (1) shall, for the purposes of this Act, be deemed to be the schedule referred to in section 8 (1) (d).
- (10) Section 41 (5) does not apply to or in respect of the registration of a plan under subclause (1).
- (11) A reference to a lot shown in a plan capable of being registered under subclause (1) made in any instrument executed before the registration of that plan under subclause (1) (being an instrument relating to the sale or other disposition of an estate or interest in the lot so shown) shall, on and after the registration of that plan, be construed as a reference to the lot which corresponds to the lot so shown.

### **3 Former lots and former common property to be derived lots and derived common property**

- (1) Where immediately before the appointed day:
  - (a) a former lot had any boundary that under section 4 (2) of the former Act was the centre of a floor, wall or ceiling, that former lot, on the appointed day, becomes for the purposes of this Schedule a derived lot corresponding to that former lot and having, subject to subclause (2), as its boundaries:
    - (i) instead of any boundary that was the centre of a floor, wall or ceiling, the upper surface of that floor, the inner surface of that wall or the under surface of that ceiling, as the case may be, and

- (ii) except as provided by subparagraph (i), the same boundaries as that former lot, and
  - (b) a former lot had no boundary that under section 4 (2) of the former Act was the centre of a floor, wall or ceiling, that former lot, on the appointed day, becomes for the purposes of this Schedule a derived lot corresponding to that former lot and having as its boundaries the same boundaries as that former lot.
- (2) A derived lot does not include any structural cubic space unless that structural cubic space was stipulated, in the relevant strata plan or strata plan of resubdivision, as forming part of the former lot to which that derived lot corresponds.
- (3) On the appointed day, former common property becomes, for the purposes of this Schedule, derived common property corresponding to that former common property but has as its boundaries:
- (a) where any derived lot has any of its boundaries ascertained in accordance with subclause (1) (a) (i) or (b), boundaries adjusted reciprocally, and
  - (b) except as provided by paragraph (a), the same boundaries as that former common property.
- (4) A reference to a former lot made in any instrument executed before the appointed day (being an instrument relating to the sale or other disposition of an estate or interest in that former lot) shall, on and after that day, be construed as a reference to the derived lot which corresponds to that former lot.

#### **4 Continuation of bodies corporate**

A body corporate, constituted under the former Act, in relation to a former strata scheme:

- (a) shall continue notwithstanding the repeal of the former Act,
- (b) shall, on the appointed day, be deemed to be the body corporate constituted under section 54 (1) in respect of the scheme that corresponds to that former strata scheme and to which the provisions of this Act apply by reason of clause 6, and
- (c) notwithstanding section 54 (1), shall have as its corporate name its corporate name under the former Act.

#### **5 Continuation of estates or interests in former lots and former common property and rights in former common property**

A person who, immediately before the appointed day:

- (a) had an estate or interest in a former lot, has on that day the same estate or interest in the derived lot which corresponds to that former lot, or
- (b) had an estate or interest (not being a right or special privilege referred to in clause

15) in former common property, has, subject to clause 7 (1), on that day the same estate or interest in the derived common property which corresponds to that former common property.

**6 Application of Act to former strata schemes, former parcels, derived lots and derived common property**

Subject to this Schedule, the provisions of this Act shall, on and from the appointed day, apply to and in respect of:

- (a) a former strata scheme as if it were a strata scheme,
- (b) a former parcel as if it were a parcel,
- (c) a derived lot as if it were a lot, and
- (d) derived common property as if it were common property.

**7 Vesting of derived common property in body corporate**

- (1) On the appointed day, derived common property is divested from the former proprietors by whom it was, immediately before that day, held as referred to in section 9 (1) of the former Act and, subject to section 20, vests in the body corporate for the estate or interest therein of those former proprietors evidenced by the Register immediately before that day.
- (2) The Registrar-General shall, on the appointed day, issue in the name of any body corporate in which any derived common property vests under subsection (1) a certificate of title for that derived common property.
- (3) For the purpose only of the making of the recordings referred to in section 23 (2) on a certificate of title issued under subclause (2), section 23 (2) shall be construed as if the reference in:
  - (a) section 23 (2) (b) to the address for service of notices on the body corporate were a reference to such an address shown on the strata plan, within the meaning of the former Act, upon the registration, under the former Act, of which the body corporate concerned was constituted or on a later or the latest amendment of that strata plan,
  - (b) section 23 (2) (c) to the schedule of unit entitlement in force in respect of the strata scheme concerned were, subject to subclauses (4) and (5), a reference to a schedule specifying the respective unit entitlements of the lots the subject of the strata scheme concerned, being the unit entitlements as in force under the former Act immediately before the appointed day, and
  - (c) section 23 (2) (d) to any easement or restriction therein referred to were a reference to any such easement or restriction noted on the strata plan referred to

in paragraph (a).

- (4) Before recording a schedule on a certificate of title in accordance with section 23 (2) (c) construed in accordance with subclause (3) (b), the Registrar-General, if the unit entitlement for every derived lot to be specified in the schedule is divisible by a whole number so as to produce as the quotient a whole number, may record on that certificate of title as the schedule of unit entitlement a schedule:
- (a) allocating to each of those derived lots the quotient obtained by making that division in respect of each such lot, and
  - (b) specifying as the aggregate unit entitlement the sum of the quotients so allocated in respect of all of those derived lots.
- (5) Where:
- (a) under the former Act one or more former lots was or were resubdivided as referred to in section 20 (4) of the former Act, and
  - (b) the aggregate of the unit entitlements of the lots created by the strata plan of resubdivision which effected that resubdivision is not equal to the unit entitlement of the lot, or to the aggregate of the unit entitlements of lots, which was or were so resubdivided,
- the Registrar-General, when issuing a certificate of title comprising common property the subject of the former strata scheme concerned, shall record thereon as the schedule of unit entitlement a schedule:
- (c) allocating to each derived lot that corresponds to a former lot the subject of that former strata scheme a unit entitlement, expressed as a whole number, which bears to the aggregate unit entitlement the same proportion as the unit entitlement under the former Act of that former lot bore, immediately before the appointed day, to the aggregate of the unit entitlements under the former Act of all the former lots which, immediately before that day, were the subject of that former strata scheme, and
  - (d) specifying as the aggregate unit entitlement the sum of the unit entitlements so allocated in respect of all of those derived lots.
- (6) The address recorded on a certificate of title in accordance with section 23 (2) (b) construed in accordance with subclause (3) (a) for service of notices on a body corporate shall, for the purposes of, but subject to, this Act, be the address for service of notices on that body corporate as continued by the operation of clause 4.
- (7) The schedule recorded on a certificate of title in accordance with section 23 (2) (c) construed in accordance with subclause (3) (b) or recorded on a certificate of title in accordance with subclause (4) or (5) shall, for the purposes of, but subject to, this Act,

be the schedule of unit entitlement in relation to the strata scheme which corresponds to the former strata scheme concerned.

- (8) The unit entitlement, as shown on the schedule referred to in subclause (7), of a derived lot shall, for the purposes of, but subject to, this Act be the unit entitlement of that derived lot.
- (9) Section 49 (3) does not apply where the Registrar-General records a schedule of unit entitlement under this clause on a folio of the Register comprising common property unless the recording was made in accordance with subclause (4) or (5).
- (10) The certificate of title and the folio of the Register for a former lot shall respectively be deemed to be the certificate of title and the folio of the Register for the derived lot corresponding to that former lot and any recording made on that certificate of title or folio in relation to the derived common property shall, for the purposes of section 42 (a) of the *Real Property Act 1900*, be deemed to be excluded therefrom.
- (11) The partial cancellation of a certificate of title for a derived lot made for the purpose of excluding the recording referred to in subclause (10) shall be deemed not to be a partial cancellation of that certificate of title for the purposes of the *Real Property Act 1900*.

## **8 Modification of section 22 in relation to former strata schemes**

Section 22 applies to and in respect of a scheme to which the provisions of this Act apply by reason of clause 6 but, for the purposes only of that application, shall be deemed to be amended:

- (a) by omitting from subsection (1) the words “no part of a parcel is common property the Registrar-General shall, upon registration of a strata plan” and by inserting instead the words “immediately before the appointed day no part of a former parcel was common property, the Registrar-General shall, upon that day”,
- (b) by omitting from subsection (1) (b) the word “plan” and by inserting instead the word “scheme”,
- (c) by omitting from subsection (2) the words “the registration of a strata plan” and by inserting instead the words “the appointed day”,
- (d) by omitting from subsection (2) (a) the words “section 18 (2) or subsection (5), as the case may be” and by inserting instead the words “clause 7 (2) of Schedule 4”, and
- (e) by inserting in subsections (3) and (4) after the matter “(1)” wherever occurring the words “, as deemed to be amended by clause 8 (a) and (b) of Schedule 4,”.

## **9 Modification of section 23 (3) in relation to former lots**

Section 23 (3) shall apply to and in respect of a certificate of title issued under clause 7



(2) but, for the purposes only of that application, shall be deemed to be amended:

- (a) by omitting the word “not”,
- (b) by omitting the words “on the folio of the Register comprising a lot the subject of the strata scheme concerned but shall record the easement or restriction”, and
- (c) by omitting the words “any such lot” and by inserting instead the words “any lot the subject of the strata scheme concerned”.

**10 Registration of transfers or leases of derived common property registrable under section 10 of former Act**

(1) Where a transfer or lease of any common property under the former Act:

- (a) would under section 10 of the former Act have been registrable under the *Real Property Act 1900* had this Act not been enacted but had not, before the appointed day, been registered under that Act, and
- (b) was executed pursuant to an agreement entered into by the body corporate before the appointed day,

that transfer or lease, upon its lodgment in the office of the Registrar-General, shall be dealt with under section 25 (4) as if it were a dealing referred to in section 25 (1).

(2) For the purposes of section 25 (3), a lease referred to in subclause (1) shall be deemed to have been granted under section 25 (1).

**11 General meetings of certain continued bodies corporate**

(1) Where, in relation to a body corporate continued by the operation of clause 4, the original proprietor is not, on the appointed day, the proprietor of any lots the subject of the strata scheme or is the proprietor of lots the subject of the strata scheme the sum of whose unit entitlements is less than two-thirds of the aggregate unit entitlement and:

- (a) a general meeting of that body corporate has not been held before the appointed day, a general meeting of that body corporate shall be held within three months after the appointed day, and that general meeting shall, for the purposes of this Act (section 57 (4) excepted) be the first annual general meeting of the body corporate, or
- (b) a general meeting of that body corporate has been held before the appointed day, the last general meeting of that body corporate held before that day shall, for the purposes of clause 1 (1) of Part 1 of Schedule 2, be deemed to have been the first annual general meeting.

(2) If a meeting of the body corporate is not held in accordance with subclause (1) (a), the Commissioner may, pursuant to an application by a proprietor or mortgagee of a

lot appoint, by order, a person to convene a general meeting within such time as may be specified in the order and the meeting convened by that person shall for the purposes of this Act (section 57 (4) excepted) be the first annual general meeting of the body corporate.

- (3) An order made under subclause (2) may include such ancillary or consequential provisions as the Commissioner thinks fit.
- (4) The agenda for a meeting convened under subclause (1) (a) or subclause (2) shall be the agenda specified in section 57 (2).
- (5) The original proprietor shall not fail or neglect to deliver to the body corporate (being a body corporate a general meeting of which is required to be held under subclause (1) (a)), within fourteen days after notice in writing is given to him by the body corporate or if the documents referred to in paragraphs (a) and (b) are not then in his possession within fourteen days after they come into his possession or under his control:
  - (a) any plan, specification, certificate (other than a certificate of title for a lot), diagram or other document (including any policy of insurance) obtained or received by him and relating to the parcel or building, and
  - (b) any book of account, notice or other record relating to the strata scheme, other than any such document which exclusively evidences rights or obligations of the original proprietor and which is not capable of being used for the benefit of the body corporate or any of the proprietors, other than the original proprietor.Maximum penalty: 10 penalty units.
- (6) Section 70 (1) (b) (iii) shall be deemed to be amended by inserting after the matter "section 57 (4)" the matter "or under clause 11 (5) of Schedule 4".

## **12 Meetings of former bodies corporate held within two months after appointed day**

Notwithstanding section 57 (5), for the purposes of any general meeting of a body corporate continued by the operation of clause 4, being a general meeting held before the expiration of two months after the appointed day:

- (a) the procedure for the convening and holding of meetings of such a body corporate and the rights of persons to vote at and to requisition meetings of such a body corporate shall be the same as they were under the former Act, and
- (b) where a notice is given to the body corporate under section 81 (3), (5) or (6), the mortgagee specified in the notice shall have the same voting rights as he would have had if the meeting had been held in accordance with the former Act and if the notice were a notice given under section 26 (2) of the former Act.

### **13 Notices served by public authority or local council before the appointed day**

The reference in section 60 to a notice served on the proprietor of a lot by a public authority or local council includes a reference to a notice served, before the appointed day, by such an authority or council on the proprietor of a former lot which has become a derived lot.

### **14 Effect of former by-laws**

- (1) Subject to this clause, the former by-laws relating to a former strata scheme shall, notwithstanding the repeal of the former Act, continue in force in respect of the corresponding scheme to which the provisions of this Act apply by reason of clause 6 except to the extent of any inconsistency of the former by-laws with any provision of this Act except Schedule 1.
- (2) Until the expiration of a period of three months after the appointed day the former by-laws relating to a former strata scheme may be added to, amended or repealed in the manner provided by the former Act, and any such addition, amendment or repeal shall, notwithstanding any other provision of this Act, have force and effect upon a notification thereof, in the form prescribed under the former Act, being recorded on the relevant strata plan registered under the former Act.
- (3) Upon the expiration of a period of three months after the appointed day:
  - (a) any by-laws continued in force by subclause (1) or any by-laws so continued in force, as added to, amended or repealed in accordance with subclause (2), shall cease to have any force or effect, and
  - (b) the by-laws set forth in Schedule 1 and any by-laws, made in accordance with subclause (4), amending, adding to or repealing:
    - (i) the by-laws set forth in Schedule 1, or
    - (ii) any by-laws made under that subclause,shall, subject to subclause (5), be the by-laws in force in respect of the strata scheme concerned.
- (4) During the period commencing two months after the appointed day and ending three months after that day a body corporate continued by the operation of clause 4 may, in the manner provided by section 58, make by-laws amending, adding to or repealing the by-laws set forth in Schedule 1 or any by-laws made under this subclause.
- (5) An amendment of, addition to or repeal of the by-laws in accordance with subclause (4) has no force or effect until:
  - (a) the expiration of the period of three months after the appointed day, or

(b) the Registrar-General has, pursuant to a notification in the prescribed form lodged in his office by the body corporate in accordance with section 58 (3), recorded the notification on the folio of the Register comprising the common property,

whichever occurs the later.

(6) Nothing in this clause affects the operation, after the expiration of the period of three months after the appointed day, of section 58 in relation to a body corporate continued by the operation of clause 4.

### **15 Maintenance of exclusive use etc of, and special privileges in respect of, common property**

(1) Where immediately before the appointed day a proprietor of a former lot was entitled, whether pursuant to a resolution of the body corporate under the former Act or pursuant to a former by-law, to a right of exclusive use and enjoyment of, or special privileges in respect of, any of the former common property, the proprietor for the time being of the derived lot that corresponds to that former lot may at any time after that day serve notice on that body corporate, as continued by the operation of clause 4, requiring it to make a by-law, in terms specified in the notice, confirming that right or those special privileges and indicating the method by which the by-law may be amended, added to or repealed.

(2) Notwithstanding section 58, the body corporate may make a by-law referred to in subclause (1) otherwise than pursuant to a special resolution or a unanimous resolution.

(3) Where the body corporate on which a requisition has been served under subclause (1):

(a) fails to make a by-law (being a by-law adding to the by-laws set forth in Schedule 1) in accordance with the requisition:

(i) if the requisition was served on the body corporate within two months after the appointed day—before the expiration of three months after the appointed day, or

(ii) if the requisition was served on the body corporate after the expiration of two months after the appointed day—within one month after the service of the requisition, or

(b) having made such a by-law and having been tendered the prescribed fee, does not cause the by-law to be recorded in accordance with section 58 (3) within a reasonable time,

the proprietor who made the requisition may make an application to the Commissioner for an order to be made by the Residential Tribunal under subclause (5).

- (4) The provisions of Part 5 apply to an application made under subclause (3) in the same way as they apply to an application for an order made under that Part and required to be referred by the Commissioner to the Residential Tribunal.
- (5) Where, pursuant to an application by a proprietor under subclause (3), the Residential Tribunal is of the opinion that the applicant or a predecessor in title to the lot of which the applicant is proprietor was, immediately before the appointed day, entitled to a right or to special privileges of the nature referred to in subclause (1), the Residential Tribunal may, having regard to the interests of other persons having an estate or interest in lots the subject of the strata scheme concerned, the extent to which the right or special privileges referred to in the application has or have been exercised or apparent since the appointed day and the justice and merits of the case, order that the applicant is entitled to such rights or special privileges of that nature as may be specified in the order and in that order shall specify the method by which the by-law, giving effect, by virtue of subclause (7), to the terms of the order, may be amended, added to or repealed.
- (6) The provisions of:
  - (a) section 130 (subsection (2) (b) and (c) excepted) apply to and in respect of an order under subclause (5) in the same way as they apply to an order under Division 4 of Part 5 (section 117 excepted), and
  - (b) section 141 (subsections (3) and (4) excepted) apply to the recording of an order under subclause (5) in the same way as they apply to the recording of an order referred to in that section.
- (7) An order under subclause (5), when recorded under section 141, has effect, subject to any order with respect thereto made by a superior court, as if its terms were a by-law.
- (8) Notwithstanding section 58, a by-law:
  - (a) made pursuant to a requisition under subclause (1), or
  - (b) giving effect, by virtue of subclause (7), to the terms of an order under subclause (5),may be amended, added to or repealed in such manner as may be specified in that by-law.
- (9) A by-law:
  - (a) made under subclause (1), or
  - (b) giving effect, by virtue of subclause (7), to the terms of an order under subclause (5),being a by-law expressed to be for the benefit of a specified derived lot, shall while it

remains in force enure as appurtenant to, and for the benefit of, that lot.

(10) Subject to subclause (8), a by-law:

(a) made under subclause (1), or

(b) giving effect, by virtue of subclause (7), to the terms of an order under subclause (5),

shall be deemed, for the purposes of this Act, to be a by-law referred to in section 58 (7).

#### **16 Recovery of contributions levied under former Act**

(1) Any contribution levied under the former Act by a body corporate and unpaid at the appointed day may be recovered by the body corporate, and as on and from the appointed day bears interest, as if it were a contribution levied under this Act.

(2) Any determination made under the former Act by a body corporate specifying amounts to be raised by regular periodic contributions shall be deemed to be a determination made under section 68 (1) (j) of the kind referred to in section 68 (4).

#### **17 Modification of section 68 (1) (e) in relation to continued bodies corporate**

In relation to a body corporate continued by the operation of clause 4, section 68 (1) (e) shall be deemed to be amended by inserting after the matter "Division 5" the words ", as notified by clause 25 of Schedule 4".

#### **18 Inspection of former records etc**

(1) A body corporate continued by the operation of clause 4 shall, for the purposes of the strata scheme concerned, cause to be retained, until the expiration of the prescribed period, any records, minutes of meetings, notices and books of account kept or received by it before the appointed day and in its custody or under its control on that day and upon application under section 70 (1) made in respect of a lot the subject of the strata scheme concerned shall make those records, minutes, notices and books available for inspection by the applicant or his agent at a time and place ascertained in accordance with section 70 (1) (b).

(2) Section 70 (2) applies to the making of an inspection referred to in subclause (1) in the same way as it applies to the making of an inspection referred to in section 70 (1) (b).

#### **19 Administrative and sinking funds of continued bodies corporate**

(1) Where a determination made under section 15 (2) (b) of the former Act by a body corporate continued by the operation of clause 4 was in force immediately before the appointed day, that determination shall be deemed to be the determination required

under section 68 (1) (j) to be made by that body corporate.

- (2) Where a fund was, immediately before the appointed day, kept under section 15 (2) (a) of the former Act by a body corporate continued by the operation of clause 4 that fund shall, on the appointed day, be deemed to be the fund required under section 68 (1) (l) to be established by that body corporate.
- (3) In relation to a body corporate continued by the operation of clause 4 which had not, before the appointed day, made a determination under section 15 (2) (b) of the former Act:
  - (a) section 68 (1) (j) shall be deemed to be amended by omitting the words “seven days after the constitution of the body corporate” and by inserting instead the words “three months after the appointed day”, and
  - (b) section 68 (1) (l) shall be deemed to be amended by inserting after the matter “paragraph (j)” the words “, as deemed to be amended by clause 19 (3) (a) of Schedule 4”.
- (4) In relation to a body corporate continued by the operation of clause 4 which had, before the appointed day, made a determination under section 15 (2) (b) of the former Act but had not before that day established a fund under section 15 (2) (a) of the former Act, section 68 (1) (l) shall be deemed to be amended by omitting the words “upon determining the amounts referred to in paragraph (j)” and by inserting instead the words “upon receiving any amounts raised pursuant to a determination referred to in clause 19 (1) of Schedule 4”.
- (5) In relation to a body corporate continued by the operation of clause 4:
  - (a) section 68 (1) (k) shall be deemed to be amended by omitting the words “one month after the constitution of the council or one year after the constitution of the body corporate, whichever first happens” and by inserting instead the words “three months after the appointed day”,
  - (b) section 68 (1) (m) shall be deemed to be amended by inserting after the matter “paragraph (k)” the words “, as deemed to be amended by clause 19 (5) (a) of Schedule 4”.
- (6) Until a body corporate continued by the operation of clause 4 establishes its sinking fund:
  - (a) it may disburse the moneys in its administrative fund for the purpose of meeting its liabilities referred to in section 68 (1) (j) or (k), and
  - (b) section 68 (2) does not apply to that body corporate.
- (7) Upon the establishment of its sinking fund a body corporate continued by the operation of clause 4 shall:

- (a) determine what part of its administrative fund should be allocated for the purpose of meeting its actual or expected liabilities referred to in section 68 (1) (k), and
- (b) notwithstanding section 68 (2), transfer the amount so determined to its sinking fund.

## **20 Modification of section 69 in relation to continued bodies corporate**

- (1) Where the initial period in relation to a body corporate continued by the operation of clause 4 has not expired, the original proprietor in relation to the strata scheme concerned may give to the body corporate a notice stating that he is the original proprietor and specifying his name in full and the address for the service of notices on him.
- (2) In relation to a body corporate continued by the operation of clause 4, section 69 (3) (b) shall be deemed to be omitted and the following paragraph inserted instead:
  - (b) the name of, and address for the service of notices on, the original proprietor, as shown in any notice given to the body corporate under clause 20 (1) of Schedule 4.
- (3) Where:
  - (a) a body corporate believes that a person may, under subclause (1), give a notice to it, and
  - (b) the body corporate has not received that notice,the body corporate may serve a notice on that person specifying the capacity in which it believes he is entitled to give the notice and requiring him:
  - (c) to state, within fourteen days, whether or not he is a person entitled to give a notice in that capacity, and
  - (d) if he is such a person, to furnish that notice.
- (4) Where a body corporate has served a notice under subclause (3) on a person who it believes to be a person entitled to give a notice to the body corporate under subclause (1) and that person has not complied with the firstmentioned notice, that person is not entitled to cast a vote at any meeting of the body corporate until he has complied with the firstmentioned notice.
- (5) A notice given under section 26 (2) of the former Act before the appointed day by a mortgagee to a body corporate shall, for the purpose of the making by the body corporate of a recording under section 69 (3) (c) of the name of the mortgagee of the lot specified in the notice, be deemed to be a notice given to that body corporate under section 81 (3) and for the purpose of completing the recording in the strata roll



required by section 69 (3) (c):

- (a) the address, if any, specified in the notice as the address of the mortgagee shall be deemed to be the address for the service of notices on the mortgagee shown in a notice given to the body corporate under section 81 (3), and
  - (b) any other mortgage notice which was given under section 26 (2) of the former Act before the notice firstmentioned in this clause was received by the body corporate shall, subject to any notice given to the body corporate under section 81 (3), be deemed to be a mortgage specified in that firstmentioned notice as having priority over the mortgage specified in that firstmentioned notice.
- (6) Any notice given before the appointed day by a mortgagor of a former lot to a body corporate, being a notice of the discharge of a mortgage notice of which had been given to the body corporate under section 26 (2) of the former Act, shall, for the purpose of the making under section 69 (3) (d) by the body corporate of a recording of the discharge of that mortgage, be deemed to be a notice given to that body corporate under section 81 (4).

## **21 Modification of section 70 (1) (c) in relation to continued bodies corporate**

For the purposes of section 70 (1) (c), any contribution levied under the former Act by a body corporate and unpaid before the appointed day shall:

- (a) if levied pursuant to a determination specifying amounts to be raised by regular periodic contributions, be deemed to be a contribution determined under section 68 (1) (j), or
- (b) except as provided in paragraph (a), be deemed to be a contribution determined under section 68 (1) (k).

## **22 Continuation of councils of former bodies corporate**

- (1) The council constituted under the former Act of a body corporate continued by the operation of clause 4 shall, subject to this Act, be, on and from the appointed day, the council of that body corporate.
- (2) A person who is a member of a council of a body corporate referred to in subclause (1) shall, for the purposes of section 72 (1), be deemed to have been elected as a member of that council if he was elected as a member of the council of the body corporate constituted under the former Act.
- (3) Section 73 (1) shall, in relation to a council referred to in subclause (1), be deemed to be amended by omitting therefrom the words "they assume office as such members" and by inserting instead the words "the appointed day".

### **23 (Repealed)**

### **24 Operation of section 81 in relation to former strata schemes**

Section 81 extends to authorising the giving by any person to a body corporate continued by the operation of clause 4 of a notice after the occurrence of any event specified in that section notwithstanding that that event occurred before the appointed day.

### **25 Modification of Part 4, Division 5**

- (1) Section 83 does not apply to or in respect of a body corporate continued by the operation of clause 4, which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 15 (1) (a) of the former Act, until the expiry of that policy.
- (2) Section 84 (1) (a) does not apply to or in respect of a body corporate continued by the operation of clause 4, which has in force on the appointed day a policy of insurance expiring not later than one year after the appointed day and effected by it in accordance with section 15 (1) (b) of the former Act, until the expiry of that policy.
- (3) Sections 85 (2) and 88 apply to and in respect of a policy of insurance entered into in accordance with the former Act before the appointed day between a body corporate continued by the operation of clause 4 and an insurer in the same way as those sections apply to and in respect of a contract of insurance entered into between a body corporate and an insurer pursuant to Division 5 of Part 4.
- (4) Notwithstanding the repeal of the former Act, section 17 of the former Act continues to apply to and in respect of a policy of insurance referred to in that section entered into before the appointed day until the expiry of that policy as if this Act had not been enacted.

### **26 Effect of section 90 in relation to former parcels**

- (1) A valuation of a former parcel made by a valuing authority within the meaning of section 21 of the former Act in accordance with section 21 (2) (a) of the former Act and in force immediately before the appointed day shall, for the purposes of this Act, be deemed to be a valuation made in accordance with section 90 (1) by that valuing authority.
- (2) In relation to a parcel to which the provisions of this Act apply by reason of clause 6 and which corresponds to a former parcel a valuation of which had not, at the appointed day, been made in accordance with section 21 (2) (a) of the former Act, section 90 (2) shall be deemed to be amended by omitting therefrom the words “the registration of a strata plan” and by inserting instead the words “the appointed day”.

### **27 Evidentiary effect under section 91 of particulars furnished under section 21 (3) of**

### **former Act**

Except where the Registrar-General furnishes particulars under section 49 (3) of the unit entitlements of the lots the subject of a strata scheme to which the provisions of this Act apply by reason of clause 6, the particulars of the unit entitlements of any former lots shown on a certified copy of the strata plan referred to in section 21 (3) of the former Act or on any amendment of that plan and furnished to any authority referred to in section 21 (3) of the former Act shall for the purposes of section 91 be deemed to be particulars furnished to that authority under section 49 (3) of the unit entitlements of the derived lots that correspond to those former lots.

### **28 Modification of section 92 (2) (c) in relation to valuations of certain lots**

In relation to a lot comprised in a parcel referred to in clause 26 (2), section 92 (2) (c) shall be deemed to be amended by inserting after the figures "90" the words ", as deemed to be amended by clause 26 (2) of Schedule 4".

### **29 Modification of section 119 in relation to lots in former strata schemes**

In relation to a strata scheme to which the provisions of this Act apply by reason of clause 6, section 119 shall be deemed to be amended by omitting the words "the strata plan was registered or at the time any strata plan of subdivision was registered, as the case may be" and by inserting instead the words "the strata plan, or strata plan of resubdivision, within the meaning of the former Act, as the case may be, was registered under the former Act".

### **30 Destruction of or damage to building under former Act**

- (1) Any proceedings under section 19 (1) of the former Act which were pending before the Supreme Court immediately before the appointed day may be continued and completed as if they were proceedings under section 51.
- (2) Any declaration made under section 19 (1) (b) of the former Act before the appointed day shall, notwithstanding the repeal of the former Act, continue to operate and shall have the same force and effect as if this Act had not been enacted.
- (3) Any proceedings for an order referred to in section 19 (3) of the former Act which were pending before the Supreme Court immediately before the appointed day may be continued and completed as if they were proceedings under section 50.
- (4) Any order made under section 19 (3) of the former Act before the appointed day shall, notwithstanding the repeal of the former Act, continue to operate and shall, subject to subclause (5), have the same force and effect as if this Act had not been enacted.
- (5) An order referred to in section 19 (3) of the former Act may be varied in the same way as if it were an order made under section 50 (4).
- (6) Notwithstanding the repeal of the former Act, section 11 of the former Act and the

regulations made under that section continue to apply to and in respect of a building which was destroyed under the former Act and the parcel on which that building was situated.

### **31 Administrators under former Act**

- (1) A person who, immediately before the appointed day, held office as an administrator under section 23 of the former Act shall, notwithstanding the repeal of the former Act, continue to have the powers and duties he had, as the holder of that office, immediately before the appointed day.
- (2) The provisions of section 23 of the former Act continue to apply to and in respect of a person holding office as referred to in subclause (1) notwithstanding the repeal of the former Act.
- (3) Where immediately before the appointed day an application under section 23 (1) of the former Act was pending, the Supreme Court shall remit the application to such Board as it thinks fit on such terms and conditions (including terms and conditions relating to the payment of the costs of the application up to the date of the remittal) as it thinks fit and any application so remitted shall be deemed to be an application capable of being made under section 127.

### **32 Recovery of rates paid by body corporate**

A body corporate may recover any amount referred to in section 16 (2) of the former Act paid by it, whether before or after the appointed day, as if section 16 (3) of the former Act had not been repealed by this Act.

### **33 Keeping of animals**

Where at the expiration of a period of three months after the appointed day:

- (a) the by-laws in force in respect of a scheme to which the provisions of this Act apply by reason of clause 6 prohibit the proprietor or occupier of a lot from keeping any animal upon his lot or the common property without the approval in writing of the body corporate, and
- (b) the proprietor or occupier of any lot the subject of that scheme was keeping an animal on that lot or the common property and had not before the expiration of that period been given a notice by the council requiring him not so to keep that animal,

the body corporate shall be deemed to have given its approval under the by-laws referred to in paragraph (a) to the keeping of that animal on that lot or the common property, as the case may be.

### **34 Regulations—transitional**

- (1) The Governor may, for the purposes of bringing lots, common property, bodies

corporate and councils, within the meaning of the former Act, under the provisions of this Act and applying the provisions of this Act, with or without modifications, additions or exclusions to or in respect of any such lots, common property, bodies corporate or councils, and for any purposes incidental thereto, make regulations containing such transitional, consequential or savings provisions as to the Governor may appear to be necessary or expedient.

- (2) A regulation made under this clause may make provisions which differ in their application according to such factors as may be specified in the regulation.
- (3) Section 39 (1) (b) of the *Interpretation Act 1987* does not apply to a regulation made under this clause.
- (4) Regulations made under this clause before the appointed day shall take effect on the appointed day or on some later day specified in the regulations.
- (5) Regulations made under this clause after the appointed day shall take effect on the day of publication or on some other day specified in the regulations, being a day before or after the day of publication, but not earlier than the appointed day.
- (6) The *Acts Reprinting Act 1972* does not apply to or in respect of any modifications, additions or exclusions referred to in subclause (1).

## **Part 2 Provisions relating to the *Strata Titles (Part Strata) Amendment Act 1992***

### **1 Definition**

In this Part, **amending Act** means the *Strata Titles (Part Strata) Amendment Act 1992*.

### **2 Exemption from insurance**

An order that exempted a body corporate from any requirement of section 83 immediately before the substitution of that section by the amending Act is, on that substitution:

- (a) taken to have been made under that section, as so substituted, and
- (b) taken to exempt the body corporate from the corresponding requirement of that section, as so substituted.

### **3 Orders under Part 5**

- (1) An order that was in force under Part 5 immediately before the commencement of any amendment of that Part made by the amending Act is, on the commencement of the amendment, taken to have been made under that Part, as so amended.
- (2) An application for an order under Part 5 that was pending immediately before the commencement of any such amendment is, on the commencement of the

amendment, taken to have been made under that Part, as so amended.

## **Part 3 Transitional provisions relating to the *Strata Titles (Staged Development) Amendment Act 1993***

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Strata Titles (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.

### **2 Transitional arrangements for certain development schemes**

- (1) The amendments made to this Act by the *Strata Titles (Staged Development) Amendment Act 1993* do not apply to a development scheme provided for, and represented by, a development statement:
  - (a) that was certified under section 28A (4) before 1 January 1995, or
  - (b) that, not needing to be so certified, was duly lodged for registration before 1 January 1995.
- (2) The amendments made to the *Land and Environment Court Act 1979* by the *Strata Titles (Staged Development) Amendment Act 1993* do not apply to any proceedings:
  - (a) that are commenced after 1 January 1995 in the Land and Environment Court, and
  - (b) that relate to any such development scheme or development statement.

### **3 Proceedings pending in Land and Environment Court**

The amendments made to the *Land and Environment Court Act 1979* by the *Strata Titles (Staged Development) Amendment Act 1993* do not apply to any proceedings that are pending at 1 January 1995 in the Land and Environment Court under:

this Act,

the *Strata Titles (Leasehold) Act 1986*, or

the *Community Land Management Act 1989*.

## **Part 4 Transitional provisions relating to the Strata Schemes Legislation Amendment (Strata Approvals) Act 1999**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from 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 its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **2 Application to existing developments**

- (1) The amendments made to this Act by the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999* do not apply to any proposed strata plan, strata plan of subdivision or notice of conversion in respect of which an application for development consent was lodged before the commencement of this clause.
- (2) For the purposes of satisfying section 37 (1) (a) (i), as amended by the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*, it is sufficient if the provisions of that subparagraph as in force immediately before that amendment are satisfied in respect of a building.

### **3 References to approvals under section 37**

A reference in any Act (other than in this clause) or in any instrument made under any Act or in any instrument of any kind to:

- (a) an approval under section 37, or
- (b) a certificate of approval under section 37,

is to be read as a reference to a strata certificate issued under section 37 or 37A.

## **Part 5 Transitional provisions relating to the Strata Schemes**

## Legislation Amendment Act 2001

### 1 Definition

In this Part:

**amending Act** means the *Strata Schemes Legislation Amendment Act 2001*.

### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act, but only in relation to amendments made to this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.
- (3) To the extent to which any such provision takes effect from 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 its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### 3 Surveyors certificates

A certificate duly given by a registered surveyor under section 8 (2) (c), 8A (3) (b) or 9 (3) (c) before the amendment of Schedule 1A by the amending Act is taken to have been duly given under that provision despite that amendment.

### 4 Transitional arrangements for certain staged development

The amendments made to this Act by the amending Act do not apply to a strata development contract or strata management statement registered before the commencement of this clause.

### 5 Transfer or lease of common property and creation of variation of easements, restrictions and positive covenants

A transfer or other dealing pursuant to a unanimous resolution passed before the commencement of an amendment made by the amending Act to section 19, 25, 26, 27 or 28 is authorised to be carried out after the commencement as if that section had not been amended.