

# Strata Schemes (Leasehold Development) Act 1986 No 219

[1986-219]



New South Wales

## Status Information

### Currency of version

Historical version for 14 December 2009 to 30 September 2010 (accessed 19 May 2024 at 16:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Previously named**  
Strata Titles (Leasehold) Act 1986  
Strata Titles (Leasehold Development) Act 1986
- **Does not include amendments by**  
[Commercial Arbitration Act 2010 No 61](#) (not commenced — to commence on 1.10.2010)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 24 September 2010

# Strata Schemes (Leasehold Development) Act 1986 No 219



New South Wales

## Contents

<b>Long title</b> .....	8
<b>Part 1 Preliminary</b> .....	8
Note .....	8
1 Name of Act .....	8
2 Commencement .....	8
3 Act binds Crown .....	8
4 Definitions .....	8
4A Notes in text .....	17
5 Construction of Act .....	17
5A Application of Act to electronic form plans and other documents .....	17
<b>Part 2 Land in leasehold strata schemes</b> .....	18
<b>Division 1 Creation of lots and common property</b> .....	18
6 Subdivision .....	18
7 Registration of strata plans .....	20
8 Effect of registration of a strata plan .....	25
9 Easements in certain leasehold strata schemes .....	27
10 Subdivision of development lot .....	28
11 Subdivision of lots and common property .....	29
12 Consequences of registration of strata plan of subdivision .....	31
13 Unit entitlement of lots in subdivision not involving common property .....	31

14 Unit entitlements of lots in subdivisions involving common property .....	32
15 Consolidation of lots .....	32
16 Conversion of lots into common property.....	32
17 Alteration of building affecting lot boundary .....	33
18 Certificates of title to be lodged with plans and notices.....	35
19 Strata plans to be signed or consented to.....	35
20 Provisions prohibiting registration to operate cumulatively.....	36
<b>Division 2 Common property .....</b>	<b>37</b>
21 Effect of creation of common property .....	37
22 Acquisition of additional common property .....	37
23 Body corporate to hold leasehold estate in common property as agent for lessees .....	38
24 Common property to be dealt with only under this Act and the Strata Schemes Management Act 1996 .....	39
25 Folio where no common property .....	39
26 Folios for bodies corporate, generally.....	40
27 Folio where there is common property .....	40
28 Dealings with lots include leasehold estate in common property.....	41
29 Transfer or lease of common property.....	42
30 Creation or variation of easements, restrictions and positive covenants .....	42
31 Dedication of common property .....	43
32 Effect of dealings under this Division .....	44
<b>Division 3 Leases of lots .....</b>	<b>46</b>
33 Provisions generally applicable to leases .....	46
34 Restrictions on dealings by lessee.....	46
35 Powers of lessor where no current lease .....	46
36 Further leases of lots and common property .....	46
37 Expiry of leases of lots.....	48
38 Restrictions on re-entry or forfeiture of lease of lot.....	50
<b>Division 4 Conversion of leasehold strata scheme to freehold strata scheme</b> .....	<b>51</b>
39 Procedure for converting leasehold strata scheme.....	51

40 Effect of merger of leasehold estate with lessor’s reversion .....	52
<b>Division 5 Staged development</b> .....	<b>53</b>
41 Explanation of staged development .....	53
42 Obligations of consent authorities .....	54
43 Form and content of strata development contract .....	55
44 Concept plan .....	55
45 Variation of liability for common property expenses .....	56
46 Signing of strata development contract and amendments.....	56
47 Registration of strata development contract and amendments .....	57
48 Notice of strata development contract and amendments .....	57
49 Effect of strata development contract .....	57
50 Amendment of strata development contract.....	58
51 Approval of amendments by Land and Environment Court .....	60
52 Use of common property and development lot by developer.....	60
53 Adding land to a parcel subject to a strata development contract .....	61
54 Right to complete permitted development.....	61
55 What are “development concerns”? .....	62
56 Meetings of body corporate relating to development concerns.....	62
57 Conclusion of development scheme .....	63
57AAA Revised schedule of unit entitlements .....	64
57AA Order for extension or conclusion of development scheme .....	65
57AB Application for assistance .....	66
57AC Investigation of application for assistance .....	66
57AD Power of entry.....	67
57AE Application of Fair Trading Act 1987 to applications for assistance .....	67
57AF Grant of legal assistance .....	68
57AG Resolution authorising application by body corporate .....	68
57AH Functions of Director-General.....	69
<b>Division 5A Strata management statements</b> .....	<b>69</b>
57A Requirement for strata management statement .....	69
57B Formal requirements .....	69
57C Registration of strata management statement .....	70
57D Amendment of strata management statement.....	70

57E Signing of strata management statement.....	71
57F Effect of strata management statement.....	71
<b>Division 6 Compulsory acquisition of lots and common property .....</b>	<b>73</b>
58 Definition.....	73
59 Resumptions affecting parcels.....	73
60 Effect of resumption .....	74
61 Readjustment of leasehold strata scheme for purposes of resumption .....	75
62 Common property not to pass with lot or part of lot in certain circumstances .....	77
63 Severance of lots by resumption .....	77
63A Resumptions where resuming authority is bound by this Act.....	77
64 Resumptions where resuming authority not bound by this Act .....	78
<b>Division 7 Strata certificates .....</b>	<b>78</b>
65 Other Acts not to apply to subdivisions under Division 1 .....	78
65A Persons who may apply for strata certificate .....	78
66 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property .....	78
66A Approvals by accredited certifiers .....	82
66AA Requirements relating to issue of strata certificates.....	84
66B Relevant development consents .....	84
66C Regulations .....	85
66D Satisfaction as to compliance with conditions precedent to issue of strata certificates.....	85
66E Accreditation of certifiers .....	86
66F Insurance of accredited certifiers .....	86
67 Encroachments.....	86
68 Utility lots .....	87
69 Notices of and appeals against refusal of approval .....	88
<b>Division 8 Powers and duties of Registrar-General .....</b>	<b>89</b>
70 Registration of plans and notices .....	89
71 Provisions applying to strata plans and certain other documents .....	90
72 Registrar-General’s power to adjust unit entitlements .....	90
73 Recording of condition restricting use imposed by local council .....	91
74 Prohibition on recordings in the Register in certain circumstances .....	91

75 Certain recordings to be made by Registrar-General.....	91
76 Duties of Registrar-General where resumed land remains subject to strata scheme .....	92
77 Duties of Registrar-General where resumed land is excluded from strata scheme.....	92
78 Notice to produce electronic form plans and other documents .....	93
<b>Part 3 Variation or termination of leasehold strata schemes .....</b>	<b>94</b>
79 Variation of leasehold strata scheme consequent on damage to or destruction of building .....	94
80 Termination of leasehold strata scheme .....	96
80A Termination of leasehold strata scheme and leases by Registrar-General.....	99
81 Interchangeability of notices .....	101
82 Consequences of making an order under section 79 or 80 .....	101
<b>Part 4 Rating and taxation .....</b>	<b>102</b>
83–120 (Repealed) .....	102
121 Definitions .....	102
122 Valuation of parcel.....	102
122A Valuation of parcels that form part of the site of a building .....	103
123 (Repealed) .....	103
124 Rating of lots .....	103
125 Charges for services .....	104
126 Certain lots not ratable.....	104
127 (Repealed) .....	104
128 Certain valuations of interests in parcel not to be used for purposes of this Division .....	104
<b>Part 5 (Repealed) .....</b>	<b>105</b>
<b>Part 6 General .....</b>	<b>105</b>
184–189 (Repealed) .....	105
190 Notice of application for order under section 61, 79 or 80 .....	105
191–194 (Repealed) .....	105
195 Proceedings for offences .....	105
196 Regulations—general.....	105
<b>Schedule 1A Requirements for strata plans.....</b>	<b>106</b>
<b>Schedule 1 Rights and obligations implied in certain easements.....</b>	<b>107</b>

**Schedule 2 Compensation payable on termination of leasehold strata scheme**

..... 111

**Schedule 2AA Covenants implied in strata development contracts** .....112

**Schedule 2A Strata management statements** ..... 114

**Schedules 3, 4 (Repealed)** ..... 116

**Schedule 5 Transitional and savings provisions** ..... 117

# Strata Schemes (Leasehold Development) Act 1986 No 219



New South Wales

An Act to provide for leasehold strata schemes and for related purposes.

## Part 1 Preliminary

### Note—

The purpose of this Act is to allow land to be subdivided by means of a strata scheme in cases where the owner of the land does not wish, or is not able, to part with ownership of the land. Under a leasehold strata scheme, the owner of the land that is the subject of the scheme retains an estate in fee simple in the land. The purchaser of each lot that is created under the subdivision obtains a leasehold interest, rather than a freehold interest, in the lot. The scheme of subdivision provided for by this Act is an alternative to that provided for by the *Strata Schemes (Freehold Development) Act 1973*, but many of the provisions governing the two types of schemes are the same.

### 1 Name of Act (cf *Strata Schemes (Freehold Development) Act 1973*)

This Act may be cited as the *Strata Schemes (Leasehold Development) Act 1986*.

### 2 Commencement (1973 Act, s 2)

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Act binds Crown (1973 Act, s 3)

This Act binds the Crown.

### 4 Definitions (1973 Act, s 5)

- (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 66E in relation to those certificates.

**administrative fund**, in relation to a body corporate, means the fund established by the body corporate under section 98 (1) (m).



**aggregate unit entitlement**, in relation to lots the subject of a leasehold 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 leasehold strata scheme or a proposed leasehold strata scheme, means a building containing a lot or proposed lot or part of a lot or proposed lot that is comprised in the scheme or proposed scheme.

**by-laws**, in relation to a leasehold strata scheme, means the by-laws in force in respect of that 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 112 (1) by the corporation.

**consent authority**, in relation to the carrying out of any development on or with respect to land, means the person having the function of determining whether or not the development may be carried out on that land.

**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 within the meaning of this Act or the [Strata Schemes \(Freehold Development\) Act 1973](#).

**developer**, in relation to the leasehold 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 lessee (if any), or
- (b) a person, other than the original lessee, who is the lessee of at least one development lot within the strata plan.

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

**development consent** means:

- (a) except as provided by paragraph (b)—consent under Division 1 of Part 4 of the *Environmental Planning and Assessment Act 1979*, or
- (b) where, in relation to the carrying out of any development on or with respect to specified land, the consent, permission or other authorisation of a person is declared by the regulations to be development consent for the purposes of this Act—that consent, permission or other authorisation in relation to the carrying out of that development on or with respect to that land.

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

- (a) during any period during which the rights of the person 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 scheme.

**floor** includes a stairway or ramp.

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

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

- (a) defines by lines (in paragraph (c) 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 (if any) commencing on the day on which the body corporate is constituted and ending on the day on which there are lessees of lots the subject of the leasehold strata scheme concerned (other than the original lessee, if any) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement.

**leasehold 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 those lots, and
- (b) the rights and obligations, between themselves, of lessees, 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.

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

- (a) except as provided by paragraph (b) or (d), a person for the time being recorded in the Register as entitled to a leasehold estate in the lot,
- (b) a person whose name has been entered on the strata roll as a lessee pursuant to section 98 of the [Strata Schemes Management Act 1996](#), or
- (c) (Repealed)
- (d) while a proprietor is deemed by section 35 (1) to be the lessee of the lot, that proprietor,

but does not include a sublessee from a lessee of the lot.

**lessor**, in relation to a leasehold strata scheme, means the proprietor who is the lessor of the lots or the lots and common property that are the subject of the scheme.

**local council**, in relation to land, means:

- (a) the council of the area under the *Local Government Act 1993* in which the land is situated, or
- (b) if a person is declared by the regulations to be the local council for that land for the purposes of any specified provision of this Act—the person so declared.

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

- (a) where the scheme does not relate to a proposed stratum parcel, 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) where the scheme relates to a proposed stratum parcel, 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 leasehold strata scheme, and
- (iv) of any proposed lots or part of proposed lots not within the building,

and 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 leasehold 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 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 lease of 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 the lot.

**original lessee**, in relation to a leasehold strata scheme, means any person who, immediately after registration of the strata plan concerned, is:

- (a) the lessee of all the lots the subject of the scheme, or
- (b) the lessee of two or more of those lots, the sum of whose unit entitlements is more than two-thirds of the aggregate unit entitlement.

**parcel** means:

- (a) except as provided by paragraph (b), the land from time to time comprising the lots and common property the subject of a leasehold 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 88B, 88D or 88E of the [Conveyancing Act 1919](#).

**proprietor**, in relation to a parcel, means the person for the time being recorded in the Register as entitled to an estate in fee simple in that parcel.

**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 land surveyor** has the same meaning as it has in the [Surveying and Spatial Information Act 2002](#).

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

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

**relevant development consent**—see section 66B.

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

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

- (a) except as provided by paragraph (b) and (c), the schedule recorded as the schedule of unit entitlement in the folio of the Register for the leasehold interest in the common property the subject of that scheme, or
- (b) where a plan referred to in section 59 (3) relating to the parcel the subject of that 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 61 or, pursuant to an application made under section 61 (7), under section 79, 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 57 (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 98 (1) (n).

**special resolution** has the same meaning as it has in the [Strata Schemes Management Act 1996](#).

**statutory interest** means a charge or other proprietary interest, created by this or any other Act or by any Act of the Commonwealth, affecting a lot or common property and enforceable against a lessee 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 7 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 5 of Part 2.

**strata roll**, in relation to a leasehold strata scheme or a leasehold 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.

**stratum parcel** means a parcel created by a subdivision permitted by section 6 (3).

**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 are in a building or in a part of a parcel that is not a building, and
- (c) any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts.

**Tribunal** means the Consumer, Trader and Tenancy Tribunal established by the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

**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 the lot shown on the schedule of unit entitlement.

**wall** includes a door, window or other structure dividing a lot:

- (a) from common property or from another lot, or
- (b) if the lot is a lot in a stratum parcel, from any part of a building which is not a part within the parcel.

**water supply authority** means:

- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the [Water Management Act 2000](#), or
- (b) a council or county council exercising water supply, sewerage or drainage functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#).

(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 by paragraph (b):
  - (i) are, in the case of a vertical boundary, where the base of any wall corresponds substantially to 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 the 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 so as to create one or more different lots or one or more different lots and common property, or
  - (d) common property 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.
- (7A) 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 public road, a public reserve or a drainage reserve.
- (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 leasehold 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 scheme.

(10) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

#### **4A Notes in text**

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

#### **5 Construction of Act** (1973 Act, s 6)

- (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) No stamp duty is payable under the *Stamp Duties Act 1920* in respect of the determination or partial determination of a lease by the operation of Part 2.
- (4) 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.

#### **5A Application of Act to electronic form plans and other documents** (1973 Act, s 6A)

- (1) This section applies to:
  - (a) plans lodged for the purposes of this Act, and
  - (b) other documents, except certificates of title and office copies of court orders, that:
    - (i) are required by or under this or any other Act to be lodged with those plans, or
    - (ii) are of a class prescribed by the regulations made under this Act as documents that may be lodged in electronic form.

- (2) A reference in this Act:
- (a) to a plan or another document includes a reference to an electronic data file containing a plan or another document in an electronic form, and
  - (b) to the lodging of a plan or another document includes a reference to the electronic lodging of a plan or another document in an electronic form approved by the Registrar-General, and
  - (c) to a sheet of a plan or another document that is in electronic form, is a reference to a sheet on which the whole or part of the plan or other document would be reproduced if the plan or other document were converted to hard copy form without re-pagination.
- (3) If a plan is lodged electronically, all other documents that are required to be lodged with the plan must also be lodged electronically in an electronic form approved by the Registrar-General, except:
- (a) certificates of title, office copies of court orders and (unless the regulations provide otherwise) leases required to be lodged by section 7 (1) (b) or (d), and
  - (b) any other documents excepted from this requirement by regulations under this or any other Act or by the Registrar-General.
- (4) Any signature, seal, certificate, consent or other approval required to authenticate, or to authorise the registration or recording of, a plan proposed to be lodged in electronic form is to be endorsed on an approved form for signatures. When the plan is lodged, that form must also be lodged electronically in an electronic form approved by the Registrar-General.
- (5) This Act applies to and in respect of plans and other documents lodged in electronic form in the same way as it applies to other plans and documents, subject to any modifications prescribed by this Act, the [Conveyancing Act 1919](#), the [Real Property Act 1900](#) or the regulations under any of those Acts.

## Part 2 Land in leasehold strata schemes

### Division 1 Creation of lots and common property

#### 6 Subdivision (1973 Act, s 7)

- (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 4 (1) of this Act or in section 5 (1) of the [Strata Schemes \(Freehold Development\) Act 1973](#)).

**land** means land under the [Real Property Act 1900](#), held in fee simple by any person

(other than land comprised in a qualified or limited folio of the Register) being, except as provided by subsection (3) (a), (b) and (c):

- (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,

and, where the land is leased, being land subject to a lease or leases (the terms of which are all expressed to expire at the same time) which is or are registered, or lodged for registration, under the *Real Property Act 1900*.

(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.

(3) 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,
- (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 vested in fee simple in the person in whom the proposed lots or proposed lots and common property are vested.

(3A) Land that is a development lot under this Act or the *Community Land Development Act 1989* cannot be subdivided under this section.

**Note—**

See section 10 for subdivision of land that is a development lot.

(4) 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 *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.

- (5) Where a plan is lodged in the office of the Registrar-General for the purpose of creating under section 88B of the *Conveyancing Act 1919* an easement, a restriction on the use of land or a positive covenant relating to land the subject of a proposed leasehold strata scheme or of a leasehold strata scheme, in each case before leases of the lots and common property (if any) are registered for the purposes of the scheme, the plan shall be treated as having been registered for the purposes of section 88B (3) of that Act only when the leases have been registered under the *Real Property Act 1900*.
- (6) In this section, a reference to land held in fee simple by, or vested in, a person includes land held in fee simple by, or vested in, the Crown in right of New South Wales or a public authority (including any local council) constituted or established by an Act.

**Note—**

Before the amendments made to this Act by the *Strata Schemes (Leasehold Development) Amendment Act 1999*, only land owned by the Crown or a public authority (including a local council) could be subdivided under this Act. As a result of the amendments, land held in fee simple by any person (including the Crown, a public authority or local council) may be subdivided under this Act.

**7 Registration of strata plans** (1973 Act, s 8)

- (1) A plan relating to land and illustrating a proposed subdivision referred to in section 6 (2) or (3) shall not be registered as a strata plan unless:
- (a) (Repealed)
- (b) where all of the land is subject to a lease or leases registered under the *Real Property Act 1900* which is or are intended to be replaced wholly or partly by leases of each of the lots and the common property (if any) shown on the plan:
- (i) the replacement leases relating to the proposed lots and, if the plan provides for common property, the common property have been lodged in the office of the Registrar-General for registration,
- (ii) those replacement leases are expressed to be wholly or partly in substitution for the lease or leases first referred to in this paragraph, and
- (iii) the terms of those replacement leases are all expressed to commence on registration of the plan and to expire at the same time as the lease or leases first referred to in this paragraph and, if those replacement leases confer rights of renewal, the renewal terms are the same,
- (c) where the land is subject to leases registered under the *Real Property Act 1900* which are intended to subsist after the plan is registered as leases of each of the

lots shown on the plan:

- (i) the terms of those leases have commenced and are all expressed to expire at the same time and, if those leases confer rights of renewal, the renewal terms are the same, and
- (ii) the Registrar-General is satisfied, as a result of evidence produced to the Registrar-General, that the area to which each of those leases relates (not being an area that is leased solely or principally for use by lessees of the land in common with each other) corresponds to a lot or lots shown on the plan,

and either:

- (iii) there has been lodged in the office of the Registrar-General a certificate in an approved form, purporting to be signed by the persons prescribed for the purposes of this subparagraph and certifying that at a meeting held for the purpose a resolution, supported by all of the lessees under those leases, was passed agreeing to the proposed subdivision of the land as shown on the plan, or
- (iv) if at such a meeting a majority but not all of those lessees supported such a resolution—there has been lodged in the office of the Registrar-General a certified or office copy of the minute of an order, made in accordance with subsection (7), approving the scheme for subdivision,

and:

- (v) if the plan provides for common property—there has been lodged in the office of the Registrar-General for registration a lease of the common property, and
  - (vi) the term of the lease of the common property is expressed to commence on registration of the plan and to expire at the same time as the terms of the leases referred to in subparagraph (i) and, if the leases so referred to confer rights of renewal, the lease of the common property confers a right of renewal for a term that is the same as that conferred by those rights, or
- (d) where the plan is lodged in circumstances different from those described in paragraph (b) or (c):
- (i) there have been lodged in the office of the Registrar-General for registration leases from the proprietor of each of the lots (which may consist of or include leases to the proprietor) and, if the plan provides for common property, a lease of the common property, and
  - (ii) the terms of the leases referred to in subparagraph (i) are all expressed to commence on registration of the plan (but, in the case of the leases of the lots, may be expressed to commence before registration of the plan) and to expire

at the same time and, if the leases confer rights of renewal, the renewal terms are the same.

(e)-(j) (Repealed)

(2) 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.

(2A) The plan must be lodged with a separate document in the approved form that includes:

(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 66 or an accredited certifier under section 66A 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 land surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met.

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

(2B) The floor plan for a leasehold 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.

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

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

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

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

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

parcel, and

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

(2CAA) 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 57AAA.

(2CB) A plan intended to be registered as a strata plan must indicate:

- (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.

(2CC) 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 have been signed by the persons required to have signed the strata plan under section 19 (1).

(2CD) 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.

(2D) A plan intended to be registered as a strata plan that creates a development lot must be accompanied by:

- (a) a copy of the relevant strata development contract, and
- (b) unless the plan is lodged by the Crown or a statutory body representing the Crown—the certificate of the consent authority provided under section 42 (2).

(2E) The Registrar-General may refuse to register a plan as a strata plan:

- (a) if any requisition made by the Registrar-General with respect to the registration of any lease lodged in connection with registration of the plan has not been complied with, or
- (b) if a formal land survey plan (within the meaning of the *Surveying and Spatial Information Act 2002*) of the proposed parcel requested by the Registrar-General and such number of copies of the plan of survey, if any, as have been so

requested have not been lodged in the office of the Registrar-General, or

(b1) if the certificate of title or Crown grant for the land comprising the proposed parcel does not accompany the plan (or is not produced in the office of the Registrar-General within such time as the Registrar-General considers reasonable), unless evidence is furnished to the Registrar-General's satisfaction that:

(i) the certificate of title or Crown grant is in his or her custody, and that he or she has authority to use the instrument in connection with the registration of the plan, or

(ii) the certificate of title or Crown grant has been lost, mislaid or destroyed and application has been duly made (and is being duly prosecuted) under section 111 of the *Real Property Act 1900*, or

(c) 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.

(2F) 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.

(3) If a proposed strata plan provides for common property, a reference in subsection (1) to a lease of common property is a reference to a lease of common property from the proprietor as lessor under the proposed leasehold strata scheme to the body corporate to be constituted on the registration of the plan, being a lease executed by that proprietor as agent for that body corporate.

(4), (5) (Repealed)

(6) Where a meeting of persons who are lessees of the land comprised in a parcel has been held for the purposes of subsection (1) (c) and a majority (but not all) of those persons supported a resolution for the subdivision of the parcel as shown on a proposed strata plan, any one or more of the persons who supported the resolution may apply to the Supreme Court for an order under subsection (7).

(7) On hearing an application made under subsection (6), the Supreme Court may if it appears to it to be just and equitable to do so, make an order approving the scheme for the subdivision of the parcel to which the application relates.

(8) Notice of an application made under subsection (6) must be given to any person who is a lessee of a part of the parcel concerned unless that person is the applicant or, as the case may be, one of the applicants.

(9), (10) (Repealed)



## 8 Effect of registration of a strata plan

(1) On registration of a plan as a strata plan:

- (a) where, immediately before registration of the plan, the whole of the parcel was subject to a lease or leases registered under the *Real Property Act 1900* which was or were intended to be wholly or partly replaced by leases of each of the lots and the common property (if any) shown on the plan:
  - (i) the lease or leases first referred to in this paragraph is or are determined in so far as it or they related to lots and common property,
  - (ii) any estate or interest (including any rates, taxes, charges or fees referred to in Division 6 of Part 4) and any caveat which affected the lease or leases wholly or partly determined by subparagraph (i) shall affect those replacement leases in so far as they relate to lots, and
  - (iii) all outstanding rights and obligations of the lessee under a lease wholly or partly determined by subparagraph (i), being rights and obligations existing immediately before the registration of the plan shall continue to be exercisable or, as the case may be, shall be discharged by the person who was the lessee under that lease as if that lease had not been wholly or partly determined, except to the extent, if any, that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties,
- (b) where, immediately before registration of the plan, the parcel was subject to two or more leases registered under the *Real Property Act 1900* which were intended to subsist after the plan was registered as leases of each of the lots shown on the plan:
  - (i) every lease which was, immediately before the registration of the plan, a lease of a part of the parcel that corresponds to a lot shown on the plan shall become a lease of that lot for the residue of the term of the lease, subject to any estate or interest (including any rates, taxes, charges or fees referred to in Division 6 of Part 4) and any caveat affecting the lease immediately before registration of the plan, and
  - (ii) where any part of the parcel comprised in the plan is shown as common property, any lease affecting that part immediately before the registration of the plan is determined in so far as it relates to the common property,
- (c) notwithstanding section 88 of the *Conveyancing Act 1919*, if a stratum parcel is created there shall be implied:
  - (i) 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,
- (ii) 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,
  - (iii) 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
  - (iv) 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,
- (d) all ancillary rights and obligations reasonably necessary to make easements effective shall apply in respect of an easement created by paragraph (c),
- (e) an easement for support or shelter created by paragraph (c):
- (i) shall entitle the owner of the dominant tenement to enter upon the servient tenement to replace, renew or restore any support or shelter, and
  - (ii) shall subsist until the easement is released, and
- (f) the Registrar-General shall make in the Register such recordings in respect of the easements as the Registrar-General considers appropriate.
- (2) As soon as practicable after the registration of a plan as a strata plan, the Registrar-General shall:
- (a) create folios of the Register for:
    - (i) the leasehold estates of the lessees in lots, and
    - (ii) the leasehold estate of the body corporate in the common property (if any), and
  - (b) in the case of replacement leases referred to in subsection (1) (a)—record in the folios for the leases of those lots, in such a manner as will preserve their priority of registration, any mortgages, charges, covenant charges, writs or caveats affecting those leases by virtue of subsection (1) (a) (ii).
- (3) For the purposes of this section, a strata plan lodged for registration under this Act which is required to be accompanied by a lease to be registered under the *Real Property Act 1900* shall be treated as having been registered only when the lease has been registered under that Act.
- (4) If a leasehold strata scheme for a stratum parcel becomes a strata scheme within the

meaning of the *Strata Schemes (Freehold Development) Act 1973*, the easements implied by subsection (1) (c) in respect of the former parcel shall be implied in respect of the parcel to which the strata scheme relates as if the references to lots and common property in subsection (1) (c) (i)-(iv) were references to the lots and common property the subject of that strata scheme.

## 9 Easements in certain leasehold strata schemes

(1) In this section:

**drainage** includes the product of rain, 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) Where:

- (a) a stratum parcel is the subject of a leasehold strata scheme or a former stratum parcel has become a parcel within the meaning of the *Strata Schemes (Freehold Development) Act 1973*,
- (b) an instrument has or has had the effect of creating after the commencement of this Act 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, former stratum parcel or parcel, or the land comprised in that parcel or former 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 shall be as specified in Schedule 1, 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) shall, when registered as provided by subsection (8), be 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 shall, on application made in a form approved under the *Real Property Act 1900*, make all necessary recordings in the Register for giving effect to the order.

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

- (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 plan must be lodged with a separate document in the approved form that includes:
  - (a) a strata certificate issued by the local council under section 66 or an accredited certifier under section 66A 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 land 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 document 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.

**11 Subdivision of lots and common property** (1973 Act, s 9)

- (1) A lot (other than a development lot) or common property, or a lot (other than a development lot) and common property, may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (2).
- (2) 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 4 (7) (a)—in accordance with section 66 (4) or section 66A (4), or
    - (ii) where the plan is a plan illustrating a proposed subdivision referred to in section 4 (7) (b), (c) or (d)—in accordance with section 66 (5) or section 66A (5),
  - (c) that floor plan includes a certificate given by a registered land 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) it is lodged with a separate document in the approved form that identifies any encroachment by the building (whether or not on to a public place),
  - (d) in the circumstances set out in subsection (2A)—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 that there was no 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, and

(e) any by-law conferring a right or privileges referred to in section 51 (1) of the *Strata Schemes Management Act 1996* in respect of common property comprised in the plan has been:

(i) repealed, or

(ii) amended so that the by-law does not so confer the right or privileges.

(2A) 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 lessee (not being an original lessee who holds all lots forming part of the parcel to which the strata scheme concerned relates), and

(b) a certificate under subsection (2) (d) or section 16 (2) (b) or 32 (4) (b) has not previously been lodged in the office of the Registrar-General.

(3) A plan shall not be registered as a strata plan of subdivision under this section unless:

(a) there have been lodged in the office of the Registrar-General for registration the replacement leases relating to the proposed lots comprised in the plan,

(b) those replacement leases contain provisions to the effect that they are in substitution for the leases determined or otherwise affected by the subdivision, and

(c) the terms of those replacement leases are all expressed to commence on registration of the plan and to expire at the same time as any lease to be determined and, where the replacement leases confer rights of renewal, the renewal terms are the same as those contained in the leases of other lots comprised in the leasehold strata scheme concerned.

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

(5) Subsections (2) (b) and (2) (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)

## **12 Consequences of registration of strata plan of subdivision**

- (1) On the registration of a plan as a strata plan of subdivision referred to in section 10 or 11:
  - (a) the lease of any development lot, or other lot that is the subject of the subdivision, is determined and the lease of any common property concerned ceases to apply to any lot created by the subdivision,
  - (b) any estate or interest (including any rates, taxes, charges or fees referred to in Division 6 of Part 4) and any caveat affecting a lease determined by paragraph (a) shall affect the replacement leases in so far as they relate to lots,
  - (c) the leasehold estate in any common property created vests in the body corporate as lessee for the residue of the term specified in the lease of the common property, and
  - (d) all outstanding rights and obligations of the lessee under a lease determined by paragraph (a), being rights and obligations existing immediately before registration of the plan, shall continue to be exercisable or, as the case may be, shall be discharged by the person who was lessee under that lease as if that lease had not been determined, except to the extent, if any, that those rights and obligations are inconsistent with the provisions of the replacement leases or extinguished or varied by the relevant parties.
- (2) As soon as practicable after the registration of a plan as a strata plan of subdivision referred to in section 10 or 11, the Registrar-General shall:
  - (a) create folios of the Register for the leases of the lots, and
  - (b) record in those folios any mortgages, charges, covenant charges, writs or caveats affecting those leases by virtue of subsection (1) (b).
- (3) For the purposes of this section, a strata plan of subdivision lodged for registration under this Act which is required to be accompanied by a lease to be registered under the [Real Property Act 1900](#) shall be treated as having been registered only when the lease has been registered under that Act.

## **13 Unit entitlement of lots in subdivision not involving common property** (1973 Act, s 10)

- (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 10 (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.

**14 Unit entitlements of lots in subdivisions involving common property** (1973 Act, s 11)

A plan illustrating a proposed subdivision, other than a plan referred to in section 10 (1) or 13 (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 66 (5) (a) or section 66A (5) (c), agreed to each proposed unit entitlement and the proposed aggregate unit entitlement shown in the schedule referred to in paragraph (a).

**15 Consolidation of lots** (1973 Act, s 12)

Two or more lots may be consolidated into one lot by the registration of a plan as a strata plan of consolidation. The plan must be lodged with a separate document in the approved form relating to the plan.

**16 Conversion of lots into common property** (1973 Act, s 13)

(1) One or more lots may be converted into common property by the registration, as a notice of conversion, of a notice in the approved form, being a notice executed by the lessor under the leasehold strata scheme concerned and the lessee of that lot, or that lessor and the lessees of 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 66 (6) or by an accredited certifier in accordance with section 66A (6),
  - (b) in the circumstances set out in subsection (2A)—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 that there was no 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 for the lease of the lot, or each lot, to which the notice relates has, in so far as it affects any such lease, been discharged or surrendered, or withdrawn or otherwise disposed of, as the case may be.
- (2A) 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 lessee (not being an original lessee who holds all lots in the strata scheme concerned), and
  - (b) a certificate under subsection (2) (b) or section 11 (2) (d) or 32 (4) (b) has not previously been lodged in the office of the Registrar-General.
- (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.
- (4) On registration of a notice of conversion, the lease of any lot converted into common property is determined and the lot vests in the body corporate as lessee for the residue of the term specified in the lease of the common property.
- (5) As soon as practicable after the registration of a notice of conversion, the Registrar-General shall:
- (a) cancel the folio of the Register for the lease of the converted lot, and
  - (b) make such other recordings in the Register as the Registrar-General considers appropriate.

**17 Alteration of building affecting lot boundary** (1973 Act, s 14)

- (1) Where:

- (a) a building or a part of a building comprised in a leasehold strata scheme 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 or a part of a building comprised in a leasehold strata scheme 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 lessee of the 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 land 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 67 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.

- (1A) The plan must be lodged with a separate document in the approved form relating to the plan.
- (2) On registration of a plan lodged under subsection (1) showing an encroachment on a public place, the Registrar-General shall forward a copy 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 from the original.
- (4) If an encroachment referred to in subsection (1) (d) (ii) is shown in 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.

**18 Certificates of title to be lodged with plans and notices** (1973 Act, s 15)

(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 21 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 for the lease of 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 for the lease of 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 for the lease of 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).

**19 Strata plans to be signed or consented to** (1973 Act, s 16)

(1) The Registrar-General shall not register as a strata plan a plan lodged in the office of the Registrar-General unless the separate document required to be lodged under section 7 (2A) with the plan has been signed:

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

(b) by every lessee under a lease that is recorded in a folio of the Register relating to that land,

(c) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge recorded in that folio of the Register, and

(d) by every mortgagee or chargee under a mortgage of or charge affecting a lease referred to in paragraph (b).

- (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 that have been signed by (or by an agent authorised by) such of the following persons as the Registrar-General may determine:
- (a) the judgment creditor under any writ recorded in the folio of the Register 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) Subject to subsection (5), the Registrar-General shall not register as 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 separate document required to be lodged under this Division with the plan is signed:
- (a) by the lessor and lessee of the lot or development lot to which the plan relates,
  - (b) by every mortgagee, chargee or covenant chargee under a mortgage, charge or covenant charge that is recorded in the folio of the Register for the lease of that lot, and
  - (c) where the plan relates to common property—by the body corporate constituted for the purposes of the leasehold strata scheme.
- (4) Without limiting the effect of subsection (3), 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 judgment creditor under any writ that is recorded in the folio of the Register for the lease of any lot to which the plan relates,
  - (b) the caveator under a caveat affecting any estate or interest in that lot,
- are lodged in the office of the Registrar-General.
- (4A) (Repealed)
- (5) In relation to any particular plan lodged for registration as referred to in subsection (1) or (3), the Registrar-General may, without giving notice to any person, dispense with the requirement for a person mentioned in that subsection to sign the separate document required to be lodged with the plan.

## **20 Provisions prohibiting registration to operate cumulatively** (1973 Act, s 17)

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**

### **21 Effect of creation of common property** (1973 Act, s 18)

(1) Where common property is created by the registration of of:

- (a) a strata plan,
- (b) a strata plan of subdivision, or
- (c) a notice of conversion,

the common property is freed and discharged from any mortgage, charge, covenant charge, writ or caveat which, before registration of that plan or notice, affected the land comprising the common property, or affected any lease of that land.

(2) Nothing in subsection (1) 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, 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.

### **22 Acquisition of additional common property** (1973 Act, s 19)

(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) Subject to subsection (3), a body corporate established for the purposes of a leasehold strata scheme may, pursuant to a special resolution, accept a lease or sublease, or a transfer of a lease or sublease, of land (not being a lot that is comprised in the scheme) which is contiguous:

- (a) in any case, to the parcel that is subject to the scheme, or
- (b) in the case of a stratum parcel, to the site on which is erected the building part of which is subject to the scheme,

for the purpose of creating, or creating additional, common property.

(3) A body corporate shall not accept a lease or sublease, or transfer of a lease or sublease, referred to in subsection (2) if:

- (a) the lease or sublease concerned is subject to a mortgage, charge, covenant charge or writ, or

- (b) the term of that lease or sublease would expire after the term of the lease of the common property.
- (4) On accepting a lease or sublease, or a transfer of a lease or sublease, in accordance with subsection (2), the body corporate shall forthwith cause the dealing evidencing the transaction to be registered under the *Real Property Act 1900*.
- (5) The Registrar-General may refuse to register the dealing, if:
  - (a) it is not accompanied by:
    - (i) the certificate of title for the land affected by the lease or sublease, and
    - (ii) the certificate of title for the lease of the common property, or
  - (b) it is not accompanied by a certificate under the seal of the body corporate certifying that the resolution authorising the acceptance of the lease, sublease or transfer was a special resolution.
- (6) On the registration under the *Real Property Act 1900* of any such lease, sublease or transfer:
  - (a) the leasehold interest becomes common property and is subject to the provisions of this Act and the *Strata Schemes Management Act 1996* relating to common property,
  - (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 sublease, 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 the Registrar-General considers appropriate.
- (7) A body corporate may, pursuant to a special resolution and with the concurrence of the lessor or sublessor, surrender a lease or sublease accepted by it under this section.
- (8) On 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 the Registrar-General considers appropriate.

**23 Body corporate to hold leasehold estate in common property as agent for lessees** (1973 Act, s 20)

The leasehold estate of a body corporate in common property shall be held by the body corporate as agent:

- (a) where the same person or persons is or are the lessee or lessees of the lots the

subject of the leasehold strata scheme concerned—for that lessee or those lessees, or

- (b) where different persons are lessees of each of two or more of the lots the subject of the leasehold strata scheme concerned—for those lessees as tenants in common in shares proportional to the unit entitlements of their respective lots.

**24 Common property to be dealt with only under this Act and the [Strata Schemes Management Act 1996](#)** (1973 Act, s 21)

Common property shall not be capable of being dealt with except in accordance with the provisions of this Act and the [Strata Schemes Management Act 1996](#).

**25 Folio where no common property** (1973 Act, s 22)

- (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 in it, in such manner as the Registrar-General thinks fit:
  - (a) a statement that the leasehold 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 scheme.
- (2) During any period for which a folio of the Register created under subsection (1) or section 8 (2) (a) does not relate to 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 of, addition to or repeal of the by-laws from time to time in force with respect to the leasehold 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, the Registrar-General 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 for the lease of the common property includes respectively a reference to a folio of the Register created under subsection (1) or section 8 (2) (a) during any period for which it does not relate to common property or to a certificate of title issued under section 26 (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 relate to 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.

**26 Folios for bodies corporate, generally** (1973 Act, s 22A)

- (1) On a leasehold estate in any common property being vested in, acquired by or divested from a body corporate for a leasehold strata scheme in respect of which a folio of the Register has been created under section 8 (2) (a) or 25 (1), the Registrar-General shall make such recordings in the Register with respect to the leasehold estate so vested, acquired or divested as the Registrar-General considers appropriate.
- (2) The Registrar-General may, if the Registrar-General thinks fit, and shall, on 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 8 (2) (a) or 25 (1), a certificate of title setting forth the information contained in that folio.

**27 Folio where there is common property** (1973 Act, s 23)

- (1) In any folio of the Register for the lease of common property it shall be sufficient that the land comprised in it be described as a leasehold estate in the common property in a designated strata plan without definition of the area or dimensions of the common property, and a folio of the Register for the lease of common property shall be construed as certifying title to the leasehold estate in the common property, other than common property that is the subject of a lease or sublease accepted or acquired under section 22, in the leasehold strata scheme concerned as that common property may exist from time to time.
- (2) When creating a folio of the Register for the lease of common property, the Registrar-General shall record in the folio, in such manner as the Registrar-General 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 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 of, addition to or repeal of 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, the Registrar-General 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:

- (a) any easement of the description contained in section 30 (1) (a) or (b),
- (b) any easement acquired by resumption to the extent that it affects common property, or
- (c) any restriction on the use of land or positive covenant of the description contained in section 30 (1) (a),

(whether or not the easement, restriction or positive covenant was created after the commencement of this Act or under section 30 (1)) in the folio of the Register for the lease of a lot the subject of the leasehold strata scheme concerned but shall record the easement, restriction or positive covenant in the folio of the Register for the lease of 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 for the lease of 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 for the lease of the common property, but any such mortgage, charge, covenant charge or writ recorded in the folio of the Register for the lease of a lot the subject of the leasehold strata scheme concerned affects the beneficial interest of the lessee of that lot in the leasehold estate or interest in the common property held by the body corporate as agent for that lessee as if that mortgage, charge, covenant charge or writ were recorded by the Registrar-General in the folio of the Register for the lease of that common property.

## **28 Dealings with lots include leasehold estate in common property** (1973 Act, s 24)

- (1) In any dealing or caveat relating to a lease of a lot, a reference to the lot includes a reference to any estate or interest in the common property which is vested in the body corporate as agent for the lessee of the lot without express reference to the common property and without the dealing or caveat being recorded in the folio of the Register for the lease of the common property.

- (2) The beneficial interest of a lessee of a lot in the estate or interest in the common property, if any, held by the body corporate as agent for that lessee shall not be capable of being severed from, or dealt with except in conjunction with, the lease of the lot.

**29 Transfer or lease of common property** (1973 Act, s 25)

- (1) A body corporate may, pursuant to a special resolution and with the consent of the lessor, and if not prevented by the terms of the lease, transfer a lease of part of the common property or grant a sublease of such a part.
- (1A) A body corporate may, pursuant to a special resolution and with the consent of the lessor under the leasehold strata scheme, execute a variation of any such lease or sublease pursuant to section 55A of the *Real Property Act 1900*.
- (2) A body corporate, pursuant to a special resolution, may accept a surrender of a sublease or, if otherwise empowered so to do, re-enter under a sublease, granted under subsection (1).
- (3) The Registrar-General shall register a dealing referred to in this section by making in the Register such recordings with respect to the dealing as the Registrar-General considers appropriate.

**30 Creation or variation of easements, restrictions and positive covenants** (1973 Act, s 26)

- (1) Subject to subsection (4), a body corporate may, pursuant to a special resolution:
  - (a) execute a dealing creating an easement which burdens the leasehold estate in the common property or a restriction on the use of land or a positive covenant which burdens the leasehold estate in the common property or the leasehold estates in the whole parcel,
  - (b) accept a dealing creating an easement or a restriction on the use of land or a positive covenant which benefits the leasehold estate in the common property or the leasehold estates in the whole of the parcel,
  - (c) execute a dealing releasing or varying an easement or a restriction on the use of land or a positive covenant which benefits the leasehold estate in the common property or the leasehold estates in the whole parcel, or
  - (d) accept a dealing releasing or varying an easement which burdens the leasehold estate in the common property or a restriction on the use of land or a positive covenant which burdens the leasehold estate in the common property or the leasehold estates in 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 or sublease accepted or acquired by the body corporate under section 22 (2) that, apart from subsection (1), it is not

entitled to execute or accept as a lessee or sublessee or, by the terms of the lease or sublease, it is prevented from executing or accepting.

- (3) A body corporate (pursuant to a special resolution) or the lessor under the scheme, or both of them, may join in or consent to the execution or acceptance of a dealing referred to in subsection (1) relating to a lease or sublease accepted or acquired by the body corporate under section 22 (2).
- (4) A dealing referred to in subsection (1) is not effective unless the lessor has consented in writing to the execution or acceptance of the dealing by the body corporate.
- (5) A body corporate (pursuant to a special resolution) and the lessor under the scheme may:
  - (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 or a restriction on the use of land which benefits the common property or the whole parcel,
  - (c) execute a dealing releasing or varying an easement or a restriction on the use of land 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 the whole parcel.
- (6) Subsection (5) does not authorise a body corporate or the lessor under the scheme:
  - (a) to execute or accept a dealing relating to:
    - (i) common property the subject of a lease accepted or acquired by the body corporate under section 22 (2), unless the lessor under the scheme is the lessor under the lease, or
    - (ii) common property the subject of a sublease, or
  - (b) to execute or accept any such dealing contrary to the terms of the lease or sublease concerned or any other agreement entered into by either of them.

### **31 Dedication of common property** (1973 Act, s 27)

- (1) In this section:

**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](#).

- (1A) Common property may be dedicated as public road, public reserve or drainage reserve by registration of a plan under Division 3 of Part 23 of the [Conveyancing Act 1919](#).
- (1B) Common property may be dedicated as public reserve only if there is an adjoining public road or other public place giving access to the reserve by the public.
- (2) The common property to be dedicated must be identified on a plan and relate to a statement, acknowledged by endorsement of the seal of the body corporate pursuant to a special resolution, that it is intended:
  - (a) to open or widen a public road, or
  - (b) to create a public reserve, or
  - (c) to create a drainage reserve.
- (2A) The seal of the body corporate and the seal or signature of the lessor under the leasehold strata scheme concerned are to be endorsed on the plan, subject to subsection (3A).
- (3) Common property that is a leasehold interest acquired under section 22 (2) may be dedicated only if each additional seal or signature required by section 195D of the [Conveyancing Act 1919](#) to allow registration of the plan under Division 3 of Part 23 of that Act has been obtained.
- (3A) If the plan is lodged electronically, or the plan is lodged manually but the seals, signatures and consents required by this section are not endorsed on the plan, they must be endorsed on the approved form for signatures and that form must be lodged in the same way as the plan.
- (4) On 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 the Registrar-General considers appropriate.

### **32 Effect of dealings under this Division** (1973 Act, s 28)

- (1) In this section:

**dealing** includes a plan referred to in section 31 (2).

- (2) A dealing executed by a body corporate for the purpose 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 lessees of all the lots comprised in the leasehold strata scheme concerned and the receipt of the body corporate for purchase money, rent, premium or other money payable to the body corporate in respect of the dealing shall be a

sufficient discharge and shall exonerate every person paying any such money from any responsibility for its application.

- (3) A body corporate shall not execute a dealing for the purposes of this Division:
- (a) if the estate or interest of the body corporate or of the lessees or any of them in the parcel or in any part of the parcel is thereby diminished, unless:
- (i) all persons (other than the body corporate and the lessees) 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 estate or interest 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, and
- (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 of those Acts 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 the lots concerned are held by the original lessee or where a certificate under this paragraph or section 11 (2) (d) or 16 (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 or that there was no 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 in that certificate 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 54 of a dealing by a body corporate, or by a developer on behalf of the body corporate, to give effect to a decision about a development concern (within the meaning of section 55) or prevent the registration of a dealing so executed.

## **Division 3 Leases of lots**

### **33 Provisions generally applicable to leases**

- (1) The provisions of the [Conveyancing Act 1919](#) relating to leases of land apply to and in respect of a lease of a lot or of common property except in so far as those provisions are inconsistent with the provisions of this Part or the regulations.
- (2) The lessor under a leasehold strata scheme may be the lessee of any lot subject to that scheme notwithstanding any law relating to the merger of leasehold and reversionary estates in land.

### **34 Restrictions on dealings by lessee**

- (1) (Repealed)
- (2) Except as expressly provided by Division 2, any provision in the lease of a lot or common property which purports to require the consent of the lessor under the scheme to any dealing with the lease is void.

### **35 Powers of lessor where no current lease**

- (1) If a proprietor is entitled to immediate possession of a lot because of the determination of a lease, the proprietor is, for the purposes of this Act (but subject to such exceptions as may be prescribed), to be deemed to be the lessee of the lot.
- (2) Nothing in subsection (1) confers or imposes on the proprietor any right or obligation created by any lease, sublease, mortgage charge or covenant charge to which any former lessee was subject.

### **36 Further leases of lots and common property**

- (1) Except as provided by subsection (3) and section 122 of the [Conveyancing Act 1919](#), the lessor under a leasehold strata scheme may grant further leases of the lots the subject of the scheme (which may consist of or include leases to the lessor) at any time before the scheme is terminated.
- (2) If a lease is granted under subsection (1) so as to commence when the lease of the

common property expires, the lessor under the scheme shall also grant a further lease of the common property to the body corporate.

- (3) Where the lessees of lots the sum of whose unit entitlements is not less than four-fifths of the aggregate unit entitlement and the body corporate have, at least 6 months before the expiration of the terms of those leases, given written notice in accordance with subsection (4) to the lessor under the leasehold strata scheme concerned of their intention to exercise their rights to renew their leases, the lessor shall, at least 3 months before those terms expire, grant and deliver:
  - (a) further leases of those lots to those lessees, and
  - (b) a further lease of the common property to the body corporate.
- (4) A lessee of a lot or a body corporate gives notice in accordance with this subsection to the lessor under the leasehold strata scheme concerned of an intention to exercise a right to renew a lease only if:
  - (a) the right to a further lease, being a lease containing specified provisions, has been granted to the lessee or body corporate by the lessor in writing signed by the lessor, and
  - (b) the notice is accompanied by a lease for execution by the lessor in the form approved for registration under the *Real Property Act 1900* and containing those provisions.
- (5) Except where any such lease is granted so as to commence during the term of another lease of a lot or the common property and is expressed to expire at the same time as the other lease, the terms of all leases granted under this section with respect to a parcel shall be expressed:
  - (a) to commence at the expiration of the terms of the leases they are intended to replace, and
  - (b) to expire at the same time.
- (6) If a lease granted under this section confers on the lessee a right of renewal, the renewal term shall be the same as that to which each other lessee under the leasehold strata scheme is entitled.
- (7) The lessor under the scheme may execute a further lease of the common property as agent for the body corporate, unless the lease is granted pursuant to subsection (3).
- (8) Notwithstanding subsection (3), the lessor under the scheme may refuse to grant:
  - (a) a further lease of a lot to a lessee, if:
    - (i) the lessee has committed a breach of a provision of the lease of that lot and that breach has not been remedied, or

- (ii) the lessee has not complied with a requirement imposed by the lessor in accordance with a provision of the lease for the renovation of improvements comprised within that lot, or
- (b) a further lease of the common property to the body corporate, if:
  - (i) the body corporate has committed a breach of a provision of the lease of the common property and that breach has not been remedied, or
  - (ii) the body corporate has not complied with a provision of the lease for the renovation of any improvements comprising common property.
- (9) If a lessor refuses under subsection (8) (b) to grant a further lease of the common property the subject of a leasehold strata scheme, the lessor shall also refuse to grant further leases of lots the subject of the same scheme.
- (10) A right to a further lease of a lot or of common property may not be exercised otherwise than in accordance with this section.

### **37 Expiry of leases of lots**

- (1) When all leases of the lots and common property (if any) that are the subject of a leasehold strata scheme expire or are otherwise determined without being wholly or partly replaced by further leases of the lots or common property registered under the [Real Property Act 1900](#), then except as otherwise provided by this section:
  - (a) the scheme is terminated,
  - (b) the body corporate constituted for the purposes of the scheme is dissolved,
  - (c) if the leases so provide or it is so provided in any other agreement, the former lessor under the scheme is liable to pay to each person who, immediately before the termination of the scheme, was the lessee of a lot (in this section referred to as **the former lessee**) such amount by way of compensation, determined in accordance with the formula set out in Schedule 2 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee,
  - (d) all rights which were vested in the body corporate immediately before its dissolution (being rights which, but for the dissolution of the body corporate, would have survived the expiry of the term of the leases) are vested in the former lessees,
  - (e) the former lessees become jointly and severally liable for all of the liabilities of the body corporate subsisting immediately before its dissolution, and
  - (f) any legal proceedings begun by or against the body corporate may be completed



by or against the former lessees.

- (2) As soon as practicable after the termination of a leasehold strata scheme, the Registrar-General shall, on the application of the lessor under the scheme:
  - (a) cancel the folios of the Register for the leases of the lots and common property comprised in the scheme,
  - (b) cancel the strata plan relating to the scheme, and
  - (c) record on the folio of the Register relating to the parcel that was the subject of the scheme the fact that the scheme has terminated.
- (3) Where, in relation to a lot comprised in a leasehold strata scheme that is about to be terminated by virtue of subsection (1) or to a former lot that was comprised in a leasehold strata scheme that has already been so terminated, a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (1) (c) to the lessee or former lessee of that lot, that dispute shall be resolved:
  - (a) if the lease of that lot so provides or so provided or the parties to the dispute otherwise agree, by reference to arbitration under the [Commercial Arbitration Act 1984](#), or
  - (b) in any other case, by an order of the Supreme Court.
- (4) An application for an order under subsection (3) (b) may be made by any party to the dispute concerned.
- (5) Notice of the application shall be served, in accordance with rules of court, on such persons as the Supreme Court may direct.
- (6) As far as practicable, all applications which relate to the same leasehold strata scheme shall be heard together.
- (7) At any time before the expiry of the terms of leases of the lots and the common property (if any) comprised in a leasehold strata scheme, the lessee of any of those lots, the body corporate or any creditor of the body corporate may apply to the Supreme Court for an order under subsection (10).
- (8) Notice of an application under subsection (7) shall be served, in accordance with rules of court, on every person referred to in that subsection other than the applicant and on such other persons (including creditors of the body corporate) as the Supreme Court directs.
- (9) The person making an application under subsection (7) and any person referred to in subsection (8) (whether served with a copy of the notice of the application or not) is entitled to appear and be heard at the hearing of the application.

- (10) At the hearing of an application under subsection (7), the Supreme Court may make an order to the effect that, notwithstanding the expiry of the leases of the lots and common property (if any) the subject of the leasehold strata scheme concerned, the body corporate shall continue in existence for the purposes specified in the order until such date as may be specified in the order or in a further order of the Supreme Court.
- (11) An order made under subsection (10) may include directions for or with respect to any of 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,
  - (c) the termination of any development scheme that relates to the parcel and the cancellation of the development statement concerned,
  - (d) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person,
  - (e) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution,
  - (f) the administration and functions of the body corporate,
  - (g) any legal proceedings which have been brought by or against the body corporate and which are currently pending,
  - (h) the voting power at meetings of the body corporate of persons referred to in paragraphs (d) and (e),
  - (i) 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,
  - (j) the winding up of the body corporate (including the appointment and functions of any person to carry out the winding up).
- (12) An order under subsection (10) shall have effect according to its tenor notwithstanding any other provision of this Part.
- (13) The Supreme Court may, from time to time, vary any order made under subsection (10) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

### **38 Restrictions on re-entry or forfeiture of lease of lot**

- (1) Where the lease of a lot is subject to a registered mortgage, charge or covenant charge, a right of re-entry or forfeiture under a provision of the lease for a breach of any covenant, condition or agreement (express or implied) in the lease shall,

notwithstanding section 129 (6) of the *Conveyancing Act 1919*, not be exercised unless the lessor has served on the mortgagee, chargee or covenant chargee a copy of the notice relating to that breach served on the lessee under section 129 of that Act.

- (2) Where a lessor has brought legal proceedings to enforce a right of re-entry or forfeiture under a provision of a lease of a lot, the Supreme Court may, on application by any person claiming as mortgagee, chargee or covenant chargee of the lot make an order:
  - (a) staying those proceedings on such terms as appear to the Supreme Court to be just and equitable, and
  - (b) vesting, for the whole of the remaining term of the lease, or any shorter term, the lease of the lot in that person on such conditions as to the execution of any dealing or other document, payment of proper and reasonable rent, costs, expenses, damages, compensation, giving security or otherwise as that Court, having regard to all the circumstances of the case, thinks just and equitable.
- (3) An order under subsection (2):
  - (a) may be made in proceedings for the purpose brought by the person claiming as mortgagee, chargee or covenant chargee, or
  - (b) where the proceedings brought by the lessor are already in the Supreme Court, may be made in those proceedings.

## **Division 4 Conversion of leasehold strata scheme to freehold strata scheme**

### **39 Procedure for converting leasehold strata scheme**

- (1) Where:
  - (a) under the leases of the lots the subject of a leasehold strata scheme, the lessees have rights to acquire the lessor's reversion in those lots, or
  - (b) apart from those leases, the lessor confers on those lessees rights to acquire the lessor's reversion in those lots,

the body corporate may at a meeting duly convened for the purpose of ascertaining whether those rights are to be exercised, being a meeting held before the scheme is terminated (whether under section 37 or otherwise), pass a special resolution authorising the conversion of the leasehold strata scheme into a freehold strata scheme.

- (2) Rights of the kind referred to in subsection (1) shall not be exercised unless or until a special resolution has been passed in accordance with that subsection.

- (3) Where a special resolution has been passed in accordance with subsection (1) at the meeting, the lessees may exercise their rights to acquire from the lessor under the scheme the reversion in their respective lots.
- (4) If any lessee has not, within 6 weeks after the date of a meeting at which a special resolution is passed in accordance with subsection (1), acquired the reversion in the lessee's lot, the body corporate may, pursuant to a unanimous resolution and notwithstanding section 22, acquire the reversion in and the lease of the lot.
- (5) If the reversion in any lot has not, within 3 months after the date of that meeting, been acquired by the lessee of the lot or the body corporate, the lessor under the scheme may acquire the lease of the lot.
- (6) When there is no outstanding reversion in a lot the subject of the leasehold strata scheme concerned, the lessor under the scheme shall forthwith notify the Registrar-General in the approved form of:
  - (a) the passing of the special resolution authorising the conversion of the scheme, and
  - (b) the disposal of the reversionary estates in all lots the subject of that scheme.
- (7) If the reversion in any lot has not, within the period of 6 months after the date of that meeting, been disposed of in accordance with this section, the lessor under the scheme shall, at the expiration of that period, notify the Registrar-General in the approved form of:
  - (a) the passing of the special resolution authorising the conversion of the scheme,
  - (b) the disposal of the reversionary estates in the lots the subject of that scheme, being lots the reversion in which has been acquired or the leases of which have been acquired in accordance with this section, and
  - (c) the identity of any lot the reversion in which, or lease of which, has not been so acquired.
- (8) Any notification required by this section to be given by the lessor under the scheme may be given by the body corporate or any lessee or other person and, if it is so given, shall be deemed to have been given by that lessor.

#### **40 Effect of merger of leasehold estate with lessor's reversion**

- (1) On receipt of a notification given in accordance with section 39 and an application in the approved form before the leasehold strata scheme to which they relate is terminated (whether under section 37 or otherwise), the Registrar-General shall, if satisfied that the application has been duly made, make such recordings in the Register to effect the merger of leasehold and reversionary estates as the Registrar-General considers appropriate and, when those recordings are made:

- (a) the leasehold strata scheme shall become a strata scheme within the meaning of the *Strata Schemes (Freehold Development) Act 1973*,
  - (b) the strata plan relating to the scheme shall become a strata plan within the meaning of that Act,
  - (c) each former lot shall become a lot within the meaning of that Act and, except as provided by paragraph (e), shall vest in the former lessee of the lot for an estate in fee simple,
  - (d) the former common property (if any) shall become common property within the meaning of that Act and, except as regards any lease acquired by the body corporate under section 22, shall vest in the body corporate for an estate in fee simple,
  - (e) the fee simple estate in any lot in relation to which a merger has not been recorded in the Register shall be held subject to the former lease of the lot,
  - (f) any registered mortgage, charge, covenant charge, easement, restriction on the use of land or positive covenant conferring or imposing rights or obligations with respect to the former leases of lots or the former lots shall confer or impose equivalent rights or obligations with respect to the lots created,
  - (g) any registered easement, restriction on the use of land or positive covenant conferring or imposing rights or obligations with respect to the former common property shall confer or impose equivalent rights or obligations with respect to the common property created, and
  - (h) except as provided by paragraph (e), the former leases of each former lot and the former lease of the former common property (if any) are determined.
- (2) When lots and common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973* are created by subsection (1), that Act applies to and in respect of those lots and that common property and the Registrar-General shall record in a folio of the Register for each lot particulars of all estates and interests affecting that lot by virtue of subsection (1).

## **Division 5 Staged development**

### **41 Explanation of staged development** (1973 Act, s 28A)

- (1) The purpose of this Division is to facilitate the development of a parcel that is subject to a leasehold 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 leasehold 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 leasehold strata scheme and other persons having estates or interests in lots included in the parcel must allow it to be carried out in accordance with the contract.

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

#### **42 Obligations of consent authorities** (1973 Act, s 28B)

- (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.

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

- (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 57A) govern both the non-strata land and the parcel, and
  - (c) indicate that, if the strata management statement is registered in accordance with Division 5A, 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.

**44 Concept plan** (1973 Act, s 28D)

- (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.

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

- (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of the common property of the leasehold strata scheme concerned differently from the way that liability would otherwise be apportioned by the schedule of unit entitlement applicable to lots under the scheme.
- (2) An apportionment under this section has effect despite the current schedule of unit entitlement, but does not apply to any liability that relates to the use or maintenance of the common property after the development scheme is concluded.

**46 Signing of strata development contract and amendments** (1973 Act, s 28F)

- (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 has been signed by:
  - (a) the developer for the development lot, and
  - (b) the lessor under the leasehold strata scheme concerned, and
  - (c) each registered mortgagee, chargee and covenant chargee of the lease of the development lot, and
  - (d) each registered mortgagee and chargee of a sublease of the development lot.
- (2) A strata development contract must be lodged with the certificate (if any) required to be given by section 42 (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 that have been signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:
  - (a) the judgment creditor under any writ recorded in the folio for the land comprised in the strata plan or for the lease or a sublease of the development lot concerned,
  - (b) the sublessee under any sublease of the common property of the leasehold strata scheme concerned,



(c) the caveator under a caveat affecting any estate or interest of any person required to sign the contract because of that estate or interest or under a caveat affecting any such common property.

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

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

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

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

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

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

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

(a) the existence of the contract and of any subsequent amendment of it that is registered from time to time, and

(b) such information relating to the contract and any amendment of the contract as the Registrar-General considers appropriate.

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

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

(a) the developer concerned, or

(b) the lessor under the scheme, or

(c) a lessee (other than that developer) or a sublessee of a lot, or

(d) a registered mortgagee, chargee or covenant chargee, or an occupier, of a lot or a registered or enrolled mortgagee or chargee of a lease of a lot.

(2) The contract ceases to have effect:

- (a) in relation to a person described in subsection (1) (a), (b), (c) or (d), on that person ceasing to be a person so described, and
- (b) in relation to all of the persons described in subsection (1), when the development scheme to which the contract relates is concluded.

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

- (3) A strata development contract does not permit development to be carried out in contravention of this or any other Act or any other law.
- (4) A sublessee entitled under a sublease to immediate possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned.
- (5) A mortgagee, chargee or covenant chargee in possession of a development lot is taken to be the developer, and the person who would otherwise be the developer is taken not to be the developer, for the purposes of this Act, the regulations and the strata development contract concerned.
- (6) A provision in any other contract or instrument under which a strata development contract is excluded, modified or restricted is void.
- (7) A covenant entered into under a strata development contract does not merge on transfer of a lease of a lot.
- (8) Nothing in this section affects any right or remedy a person may have apart from a right or remedy under a strata development contract, with the exception that Part 5 does not apply to matters arising under any such contract.

**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 57F (6A).

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

- (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 lessee of lots in the leasehold strata scheme concerned, supported by a unanimous resolution of the body corporate of the leasehold strata scheme concerned.
- (3) An amendment proposed in order to give effect to a change in the law or a change in the requirements of a consent authority (but that does not involve a change in the basic architectural or landscaping design of the development, or in its essence or theme) may be made only if it is:
- (a) approved by the consent authority (if any), and
  - (b) notified to:
    - the body corporate of the leasehold strata scheme concerned, and
    - the lessee of each lot in that scheme (other than the developer), and
    - each registered or enrolled mortgagee, chargee and covenant chargee of a lease of a lot in that scheme, and
    - each registered or enrolled sublessee of a lot in that scheme.
- (4) Any other proposed amendment that would require a change in the terms of a development consent may be made only if it is:
- (a) approved by the consent authority, and
  - (b) supported by a special resolution of the body corporate of the leasehold strata scheme concerned.
- (5) Any other proposed amendment that would not require a change in the terms of a development consent may be made only if:
- (a) it is supported by an ordinary resolution of the body corporate of the leasehold strata scheme concerned, and
  - (b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the consent authority (if any), to the effect that a change in the terms of any development consent is not required.

- (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.

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

- (1) An amendment of a strata development contract is not required to be supported by a resolution of a body corporate if the amendment is approved by the Land and Environment Court.
- (2) Such an approval may be given only if the Court is satisfied:
  - (a) that a motion supporting the amendment has been defeated, or
  - (b) that the notice of intention to move such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice, or
  - (c) that the consent to the amendment of a mortgagee, chargee or covenant chargee or of a sublessee has been sought but has been refused.
- (3) An application for such an approval must be served on:
  - (a) the consent authority, and
  - (b) the body corporate, and
  - (c) each person (other than the applicant) who is the lessee of a development lot, and
  - (d) each registered or enrolled mortgagee, chargee, covenant chargee and sublessee of a lot in the leasehold strata scheme concerned.

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

- (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*.

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

- (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 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.

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

- (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.

**55 What are “development concerns”?** (1973 Act, s 280)

- (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.

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

- (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 lessees of not fewer than one quarter of the lots in the leasehold strata scheme concerned that are not development lots.

- (3) In convening any such extraordinary general meeting, the developer or any of those lessees may give notice of the meeting on behalf of the council of the body corporate.
- (4) The presence of the developer (or, if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the body corporate or of the council of the body corporate of which notice has been duly given, but only while business relating to a development concern is being dealt with.
- (5) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or, if the developer is a corporation, the company nominee of the corporation) may exercise such of the other functions of a body corporate bound by the contract or of any other person having functions under the leasehold strata scheme concerned as may be prescribed by the regulations.
- (6) This section has effect despite any other provision of this Act.

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

- (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, that complies 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 57AA by an order of the Land and Environment Court,
  - (f) the leasehold strata scheme concerned is terminated under Part 3 by an order of the Supreme Court.
- (2) A strata development contract must predict a time, being no later than the tenth anniversary of the day on which the contract was registered, as the time for conclusion of the development scheme to which it relates.

- (3) A notice complies with this subsection only if:
  - (a) it has been signed by the developer concerned, and
  - (b) it has been signed by the lessor under the scheme, except where the lessor is the developer, and
  - (c) it has been signed by each registered mortgagee, chargee, covenant chargee and sublessee of the development lot, and by each registered mortgagee and chargee of a lease of that lot, and
  - (d) it is lodged with a certificate, given in the approved form by the body corporate for the strata scheme concerned, certifying that the relevant agreement is supported by a unanimous resolution of the body corporate.
- (4) The Registrar-General is required to make an appropriate record of the conclusion of a development scheme in the folio for the body corporate and the lease of the common property (if any) of the leasehold strata scheme concerned.
- (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 57AAA, the Registrar-General must record it as the schedule of unit entitlement in substitution for the existing schedule of unit entitlement for the scheme.

**57AAA 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 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 registered valuer under the [Valuers Act 2003](#).

**57AA Order for extension or conclusion of development scheme** (1973 Act, s 28QA)

- (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) the lessor under the scheme, except where the lessor is the developer, and
  - (c) each lessee (other than that developer) of a lot, each registered or enrolled mortgagee, chargee, covenant chargee and sublessee of a lot and each registered mortgagee and chargee of a lease of a lot, and
  - (d) the body corporate, and
  - (e) the consent authority (if any) that granted the relevant development consent, and
  - (f) the Registrar-General, and
  - (g) such other persons (if any) as the Land and Environment Court may direct.
- (3) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application.
- (4) An order under this section may:
  - (a) contain such provisions relating to the leasehold strata scheme as are, in the opinion of the Land and Environment Court, necessary because of the conclusion of the development scheme, and
  - (b) require the payment of money to or by the body corporate or the lessees of lots to any one or more of them in addition to, or instead of, any award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the [Land and Environment Court Act 1979](#), and

(c) contain such other provisions and make such other requirements as, in the opinion of the Land and Environment Court, are just and equitable in the circumstances of the case.

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

**57AB Application for assistance** (1973 Act, s 28QB)

(1) A body corporate or a lessee 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 49, or

(c) a development consent granted in accordance with section 42 (1) or a modification of such a development consent.

(2) After receipt of such an application, the 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***.

**57AC Investigation of application for assistance** (1973 Act, s 28QC)

(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.

**57AD Power of entry** (1973 Act, s 28QD)

- (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 leasehold strata scheme concerned at any reasonable time on notice given to any occupier of that lot and may enter the common property at any time whether or not on giving notice.
- (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.

**57AE Application of [Fair Trading Act 1987](#) to applications for assistance** (1973 Act, s 28QE)

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 under section 214 of the [Strata Schemes Management Act 1996](#) 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.

**57AF Grant of legal assistance** (1973 Act, s 28QF)

- (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*.

**57AG Resolution authorising application by body corporate** (1973 Act, s 28QG)

- (1) A body corporate authorised to do so by a resolution of the body corporate passed at a duly convened general meeting may:
  - (a) make an application for assistance, or
  - (b) bring proceedings referred to in section 123 of the *Environmental Planning and Assessment Act 1979* or section 20 (1) (e) of the *Land and Environment Court Act 1979* relating to:
    - a strata development contract or an amendment of such a contract, or
    - a development consent granted in accordance with section 42 (1) of this Act or a modification of such a development consent.
- (2) Any vote cast by the developer concerned (whether as lessee of a lot or as mortgagee, covenant chargee or proxy) or by a mortgagee of the developer concerned (whether as a mortgagee, covenant chargee or proxy) is to be disregarded when determining whether such a resolution has been passed.
- (3) The carrying out of development in contravention of a condition of a development consent granted under any other Act is taken to be a breach of the *Environmental Planning and Assessment Act 1979* for the purposes of:

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

**57AH Functions of Director-General** (1973 Act, s 28QH)

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 5A Strata management statements**

**57A Requirement for strata management statement** (1973 Act, s 28R)

- (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 waive the requirement for a strata management statement:
  - (a) 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.
- (3) The Registrar-General may register a strata management statement for a building and its site at any time part of the building is included in a stratum parcel but is not the subject of such a statement.

**57B Formal requirements** (1973 Act, s 28S)

- (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 2A 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.

**57C Registration of strata management statement** (1973 Act, s 28T)

- (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 leasehold 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 leasehold strata scheme for part of the building concerned, and
  - (b) for each fee simple and leasehold estate that is recorded in a folio of the Register for a part of the building or site concerned that does not form part of a stratum parcel.

**57D Amendment of strata management statement** (1973 Act, s 28U)

- (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 leasehold strata scheme for part of the building concerned and by each person in whom is vested an estate in fee simple or a leasehold estate, recorded in a folio of the Register kept under the *Real Property Act 1900*, 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 leasehold strata scheme for part of the building concerned, and
  - (b) for each freehold and leasehold estate in a part of the building or site concerned that does not form part of a stratum parcel.

**57E Signing of strata management statement** (1973 Act, s 28V)

- (1) The Registrar-General may register a strata management statement or any amendment of such a statement only if the statement or amendment:
  - (a) is lodged with a certificate given by the secretary of the body corporate for each leasehold 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) has been signed by each person in whom is vested an estate in fee simple or a leasehold estate, 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) has been 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 judgment creditor under any writ recorded in any such folio or the lessee under any lease, or the judgment creditor under any writ, recorded 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 or lessee, 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.

**57F Effect of strata management statement** (1973 Act, s 28W)

- (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 leasehold strata scheme for part of the building, or
- (b) a proprietor, mortgagee in possession or lessee 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, 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 leasehold 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 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 lease 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 6 Compulsory acquisition of lots and common property**

### **58 Definition** (1973 Act, s 29)

In this Division, **land** does not include an easement.

### **59 Resumptions affecting parcels** (1973 Act, s 30)

- (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 the leasehold estate or leasehold estate and reversion in all the lots the subject of a leasehold strata scheme unless the resumed land also includes the leasehold estate or leasehold estate and reversion in 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 the leasehold estate or leasehold estate and reversion in 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 leasehold 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 it includes a statement or otherwise indicates 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 includes or 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 leasehold 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:
    - (i) it includes or is accompanied by a statement that it is intended that the land to be resumed will be excluded from the leasehold 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 leasehold strata scheme, it is accompanied by a certified or office copy of the minute of an order made by the Supreme Court under section 61, 79 or 80 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 leasehold strata scheme, by a certified or office copy of the minute of an order made by the Supreme Court under section 80 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 that includes a statement referred to in subsection (3) (a), may be registered notwithstanding section 19, or
  - (b) a current plan, being a plan that includes a statement referred to in subsection (3) (b), may be registered notwithstanding section 195D (1) of the [Conveyancing Act 1919](#),

if the plan or an approved form for signatures lodged in that office with the plan has been signed or sealed by or on behalf of the resuming authority.

**60 Effect of resumption** (1973 Act, s 31)

- (1) Except in the case of a resumption referred to in section 59 (1) (b) the notice of which contained a statement referred to in section 59 (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 59 (1) (b) contains a statement referred to in section 59 (2) (a) or a notice of resumption referred to in section 59 (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 59 (3) (b) (i)), the part of the resumed land that does not consist of common property ceases to be subject to the leasehold strata scheme concerned and the provisions of this Act cease to apply thereto.
- (3) Where a notice of resumption referred to in section 59 (1) (b) contains a statement referred to in section 59 (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 leasehold estate or leasehold estate and reversion in the lots subject to the resumption by registration under the *Real Property Act 1900* of a transfer.
- (4) Where a notice of resumption referred to in section 59 (1) (c) contains a statement referred to in section 59 (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.

**61 Readjustment of leasehold strata scheme for purposes of resumption** (1973 Act, s 32)

- (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 the leasehold estate or leasehold estate and reversion in 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 leasehold 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 the lessor under the scheme and every registered lessee, mortgagee and covenant chargee of a lease of a lot the subject of the leasehold 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 59 (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 the person has been served with a notice of the application), the resuming authority, the lessor under the scheme and any lessee, mortgagee and covenant chargee 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 leasehold strata scheme concerned, the designation as a lot of the residue of any such lot,
  - (c) the amendment of any strata development contract that relates to the parcel,
  - (d) 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 leasehold strata scheme concerned or remain subject to that scheme, according to the terms of the order,
  - (e) with the consent of the lessor and the lessee 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
  - (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.
- (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 79 or 80, 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 79 (1) or 80 (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 79 (1) or 80 (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.

**62 Common property not to pass with lot or part of lot in certain circumstances** (1973 Act, s 33)

A resuming authority does not acquire any interest in common property the subject of a leasehold 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 59 (2) (a).

**63 Severance of lots by resumption** (1973 Act, s 34)

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 lessees under the scheme 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 those lessees.

**63A 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.

**64 Resumptions where resuming authority not bound by this Act** (1973 Act, s 35)

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 79, as if the building had been damaged or destroyed, or under section 80.

## **Division 7 Strata certificates**

**65 Other Acts not to apply to subdivisions under Division 1** (1973 Act, s 36)

- (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.

**65A Persons who may apply for strata certificate**

An application for a strata certificate may only be made:

- (a) by the owner of the land to which the application relates, or
- (b) by any other person, with the consent in writing of the owner of that land.

**66 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property** (1973 Act, s 37)

- (1) Subject to this Division, a local council must, 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:
  - (a) where 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, and
  - (b) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi), (vii) and (viii) are satisfied:
    - (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 the strata plan relates,

- (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,
  - (iii) any such building was completed not more than 12 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 made to the certifier,
  - (iv) separate occupation of the proposed lots illustrated by the strata 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,
  - (v) 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,
  - (vi) having regard to the circumstances of the case and the public interest, the local council is satisfied that the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood,
  - (vii) 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 (1A),
  - (viii) 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 121ZK of that Act and the Land and Environment Court has refused to confirm the order.
- (1A) For the purposes of subsection (1) (b) (vii), 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) Subject to this Division, a local council must, 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:

- (a) the requirements of subsection (1) (a) and (b) are satisfied, and
- (b) the plan and any building containing proposed lots to which the plan relates:
  - (i) satisfy any applicable development consent conditions, and
  - (ii) give effect to the stage of the strata development contract to which they relate.

(3) 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 4 (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 21 days after the notice was sent) specified in the notice.

(4) A local council may after the expiration of the time specified in the notice sent under subsection (3) 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 leasehold 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 leasehold strata scheme concerned, and
- (c) the matters specified in subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1) 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.

(5) 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 4 (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) (iv), (v) and (vi), as if the reference in subsection (1) to a proposed strata plan were a reference to the plan illustrating the proposed subdivision,

issue the strata certificate applied for.

(6) 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.

(7) 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) (vi) (as required by subsections (1), (2) (a), (4) (c) and (5) (b)),
- (b) the matters set out in subsection (4) (b),
- (c) the matters set out in subsection (6) (b).

(7A) For the purposes of subsections (1), (2), (4), (5) and (7), if an Act provides that Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply to the carrying out of the development on the land to which the strata plan relates, a reference in subsection (1) (b) (iv) or (v) to the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument is taken to be a reference to the Act under which development consent to the carrying out of development on that land may be granted or an instrument made under that Act as the case requires.

(8) 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.

(9) In subsection (8):

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

#### **66A 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:
  - (a) there is a relevant development consent in force, and
  - (b) 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, and
  - (c) where 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, and
  - (d) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi) and (vii) are satisfied:
    - (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 the strata plan relates,
    - (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,

- (iii) any such building was completed not more than 12 months, or such longer period as the relevant local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
  - (iv) separate occupation of the proposed lots illustrated by the strata 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,
  - (v) 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,
  - (vi) 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 section 66 (1A),
  - (vii) if the relevant 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 121ZK of that Act and the Land and Environment Court has refused to confirm the order.
- (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:
- (a) the requirements of subsection (2) (a)–(d) are satisfied, and
  - (b) the plan and any building containing proposed lots to which the plan relates:
    - (i) satisfy any applicable development consent conditions, and
    - (ii) give effect to the stage of the strata development contract to which they relate.
- (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 4 (7) (a) if:
- (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied (as if the reference in subsection (2) (d) (iv) or (v) is a reference to the plan to which the application for certification relates), and

- (b) the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision.
- (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 4 (7) (b), (c) or (d) if:
  - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied (as if the reference in subsection (2) (d) (iv) or (v) is a reference to the plan illustrating the proposed subdivision), and
  - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if:
  - (a) the requirements of subsection (2) (a) and (b) are satisfied, and
  - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed conversion.
- (7) For the purposes of subsections (2)-(5), if an Act provides that Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply to the carrying out of the development on the land to which the strata plan relates, a reference in subsection (2) (d) (iv) or (v) to the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument is taken to be a reference to the Act under which development consent to the carrying out of development on that land may be granted or an instrument made under that Act as the case requires.
- (8) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless all regulations with respect to the provision of such certificates have been complied with.

#### **66AA Requirements relating to issue of strata certificates**

A council or accredited certifier is to be satisfied before issuing a strata certificate that any inspections required by the regulations have been carried out.

#### **66B 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.

#### **66C 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.

#### **66D 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.

### **66E Accreditation of certifiers**

- (1) The provisions of Parts 2, 3, 4 and 5 and Divisions 1, 3 and 4 of Part 6 and Parts 7 and 8 of the *Building Professionals Act 2005*, and the regulations made under that Act for the purposes of those provisions, apply, 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 exercise of functions under this Act by accredited certifiers.
- (2) Without limiting subsection (1), the provisions of the *Building Professionals Act 2005* and the regulations under that Act referred to in that subsection apply to a strata certificate in the same way as those provisions apply to a Part 4A certificate under the *Environmental Planning and Assessment Act 1979*.

### **66F Insurance of accredited certifiers**

The provisions of Division 2 of Part 6 of the *Building Professionals Act 2005*, and the regulations made under that Act for the purposes of those provisions, apply, 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 within the meaning of the *Environmental Planning and Assessment Act 1979*.

### **67 Encroachments** (1973 Act, s 38)

- (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 a public place but may issue a strata certificate in respect of such a plan if:
  - (a) the plan clearly indicates the existence of the encroachment and its nature and extent, and
  - (b) (Repealed)
  - (c) it is satisfied that 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:
  - (a) the plan clearly indicates the existence of the encroachment and its nature and

extent, and

(b) either one of the following matters is satisfied:

(i) the building complies with any relevant development consent in force with respect to the building with the encroachment,

(ii) any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment.

(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 local council must not issue a strata certificate under section 66 (1), (2), (4) or (5) 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 66A (2), (3), (4) or (5) unless the certificate refers to the existence of the encroachment and indicates:

(i) the local council has granted a relevant development consent that is in force for the building with the encroachment, or

(ii) 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.

### **68 Utility lots** (1973 Act, s 39)

(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 66 in respect of that plan by attaching a condition restricting the use of that utility lot or those utility lots to use by a lessee or occupier of a lot or proposed lot, not being such a utility lot, the subject of the leasehold 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 lessor under the scheme and by the lessee of or a registered mortgagee of a lease 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.

**69 Notices of and appeals against refusal of approval** (1973 Act, s 40)

- (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 68 (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 66 (3) where a notice was sent under section 66 (3), after the expiration of the time referred to in the notice,
- the applicant may, within 12 months after the date on which the applicant received notice of the local council's decision or after the expiration of that period of 14 days, as the case may be, appeal to the Land and Environment Court.
- (c), (d) (Repealed)
- (5) An appeal may be made under subsection (4) to the Land and Environment Court even though the period for commencing the appeal has expired, but only if the Court allows the appeal to be so made because of special circumstances.
- (6) 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 8 Powers and duties of Registrar-General**

### **70 Registration of plans and notices** (1973 Act, s 41)

- (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.
- (2) Except as provided by sections 8 (3) and 12 (3), 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, such recordings with respect to the plan as the Registrar-General considers appropriate.
- (3)-(5) (Repealed)
- (6) 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 the Registrar-General considers appropriate.
- (7) 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 such other plans and documents, if any, as may be prescribed have been lodged with the plan or notice.

**71 Provisions applying to strata plans and certain other documents** (1973 Act, s 42)

- (1) The provisions of sections 195F, 195H, 195J (2), 196 and 196AA 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) The Registrar-General may cause a true copy of any plan, strata development contract or strata management statement or amendment of a strata development contract or strata management statement registered under this Act, or of a copy of such a plan, strata development contract or strata management statement 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 same validity and effect as the original plan, contract, statement or amendment to which it relates.
- (3) The Registrar-General may destroy, or cease to retain in electronic form, any plan, strata development contract or strata management statement or amendment of a strata development contract or strata management statement, or copy of a plan, strata development contract or strata management statement or amendment, a copy of which has been made under subsection (2).

**72 Registrar-General's power to adjust unit entitlements** (1973 Act, s 43)

- (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 57AAA, the Registrar-General may, when registering the plan, record in the folio of the Register for the lease of 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 leasehold strata scheme, the Registrar-General may amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property or revised schedule of unit entitlements recorded under section 57AAA:
  - (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 entitlement and aggregate unit entitlement recorded.

**73 Recording of condition restricting use imposed by local council** (1973 Act, s 44)

- (1) Where a strata certificate issued by a local council under section 66 is qualified by attaching, in accordance with section 68, a condition restricting use of a lot, the Registrar-General shall, when creating a folio of the Register for the lease of the lot, suitably record the condition therein.
- (1A) If a strata certificate issued by an accredited certifier under section 66A is qualified by noting, in accordance with section 68, 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 the office of the Registrar-General of an instrument referred to in section 68 (4), the Registrar-General shall make such recordings in the Register with respect to it as the Registrar-General considers appropriate and thereupon the utility lot to which the instrument relates is released from the restriction referred to in the instrument.

**74 Prohibition on recordings in the Register in certain circumstances** (1973 Act, s 45)

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 59 (3), the Registrar-General shall not:

- (a) create a folio of the Register for the lease of any lot comprised in that strata plan of subdivision or the lease of any current plan lot, as defined in section 6 (1), in that current plan, or

- (b) make any recording in the Register by reference to any such lot or current plan lot,

until the Registrar-General 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.

**75 Certain recordings to be made by Registrar-General** (1973 Act, s 46)

- (1) Where the Registrar-General registers a strata plan of subdivision that is not a plan referred to in section 74, or where the Registrar-General registers a strata plan of consolidation, the Registrar-General shall:

- (a) cancel the folio of the Register for the lease of any former lot subdivided or consolidated by the registration of the plan,
  - (b) create a folio of the Register for the lease of each new lot created by the subdivision or consolidation, and
  - (c) amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property the subject of the leasehold strata scheme concerned by making such recordings in that folio as the Registrar-General thinks fit.
- (2) Where the Registrar-General registers a notice of conversion of a lot into common property, the Registrar-General shall:
- (a) cancel the folio of the Register for the lease of the converted lot, and
  - (b) amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property the subject of the leasehold strata scheme concerned by making such recordings in that folio as the Registrar-General thinks fit.

**76 Duties of Registrar-General where resumed land remains subject to strata scheme** (1973 Act, s 47)

- (1) Where the leasehold estate or leasehold estate and reversion in the whole of a lot (not being a lot in a strata plan of subdivision referred to in section 74) is resumed and the notice of resumption contains a statement referred to in section 59 (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 relating to the resumed lot.
- (2) Where the leasehold estate or leasehold estate and reversion in the whole of a lot in a strata plan of subdivision referred to in section 74 is resumed and the notice of resumption contains a statement referred to in section 59 (2) (b) corresponding to the statement referred to in section 59 (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) amend the schedule of unit entitlement recorded in the folio of the Register for the lease of the common property the subject of the leasehold strata scheme concerned by making such recordings in that folio as the Registrar-General thinks fit, and
  - (b) make such other recordings in the Register and create such folios of the Register as appear to the Registrar-General to be appropriate.

**77 Duties of Registrar-General where resumed land is excluded from strata scheme** (1973

Act, s 48)

- (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 folios of the Register for the leasehold estate and reversion in 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 59 (2) (a) corresponding to the statement referred to in section 59 (3) (b) (i), the Registrar-General shall, where the Registrar-General 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 the Registrar-General to be necessary or proper to give effect to the order of the Supreme Court made under section 61, 79 or 80 with respect to the land resumed and the leasehold strata scheme concerned.

**78 Notice to produce electronic form plans and other documents** (1973 Act, s 49)

- (1) As soon as is practicable after a written demand of the Registrar-General requiring its production is served on a person who has lodged a plan or other document in electronic form for the purposes of this Act, the person is required to produce to the Registrar-General:
  - (a) an electronically formatted version or a hard copy version of the plan, as directed by the Registrar-General, or the original hard copy version of the other document, in each case as it was when the plan or other document was lodged electronically, and
  - (b) in the case of a plan, the approved form for signatures on which the signatures, seals, certificates, consents or other approvals required to authenticate, or to authorise the registration or recording of, the plan were endorsed.
- (2) This section applies only to a written demand served:
  - (a) in the case of a plan or other document lodged for the purpose of its being registered or recorded, while the plan or other document is so lodged, or
  - (b) in the case of a plan or other document that has been lodged otherwise than for the purpose of its being registered or recorded, before the period prescribed by the regulations (or any shorter period agreed to by the Registrar-General) has expired after the plan or other document was lodged, or
  - (c) in the case of a plan or other document that has been registered or recorded, before the period prescribed by the regulations (or any shorter period agreed to by the Registrar-General) has expired after the plan or other document has been registered or recorded.

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

### **79 Variation of leasehold strata scheme consequent on damage to or destruction of building** (1973 Act, s 50)

- (1) Where a building is damaged or destroyed:
  - (a) the lessor under the leasehold strata scheme concerned or any lessee of a lot the subject of the scheme,
  - (b) where the lease of any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee, or
  - (c) the body corporate,may make an application to the Supreme Court for an order under subsection (4).
- (2) Notice of the application 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 served with 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 leasehold strata scheme or the substitution for the existing scheme of a new 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:
    - (i) an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 80 (11), is treated as an application for an order under this section, or
    - (ii) an application authorised by section 64,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,
  - (c) the amendment of any strata development contract that relates to the parcel,
  - (d) the transfer to or vesting in the body corporate, free from mortgages, charges, covenant charges and writs, of the interests of lessees of lots which have been wholly or partly destroyed,
  - (e) the application of any insurance money received by the body corporate in respect of damage to or the destruction of the building or, in the case of a stratum parcel, the part of the building subject to the scheme,
  - (f) the payment of money to or by the body corporate, the lessor under the scheme or the lessees or any one or more of them,
  - (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,
  - (h) where the order is made pursuant to an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 80 (11), is treated as an application for an order under this section, any matter referred to in section 61 (4), and
  - (i) where the application for the order is authorised by section 64, any matter referred to in section 61 (4) (a), (b) or (e).
- (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 80, and
  - (b) where it makes such a direction:
    - (i) the application the subject of the direction shall be deemed to be made under section 80 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 80, 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 61 which, under section 61 (7) or under sections 61 (7) and 80 (11), 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.

**80 Termination of leasehold strata scheme** (1973 Act, s 51)

- (1) An application to the Supreme Court for an order under subsection (5) may be made by:
  - (a) the lessor under the scheme or any lessee of a lot the subject of the leasehold strata scheme concerned,
  - (b) where the lease of any such lot is subject to a mortgage or covenant charge—the mortgagee or covenant chargee, or
  - (c) the body corporate.
- (2) An application 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 leasehold strata scheme concerned be transferred to the authority.
- (3) Notice of the application 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.
- (4) The applicant and any person referred to in subsection (3) (whether or not served with notice of the application) shall be entitled to appear and be heard on the hearing of the application.
- (5) The Supreme Court may, on an application made under subsection (1), make an order terminating the leasehold strata scheme concerned.
- (6) An order made under subsection (5) 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:
    - (i) an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 79 (8), is treated as an application for an order under this section,
    - (ii) an application under subsection (1) in relation to a proposed resumption of the leasehold estates or leasehold estates and reversion in all the lots and in all the common property the subject of a leasehold strata scheme, or
    - (iii) an application authorised by section 64,on the day on which the resumption referred to in the order takes effect.
- (7) An order made under subsection (5) 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,
  - (c) the termination of any development scheme that relates to the parcel and the cancellation of the strata development contract concerned,
  - (c1) 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,
  - (d) the persons liable to contribute money required for the discharge of the liabilities of the body corporate and the proportionate liability of each such person,
  - (e) the distribution of the assets of the body corporate and the proportionate entitlement of each person under that distribution,
  - (f) the administration and functions of the body corporate,
  - (g) the voting power at meetings of the body corporate of persons referred to in paragraph (d) or (e),
  - (h) 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
  - (i) the winding up of the body corporate (including the appointment and functions of any person to carry out the winding up).
- (8) Upon an order under this section taking effect:

- (a) the estate or interest of the former lessees in that part of the former parcel which consisted of common property vested in the body corporate as agent for the former lessees 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 sublease, evidencing the estate or interest of the body corporate in that common property or in the relevant folio of the Register created under section 25 (1),
  - (b) the estates or interests of every lessee 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 25 (1),to the extent that the estate or interest so recorded was capable of affecting the lease of any former lot,
  - (c) the persons who, immediately before the order took effect, were lessees of lots the subject of the leasehold strata scheme concerned cease to be lessees of lots subject to that scheme,
  - (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, and
  - (e) if the leases so provided or it is provided in any other agreement, the former lessor under the scheme is liable to pay to each former lessee such amount by way of compensation, determined in accordance with the formula set out in Schedule 2 or as otherwise agreed by the former lessor and former lessee, in respect of the value of the improvements comprised within the former parcel as is attributable to the lot leased by the former lessee.
- (9) The provisions of an order made under this section shall have effect notwithstanding any provision of this Act, other than this section.
- (10) An order made under subsection (5) shall have effect according to its tenor.
- (11) Where the Supreme Court is of the opinion that an order should not be made under subsection (5):
- (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 79, 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 79 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 79, is entitled to appear and be heard on the hearing of the application.
- (12) The costs of any proceedings under this section:
- (a) pursuant to an application made under section 61 which, under section 61 (7) or under sections 61 (7) and 79 (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 the leasehold estate or the leasehold estate and reversion in all the lots and in all the common property the subject of a strata scheme,
- shall be payable by the resuming authority, unless the Supreme Court otherwise orders.
- (13) The Supreme Court may, from time to time, vary any order made under subsection (5) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.
- (14) Where, in relation to a former lot that was comprised in a leasehold strata scheme that has been terminated by an order made under subsection (5), a dispute arises as to the amount to be paid in respect of the value of improvements under subsection (8) (e) to the former lessee of that lot, that dispute shall be resolved:
- (a) if the lease of the lot so provided or the parties to the dispute otherwise agree, by reference to arbitration under the [Commercial Arbitration Act 1984](#), or
  - (b) in any other case, by an order of the Supreme Court.
- (15) An application for an order under subsection (14) (b) may be made by any party to the dispute concerned.
- (16) Notice of an application for an order under subsection (14) shall be served, in accordance with rules of court, on such persons as the Supreme Court may direct.
- (17) As far as practicable, all applications which relate to the same leasehold strata scheme shall be heard together.

**80A Termination of leasehold strata scheme and leases by Registrar-General** (1973 Act, s 51)

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

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

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

- (2) An application must relate to a parcel that is not subject to a strata development contract.
- (3) Except where the Registrar-General agrees otherwise, the application must be signed by:
  - (a) the lessor under the scheme, and
  - (b) each registered lessee and sublessee of a lot under the scheme, and
  - (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease or sublease of a lot or of the common property (if any) under the scheme.
- (4) The application must bear the consent of the consent authority (if any) for subdivision of the land to which it relates.
- (5) Details of the proposed termination, and a statement of intention to make the application, must, except where the Registrar-General otherwise agrees, be published at least 14 days before the application is made:
  - (a) in a daily newspaper circulating generally in Sydney, and
  - (b) in a local newspaper circulating generally in the area in which the parcel is situated, and
  - (c) in the Gazette.
- (6) The application must be accompanied by:
  - (a) the certificates of title for all the leases of lots in the scheme, the registered leases of those lots and the lease of the common property (if any), except where the Registrar-General agrees otherwise, and
  - (b) such other documents, consents and evidence as the Registrar-General may require, and
  - (c) if the Registrar-General so requires, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of Part 23 of the [Conveyancing Act 1919](#).

- (7) An order terminating a leasehold strata scheme takes effect on being recorded by the Registrar-General in the folio for the land comprising the parcel.
- (8) When an order terminating a leasehold strata scheme takes effect:
- (a) the body corporate is dissolved and the leasehold strata scheme is terminated, and
  - (b) the former leases of each former lot and the former lease of the common property (if any) are determined, and
  - (c) the persons who, immediately before the order took effect, were lessees or sublessees of the lots the subject of the leasehold strata scheme cease to be lessees or sublessees of the lots subject to that scheme, and
  - (d) the former lessees of the lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots, and
  - (e) any legal proceedings begun by or against the body corporate may be completed by or against the former lessees, and
  - (f) the assets of the former body corporate immediately before the order took effect vest in the former lessor under the scheme or, if the application so provides, in the former lessees as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former lessees or such other proportions as may be set out in the application), and
  - (g) the land that comprises the former parcel is vested in the former lessor under the scheme freed and discharged from any mortgage or charge registered, immediately before termination of the scheme, in the folio for a lease of a lot or the common property (if any) under the former scheme.
- (9) On recording an order terminating a leasehold strata scheme, the Registrar-General:
- (a) is to cancel the folios for the leases and any subleases of lots and the lease of the common property (if any) in the former parcel, and
  - (b) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences.

**81 Interchangeability of notices** (1973 Act, s 52)

Any notice served under section 61, 79 or 80 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.

**82 Consequences of making an order under section 79 or 80** (1973 Act, s 53)

- (1) Except as provided in section 77 (2), upon receipt of a certified or office copy of the

minute of an order made under section 79 or 80, 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 80, orders relating to cancellation of a strata development contract) to give effect to the order.

- (2) Where, by reason of receipt of a certified or office copy of the minute of an order made under section 80, the Registrar-General is required by subsection (1) to make recordings in the Register, the Registrar-General shall:
- (a) cancel the folios of the Register for the leases of the lots and common property the subject of the former leasehold strata scheme, and
  - (b) record in the folio of the Register evidencing the lessor's reversion in the former parcel that the body corporate is the lessee of that part of the parcel which contained the former lots and common property that were comprised in the scheme, together with any other estates or interests to which the body corporate's leasehold estate in that part continues to be subject.

## Part 4 Rating and taxation

### 83-120 (Repealed)

#### 121 Definitions (1973 Act, s 89)

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 empowered 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.

#### 122 Valuation of parcel (1973 Act, s 90)

- (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 as if the parcel were owned by a single owner.

#### **122A 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 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.

#### **123 (Repealed)**

#### **124 Rating of lots** (1973 Act, s 92)

- (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 a 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 (if the rate is not made or levied in respect of the lessor under the scheme concerned) be made and levied in respect of each lot comprised in the parcel as if:
  - (a) the lessee 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 lessee were, subject to any exemptions or concessions that may be applicable to the lessee or to the lessee's lot, 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 122 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.

**125 Charges for services** (1973 Act, s 93)

Charges or fees for water, sewerage, drainage or effluent services (other than stormwater management services within the meaning of the *Local Government Act 1993*) rendered in respect of a parcel or part of a parcel (otherwise than exclusively for the use and benefit of a particular lot) 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.

**126 Certain lots not ratable** (1973 Act, s 94)

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 6 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.

**127 (Repealed)**

**128 Certain valuations of interests in parcel not to be used for purposes of this Division** (1973 Act, s 96)

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**

### **129-183 (Repealed)**

## **Part 6 General**

### **184-189 (Repealed)**

#### **190 Notice of application for order under section 61, 79 or 80** (1973 Act, s 152)

- (1) The Supreme Court may, in respect of any proceedings on an application for an order under section 61, 79 or 80, make either or both of the following orders:
  - (a) order that public notice, by advertisement or otherwise, be given of the proceedings,
  - (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 the person's interest.

### **191-194 (Repealed)**

#### **195 Proceedings for offences** (1973 Act, s 157)

Proceedings for an offence against any provision of this Act may be taken only before the Local Court.

#### **196 Regulations—general** (1973 Act, s 158)

- (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 to be lodged in the office of the Registrar-General for the purposes of this Act,
  - (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) the giving of notices by or to the body corporate, lessees of lots, the lessor under the leasehold strata scheme concerned and other persons,
  - (g) the fees to be paid in respect of applications made to the Director-General or the Tribunal under this Act and the remission of any such fees,
  - (h) the nomination and election of members of councils, and
  - (i) 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 the 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.

## **Schedule 1A Requirements for strata plans**

(Sections 7, 10 and 11)

### **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 67 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 67 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 1 Rights and obligations implied in certain easements

(Section 9)

## 1 Definitions

- (1) In this Schedule:

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

***service*** has the same meaning as in section 9.

- (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) where a stratum parcel or former stratum parcel is the dominant tenement, is a reference to:
- (i) a lessee of a lot within the parcel or a proprietor of a lot, within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, which was a lot within the former parcel,
  - (ii) the body corporate of the leasehold strata scheme or strata scheme concerned,
  - (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 former lot, or
- (b) where a stratum parcel or former stratum parcel is the servient tenement, is a reference to:
- (i) the lessor under the leasehold strata scheme concerned (if any),
  - (ii) any person entitled to an estate or interest in possession in the dominant tenement, or
  - (iii) any person authorised by either of them.

## **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) Where a right of vehicular or personal access is created over or appurtenant to a stratum parcel or former 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, the lessor (if any) or 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) where 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, lessor 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,
  - (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,
- (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) where a stratum parcel or former stratum parcel is the dominant tenement, is a reference to so much of:
  - (i) the building, part of which is subject to the leasehold strata scheme or strata scheme concerned, and
  - (ii) the site of that building,as is not part of the parcel or former parcel, or
- (b) where a stratum parcel or former stratum parcel is the servient tenement, is a reference to the parcel or former parcel.

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

- (1) Where an easement for services is created over or appurtenant to a stratum parcel or former 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, the lessor (if any), or 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) where any such instrument fails to 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, lessor 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 shall be borne by the lessor (if any), body corporate or other person concerned:
  - (a) in the proportions specified in the instrument by which the easement was created or, where the proportions so specified have been varied, those proportions as varied, or
  - (b) where no such proportions are so specified—in equal proportions.
- (2) Where a person (whether or not the body corporate or a lessor) incurs costs referred to in subclause (1), the person may demand in writing the amount that the body corporate, lessor (if any) 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) Where the body corporate, lessor (if any) 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, lessor or other person.

## 8 Ancillary rights and powers

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

## Schedule 2 Compensation payable on termination of leasehold strata scheme

(Sections 37 (1) (c), 80 (8) (e))

For the purposes of sections 37 (1) (c) and 80 (8) (e), the formula is:

$$A = B - (C - D)$$

where:

**A** represents the value, at the date of termination of the leasehold strata scheme concerned, of the improvements attributable to a lot,

**B** represents the market value, at that date, of the lot, being the value of the lot at that date calculated on the basis that the lot:

- (a) is held for an estate in fee simple in possession, and
- (b) may be used, whether or not only with development consent, for any purpose the use of the lot for which is not at that date prohibited,

**C**

$$= E \times \frac{U_1}{U_n}$$

where:

**E** represents the site value, at that date, of the parcel the subject of that leasehold strata scheme, being the value of the land included in that parcel at that date calculated on the basis that the land:

- (a) is held for an estate in fee simple in possession, and
- (b) may be used for the purpose of a site for the building or part of the building subject to the scheme, but excluding the value at that date of all improvements within the parcel,

**U<sub>1</sub>** represents the unit entitlement of the lot, and

**U<sub>n</sub>** represents the aggregate unit entitlement for that leasehold strata scheme, and

**D** represents the part of factor “B”, if any, attributable to the value, at that date, of improvements to the lot effected by the lessor.

## Schedule 2AA Covenants implied in strata development contracts

(Section 49)

### 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 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 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 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 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 2A Strata management statements**

(Section 57B)

### **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 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) The following persons must be members of the building management committee:
- (a) each body corporate for a leasehold strata scheme for part of the building,
  - (b) every other person:
    - (i) 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, or
    - (ii) who holds a leasehold estate, directly from the person in whom the fee simple is vested, in such a part of the building or its site.
- (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 Tribunal to do anything without the consent of the Director-General or the 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 3, 4 (Repealed)**

## Schedule 5 Transitional and savings provisions

### Part 1A Regulations

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Strata Schemes (Leasehold Development) Amendment 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.

### Part 1 Provisions relating to the **Strata Titles (Leasehold Part Strata) Amendment Act 1992**

#### 1 Definition

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

#### 2 Transitional

- (1) This Act, as amended by an amendment made by the amending Act, applies to any leasehold strata scheme for a stratum parcel created before the commencement of the amendment (and to the parcel and building concerned) in the same way as it applies to any such scheme created after the commencement of the amendment (and to the parcel and building concerned).
- (2) A strata management statement is not required for a building and its site if a stratum parcel including part of the building was created before the commencement of section 57A, despite subclause (1).

#### 3 Exemption from insurance

An order that exempted a body corporate from any requirement of section 115

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.

#### **4 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 2 Provisions relating to the [Strata Titles \(Leasehold Staged Development\) 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 \(Leasehold Staged Development\) Amendment Act 1993](#).
- (2) Such a provision may, if the regulations so provide, take effect on the date of assent to that Act or on a later date.
- (3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication.

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

- (1) The amendments made to this Act by the [Strata Titles \(Leasehold Staged Development\) Amendment Act 1993](#) do not apply to a development scheme provided for, and represented by, a development statement:
  - (a) that was certified under section 41 (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 (Leasehold 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 (Leasehold Staged Development) Amendment Act 1993* do not apply to any proceedings that are, at 1 January 1995, pending in the Land and Environment Court under this Act.

## **Part 3 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 66 (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 66

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 66, or
- (b) a certificate of approval under section 66,

is to be read as a reference to a strata certificate issued under section 66 or 66A.

## Part 4 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 7 (2A) (c), 10 (3) (b) or 11 (2) (c) before the commencement of Schedule 1A 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 22, 29, 30, 31 or 32 is authorised to be carried out after the commencement as if that section had not been amended.

### **Part 5 Transitional provisions relating to the [Environmental Planning Legislation Amendment Act 2006](#)**

#### **1 Strata certificates**

Division 7 of Part 2, as amended by the [Environmental Planning Legislation Amendment Act 2006](#), does not apply to or in respect of an application for a strata certificate made, but not determined, before the commencement of Schedule 3.4 to that Act and that Division, as in force immediately before that commencement, continues to apply to and in respect of any such application.