

Strata Schemes Legislation Amendment Act 2001

What is the reason for the Act?

The Act is designed to remove a number of technical anomalies and restrictions which frustrate and hinder the creation and operation of strata schemes.

How does the Act assist part-strata development?

The previous legislation for part-strata schemes worked well where there was just one building involved, however problems occurred where a more elaborate development was planned. For example a development may ultimately consist of a podium upon which sits a residential tower and an office tower. The podium might contain car parking for each tower as well as some retail shops. Each tower and its associated podium car parking are to be a separate strata scheme and the shops are to be outside of each strata scheme. The development is intended to be managed as a part strata scheme by a building management committee in order that the different components of the development (i.e. the 2 strata schemes and the shops) can share facilities and expenses. For example, air-conditioning plant and equipment. However, if the office tower is only built at a later stage than the podium and the residential tower, then it cannot be a component of a part-strata scheme for the podium and residential tower. This leads to the result that the development cannot be managed as a whole, and facilities and expenses cannot easily be shared.

The reason for this is that clause 5 of Schedule 1A of the Strata Schemes (Freehold Development) Act required a Surveyor's certificate for a part-strata scheme to certify that the building has not been added onto if there is already a part-strata scheme in the building. In our example 'the building' would comprise the podium and the two towers. However, the second tower will be regarded as an addition to

the building and therefore the surveyor will not be able to give the certificate. This restriction was originally put in Schedule 1A because the Act only contemplated part-strata schemes in normal stand-alone buildings. It did not envisage that part-strata development might involve a podium and towers situation, where the second or subsequent towers are built some time after the podium and first tower. Accordingly, clause 5 of schedule 1A has been deleted in order to remove the restriction and to remedy the problem described.

How does the Act assist the interaction of part-strata and staged strata development?

It was not previously possible to have a staged strata scheme as a component of a part-strata development. For example if the first stage of a staged strata development comprised a block of 10 residential units, then the second stage could not comprise of a block of 8 residential units and 2 shops where the 2 shops were to not be part of the strata scheme. Developments will have greater flexibility if they can incorporate part-strata and staged strata in the one development. Accordingly the restrictions in section 8A(1) of the Act that prevented such development, have been deleted.

Furthermore, amendments to section 28C are introduced by this Act to require a Strata development contract to disclose that the staged strata scheme to which it relates will be part of the part-strata development, and that a strata management statement will govern the relationship between the strata and non-strata components of the development. Consequently Section 28W has been amended to provide that a strata development contract must not be inconsistent with a strata management statement, and if there is an

inconsistency then the strata management statement prevails.

Are there any other reforms affecting part-strata development?

Yes. Consider the example of a 10 storey building that has the top 5 floors as residential and the bottom 5 floors as commercial. The residential floors are made a part-strata scheme and the commercial floors are outside of the strata scheme. Accordingly a strata management statement is registered along with the strata plan that subdivides the residential floors into strata lots and common property. Now one year later the owner of the 5 commercial floors decides to also create a strata scheme for the commercial part of the building. This will be a separate strata scheme to the one that applies for the residential floors. Previously the legislation required that a strata management statement be registered along with the strata plan that creates the commercial strata scheme.

However, there is already a strata management statement in existence for the building. This is the one that was registered with the residential strata plan. There is no need for two strata management statements to apply for the one building. Accordingly, Section 28A has been amended to allow the Registrar General to dispense with the requirement for a strata management statement to accompany a strata plan for part of a building, where a strata management statement has already been registered in respect of the building.

What reforms have been made to the initial period?

The initial period in a strata scheme begins when the strata scheme commences and all of the lots are, therefore, owned by the developer. It ends when sufficient lots have been sold such that at least one-third of the unit entitlements for the scheme are no longer controlled by the developer. During the initial period the developer has effective control of the owners corporation, and so as to ensure that such control is not exercised to the detriment of the minority owners in the scheme, there are certain actions that the owners corporation cannot do during this period except with the consent of the strata schemes board. Three of those actions are firstly, registration of a strata plan of subdivision (section 9) - that is, a plan that subdivides strata lots and/or common property; secondly, registration of a notice converting a lot to common property (section 13), and thirdly registration of any

dealing that affects common property (Division 2 of Part 2) – for example a transfer, lease, easement or restriction as to user.

There is no need for this protection where there are no minority owners at all, and accordingly the three restrictions previously mentioned have been lifted where the developer still owns all of the lots.

Are purchasers protected?

The question might be asked, where does this reform leave purchasers who have entered into contracts to purchase lots but have not yet completed them at the time that the developer carries out a transaction that was previously restricted by the initial period. The answer to this valid question is that the standard contract for sale contains provisions that give purchasers the right to rescind contracts if the effect of the transaction is that the purchaser is substantially disadvantaged and the transaction was not disclosed in the contract. Purchasers under incomplete contracts with these standard provisions will therefore be protected.

What reforms have been made to unit entitlements in staged strata schemes?

The previously existing method for allocating unit entitlements in a staged development created problems in many instances. Consider this example:

There is a strata scheme in 2 stages. Stage 1 is already built and comprises 10 x 2 bedroom units. Stage 2 is to consist of 20 x 2 bedrooms units to be constructed on the development lot. Unit entitlements must (pursuant to sections 8(4A) and 8A(4) of the *Strata Schemes (Freehold Development) Act 1973*) be allocated according to the following steps.

Step 1 - Treat the developed first stage as one parcel of land – although there are already 10 lots in the first stage – look at the land in that stage as if it was just one parcel.

Step 2 - Ascertain the land value of that parcel – the value of the parcel if it was vacant land is (say) 1 million dollars.

Step 3 - Ascertain the land value of each development lot – in this example there is only one development lot and its land value is (say) 2 million dollars.

Step 4 - Apportion the total unit entitlement between the developed first stage parcel and the development lots in proportion to their respective land values – the total unit entitlement is to be (say) 300, and therefore is to be apportioned as to 100 to the first stage and 200 to the development lot (because 1 million dollars as a proportion of 2 million dollars is 1:2).

Step 5 - Ascertain the market value of the lots in the developed first stage – (say) each lot is worth \$300,000.00.

Step 6 - Apportion the unit entitlement allocated to the first stage amongst the first stage lots according to their respective market values – as each of the 10 lots has the same market value then the 100 unit entitlements for the first stage is allocated as to 10 unit entitlements for each of the 10 lots.

Step 7 - Apportion the unit entitlement allocated to the development lot in proportion to the respective market values of the lots in that stage, once they are constructed – therefore once the second stage of 20 lots has been constructed, and assuming each lot has the same market value, then the 200 unit entitlements are allocated as to 10 unit entitlements for each of the 20 lots.

Continuing with this example, let's say that instead of building 20 x 2 bedroom units in the second stage, the developer builds 10 x 2 bedroom units and a swimming pool for use by the residents in both stages. The pool will be common property but occupies land that could have supported an additional ten 2 bedroom units.

As explained earlier stage 2 of the scheme has a unit entitlement of 200. This will be divided between the 10 units in this stage, and as each unit's market value is the same, each unit will have 20 unit entitlements. The units in the first stage however only have 10 unit entitlements each, even though they have the same market value as the units in the second stage.

As developers often provide common property facilities (eg tennis courts, swimming pools) in the second or subsequent stages of development, this problem is not uncommon and the situation is obviously inequitable.

In order to overcome this anomaly, the owners corporation has been empowered to lodge a revised schedule of unit entitlements at the completion of the staged development. A special resolution must first be passed by which the owners corporation agrees to the

new unit entitlements. The revised schedule must allocate the unit entitlements amongst the completed lots upon the basis of their respective market values at the date of completion of the staged development. A registered valuer must determine these market values. The initial schedule of unit entitlements for the scheme will contain a warning that the unit entitlements are temporary and are liable to be revised at the completion of the staged development. This measure is similar to what is already done in respect of staged development under the *Community Land Development Act 1989*.

What reforms have been done concerning the transfer of common property?

Transactions with common property that require a unanimous resolution can now be authorised by a special resolution. These transactions are the transfer of common property; the acquisition of additional common property; the lease of common property; the creation or variation of easements and covenants over common property, and the dedication of common property as public road, public reserve or drainage reserve.

Have any changes been made to approved forms?

Yes, Approved Strata Forms 8, 9, 10, 15 have been amended to take account of the amendments. Approved Strata Forms 29 (Warning Statement regarding initial schedule of unit entitlements) and 30 (Revised Schedule of unit entitlements) have been added to implement the fact that unit entitlements can now be revised at the conclusion of a staged strata development.

When did the Act commence?

1 June 2001.

Where can I get a copy of the Act?

Government Information Service
Level 12, Goodsell Building
18-12 Chifley Square
SYDNEY NSW 2000
T 02 9228 7139
URL www.pco.nsw.gov.au

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Approved Form 8

CI. 25(1) (F) / CI. 26(1) (L)

Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986

Certificate of Owners Corporation

In pursuance of the **Strata Schemes (Freehold Development) Act 1973*, or **Strata Schemes (Leasehold Development) Act 1986*, The Owners - Strata Plan No. hereby certifies that the *transfer *lease+ was accepted by it pursuant to a special resolution passed by it in accordance with the requirements of the above Act.

The common seal of Owners - Strata Plan No was hereunto affixed on in the presence of being the person (s) authorised by section 238 of the *Strata Schemes Management Act 1996* to attest the affixing of the seal.

.....

.....

* Strike out whichever is inapplicable.

+ Set out sufficient particulars to positively identify the transfer or lease to which the certificate relates.

Approved Form 9

Cl. 25(1) (F) / Cl. 26(1) (L)

Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986

Certificate of Owners Corporation

In pursuance of the **Strata Schemes (Freehold Development) Act 1973*, or **Strata Schemes (Leasehold Development) Act 1986*, The Owners - Strata Plan No. hereby certifies that:

- (1) the **dealing *plan+* was **executed *accepted *sealed* by it pursuant to a special resolution passed in accordance with the requirements of the above Act;
- (2) the requirements of section 28(3)(a)(ii) or section 32(3)(a)(ii) of the above Act have been complied with in respect of the said **dealing *plan*.

The common seal of Owners - Strata Plan No was hereunto affixed on in the presence of being the person (s) authorised by section 238 of the *Strata Schemes Management Act 1996* to attest the affixing of the seal.

.....

.....

* Strike out whichever is inapplicable.
+ Set out sufficient particulars to positively identify the transfer or lease to which the certificate relates.

Approved Form 10

Cl. 25(1) (F) / Cl. 26(1) (L)

Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986

Certificate re Initial Period

In pursuance of the **Strata Schemes (Freehold Development) Act 1973*, ** Strata Schemes (Leasehold Development) Act 1986*, The Owners - Strata Plan No. hereby certifies that in respect of the strata scheme based on Strata Plan No.

*(a) the initial period, as defined by that Act, expired before:

*issue by the *local council /*accredited certifier on of a certificate referred to in *section 9(3)(b) *section 11(2)(b).

*issue by the *local council /*accredited certifier on of a certificate referred to in *section 13(2)(a) *section 16(2)(a).

*issue by the owners corporation on of a certificate referred to in *section 28(4)(a) * section 32(4)(a).

*(b) at the date of issue of a certificate referred to in section *9(3)(b); *13(2)(a) or *28(4)(a) *section 11(2)(b); *16(2)(a) or *32(4)(a) the initial proprietor owned all of the lots in the strata scheme and any purchaser under an exchanged contract for purchase of a lot in the strata scheme consented to any plan or dealing that is being lodged along with this certificate.

The common seal of Owners - Strata Plan No was hereunto affixed on in the presence of being the person (s) authorised by section 238 of the *Strata Schemes Management Act 1996* to attest the affixing of the seal.

* Strike out whichever is inapplicable.

Approved Form 15

S. 28C(1) (F) / S. 43(1) (L)

Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986

Strata Development Contract - Strata Plan No

Warning

This contract contains details of a strata scheme, which is proposed to be developed in *(insert number)* stages on the land described in it.

The developer is only bound to complete so much of the proposed development as is identified as "warranted development" in this contract. However the developer cannot be prevented from completing the balance of the proposed development identified as "authorised proposals" in this contract.

The schedule of unit entitlement may, on completion of the development, be revised in accordance with *section 28QAA of the *Strata Schemes (Freehold Development) Act 1973* or *section 57AAA of the *Strata Schemes (Leasehold Development) Act 1986*.

The proposed development might be varied but only in accordance with *section 28J of the *Strata Schemes (Freehold Development) Act 1973* or *section 50 of the *Strata Schemes (Leasehold Development) Act 1986*.

The proposed development might not be completed.

The vote of the developer is sufficient to pass or defeat a motion at a meeting of the owners corporation, or of the executive committee, if the motion is about a development concern. Development concerns are generally those things necessary to be done in order to complete the development in accordance with this contract. See *sections 28N, 28O and 28P of the *Strata Schemes (Freehold Development) Act 1973* or *sections 54, 55 & 56 of the *Strata Schemes (Leasehold Development) Act 1986*.

During development of a further stage there may be disruption to existing occupants due to building and construction activities.

This contract should not be considered alone, but in conjunction with the results of the searches and inquiries normally made in respect of a lot in a strata scheme.

The strata scheme might be part of a larger development that also includes non-strata land. If this is the case then this will be disclosed at item 2. In these types of development a document known as a 'Strata Management Statement' will govern the relationship between the strata and the non-strata parts of the development, and you should consider that document in deciding whether to acquire an interest in the strata scheme.

Description of Development

1. Description of Land

Title details of the land, which is to be developed.

2. Description of any non-strata land that is to be developed along with the strata scheme

Title details.

Insert the following statement 'A strata management statement will govern the relationship between the non-strata land and the strata scheme. A copy of the strata management may be obtained from the Registrar General if the strata plan, to which this strata development contract relates, has already been registered. If it has not yet been registered then a copy of the draft strata management statement is annexed. It should be noted that a provision of the strata development contract is void if it is inconsistent with any provision of the strata management statement'.

3. Description of any Land proposed to be added to the Scheme

Title details.

Disclose whether the land will become common property, a further development lot, an addition to an existing development lot, or a combination of these categories.

Indicate whether the addition of the land is a warranted development or an authorised proposal.

4. Description of Development Lot or Lots

Identify the lots in the Strata Plan that are Development lots.

5. Covenants implied in Strata Development Contracts by the *Strata Schemes (Freehold Development) Act 1973, Strata Schemes (Leasehold Development) Act 1986*

(i) 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.

(ii) 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.

(iii) Owners Corporation expenses

The developer agrees with the owners corporation that the developer will pay the reasonable expenses incurred by the owners corporation:

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

(iv) 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
- 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.

(v) 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.

(vi) 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 arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

(vii) 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.

(viii) 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 that is not a development lot, the developer agrees with the other parties:

- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise and
- to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided to such other parts of the parcel 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 with an insurer approved for the purposes of Part 4 of Chapter 3 of the *Strata Schemes Management Act 1996* against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development.

6. Warranted Development - proposed development subject to a warranty. Development that the developer may be compelled to carry out – repeat the below headings for each stage of development that is warranted.

(i) Description of Development

Describe the development that will be carried out. Indicate the type of buildings proposed, proposed uses of the lots in the buildings, the proposed building style and the height and density of the buildings - reference may be made to the concept plan.

(ii) Common Property Amenities

Describe any common property amenities that will be provided (eg. swimming pool, tennis courts, barbecue area.)

(iii) Schedule of Commencement and Completion (Completion of this item is optional)

Specify when the building and related works are to be physically commenced and when the building and works will be fit for use and/or occupation by a lot owner.

(iv) Schedule of Lots

Indicate the number of lots to be created in this stage.

(v) Working Hours (Completion of this item is optional)

Set out details of working hours subject to the standard laid down by the consent authority.

(vi) Arrangements for Entry, Exit, Movement and Parking of Vehicles to, from and on the parcel during development and Permitted Uses of Common Property and Development Lots during development

Set out details of access and construction zones and accompanying rights over common property and development lots during this stage of development.

(vii) Landscaping

Briefly describe the manner in which it is proposed to landscape the parcel in this Stage.

(viii) Schedule of Materials and Finishes

Indicate building materials and finishes.

(ix) Vertical Staging

Indicate and describe if vertical staging will take place

Indicate insurance details.

(x) Contribution to Common Property Expenses

Indicate whether the developer's liability for common property expenses is to be determined by unit entitlement or differently and detail if different.

(xi) Proposed By-Laws, Management Agreements, Covenants, Easements or Dedications

Indicate any which may be registered in this stage.

7. Authorised Proposals - proposed development not subject to a warranty.

Development that the developer is permitted to carry out, but not compelled to carry out - repeat the below headings for each stage of development that is an authorised proposal.

(i) Description of Development

Describe the development that is proposed – indicate the types of buildings proposed, proposed uses of the lots in the buildings, the proposed building style and the height and density of the buildings – reference may be made to the concept plan. It is not necessary to be specific – For example, it may be proposed that up to 20 one and two bedroom units be provided in a building of up to 6 storeys. The developer to decide on the mix in accordance with market conditions.

(ii) Common Property Amenities (Completion of this item is optional)

Describe any common property amenities that will be provided (eg. swimming pool, tennis courts, barbecue area.)

(iii) Schedule of Commencement and Completion (Completion of this item is optional)

Specify when the building and related works are to be physically commenced and when the building and works will be fit for use and/or occupation by a lot owner.

(iv) Schedule of Lots

Indicate the maximum number of lots to be created in this stage (eg. up to 20 lots.)

(v) Working Hours (Completion of this item is optional)

Set out details of working hours subject to the standard laid down by the consent authority.

(vi) Arrangements for Entry, Exit, Movement and Parking of Vehicles to, from and on the parcel during Development and Permitted Uses of Common Property and Development Lots during development (Completion of this item is optional)

Set out details of access and construction zones and accompanying rights over common property and development lots during this stage of development.

(vii) Landscaping (Completion of this item is optional)

Briefly describe the manner in which it is proposed to landscape the parcel in this stage.

(viii) Schedule of Materials and Finishes (Completion of this item is optional)

Indicate building materials and finishes.

(ix) Vertical Staging

Indicate and describe if vertical staging will take place.

Indicate insurance details.

(x) Contribution to Common Property Expenses

Indicate whether the developer’s liability for common property expenses is to be determined by unit entitlement or differently and detail if different.

(xi) Proposed By-Laws, Management Agreements, Covenants, Easements or Dedications

Indicate any which may be registered in this stage.

8. Date of Conclusion of Development Scheme

Set out the date by which all warranted development and authorised proposals must be completed - this date must not be more than 10 years from the date of registration of this contract.

9. Concept Plan

*Annex plans and drawings on approved form 15A illustrating separately the sites proposed for and the nature of the buildings and works that would result from the carrying out of **each** of the warranted development and the authorised proposals including:*

- (i) the location of buildings proposed to be erected or retained on the parcel*
- (ii) elevations and sections of those buildings and their external finishes and heights*
- (iii) perspectives of those buildings*
- (iv) the proposed finished levels of the land in relation to roads and those buildings*
- (v) any additional land that may be added to the scheme*
- (vi) any vertical staging.*

Signatures, Consents, Approvals

Signature / seal of developer

Signature / seal of each registered mortgagee, chargee, covenant chargee and lessee of the development lot.

.....

Signature / seal of each registered mortgagee and chargee, of a lease of the development lot.

.....

Certificate of Approval

It is certified:

- (a) that the consent authority has consented to the development described in Development Application No and
- (b) the carrying out of the proposed development described as “warranted development” and “authorised proposals” in this strata development contract would not contravene:
 - (i) any condition subject to which the consent was granted; or
 - (ii) the provisions of any environmental planning instrument that was in force when the consent was granted except to the following extent: (fill in if applicable)

Date:

Execution of consent authority

Approved Form 29

S. 28QAA(F) S .57AAA(L)

Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986

Warning Statement regarding the initial Schedule of Unit Entitlements

The Schedule of unit entitlements may, on completion of the staged strata development to which it relates, be revised in accordance with *section 28QAA of the *Strata Schemes (Freehold Development) Act 1973* or *section 57AAA of the *Strata Schemes (Leasehold Development) Act 1986*.

Approved Form 30

S. 28QAA(F) S. 57AAA(L)

Strata Schemes (Freehold Development) Act 1973
Strata Schemes (Leasehold Development) Act 1986

Revised Schedule of Unit Entitlements

In accordance with *section 28QAA *Strata Schemes (Freehold Development) Act 1973* or *section 57AAA *Strata Schemes (Leasehold Development) Act 1986* the Owners Strata Plan No. hereby certifies that:

- the existing schedule of unit entitlement does not reflect the market value of the lots in the strata scheme.
- by special resolution it has agreed to the substitution of the existing schedule of unit entitlements with the below revised schedule.

Lot Revised Unit Entitlement

The common seal of Owners Strata Plan No. was hereunto affixed on in the presence of *Strata Schemes Management Act 1996* to attest to the affixing of the seal.

Valuer's Certificate

I,

the *Valuer's Registration Act 1975*, certify that the unit entitlements set out above have been apportioned on a market value basis.

(Signature)

(Date)