

**STRATA TITLES (DEVELOPMENT SCHEMES)
AMENDMENT BILL, 1985**

EXPLANATORY NOTE

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

The Land and Environment Court (Strata Titles) Amendment Bill, 1985, is cognate with this Bill.

The object of this Bill is to amend the Strata Titles Act, 1973 ("the Principal Act"), to impose certain obligations, and confer certain rights, where a developer proposes to develop a parcel of land by erecting a series of buildings in succession, each building being, on completion, subdivided into strata lots which are then sold in order to assist in financing the next stage of the development.

Basic to the provisions proposed by the Bill is the "development statement" to be recorded by the Registrar-General. This comprises the various instruments, plans and drawings prepared by the developer to illustrate and explain the overall concept and timetable for the "development scheme". From the development statement a purchaser of a strata lot in the early stages of the development scheme knows what is proposed later in relation to the immediate environment of the lot and the amendments proposed by the Bill protect the interests of such a purchaser in relation to completion of the development scheme as represented. Certain rights are also conferred on the developer in relation to the use of common property in the strata scheme constituted by registration of a strata plan on completion of the first building. These rights are those necessary to enable the developer to carry the development scheme through to completion.

Schedule 1 amends Part I of the Principal Act to provide for the interpretation of the new provisions.

Apart from consequential amendments relating to technical and ancillary matters, Schedule 2 proposes the insertion in Part II of the Principal Act of a new Division 2A which includes—

- (a) section 28A which requires a development statement to be lodged with the relevant municipal or shire council whenever development consent is sought to a proposal involving the progressive development of a parcel of land as indicated above;
- (b) section 28B which authorises the Registrar-General, when registering a strata plan of subdivision, to register an accompanying development statement;

- (c) section 28C which specifies the requirements to be complied with before a development statement may be amended;
- (d) section 28D which provides the machinery for registering certain classes of amendments to a development statement;
- (e) section 28E which provides the machinery for registering certain other classes of amendments of a development statement;
- (f) section 28F which enables the developer to apply to the Land and Environment Court for an order dispensing with certain consents that the developer has been unable to obtain;
- (g) section 28G which creates statutory covenants between a developer, purchasers, mortgagees and occupiers of strata lots and the body corporate under a strata scheme whereby the developer covenants with the other parties that the relevant parcel of land will be developed in accordance with the development statement and those other parties covenant to permit the developer to do so;
- (h) section 28H which relates to the rights of a developer to use common property under a strata scheme while developing the parcel that is subject to the scheme;
- (i) section 28I which deals with the circumstances in which a development scheme terminates or may be terminated;
- (j) section 28J which deals with the effect of certain notices;
- (k) section 28K which enables the Land and Environment Court to order amendment of a misleading development statement;
- (l) section 28L which deals with remedies for a departure from the terms of a development statement;
- (m) section 28M which enables the Registrar-General to register the effect of certain orders;
- (n) section 28N which deals with certain applications to the Strata Titles Commissioner for assistance in the institution or defence of proceedings arising under the proposed amendments;
- (o) section 28O which relates to the granting of legal assistance under the Consumer Protection Act, 1969;
- (p) section 28P which nullifies any vote of the developer, or of a mortgagee of the developer, for the purposes of a resolution by the body corporate under a strata scheme to pursue certain remedies in relation to a development scheme; and
- (q) section 28Q which confers on the Strata Titles Commissioner certain advisory and conciliatory powers in relation to a development scheme.

Schedules 3, 4 and 5 effect ancillary and consequential amendments to the Principal Act.

Schedule 6—

- (a) brings within the common property in a strata scheme pipes, wires, cables and ducts outside the building as well as those within the building (Schedule 6 (1)); and
 - (b) amends the regulation-making power to bring it into conformity with present practice (Schedule 6 (2)).
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**STRATA TITLES (DEVELOPMENT SCHEMES)
AMENDMENT BILL, 1985**

No. , 1985.

A BILL FOR

An Act to amend the Strata Titles Act, 1973, to provide for the regulation of schemes for the progressive development of land to which a proposed strata scheme relates, and for other purposes.

See also Land and Environment Court (Strata Titles) Amendment Bill, 1985.

Strata Titles (Development Schemes) Amendment 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Strata Titles (Development Schemes) Amendment Act, 1985".

Commencement.

2. (1) Sections 1 and 2 and Schedule 6 (2) shall commence on the date
10 of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1–6, shall commence on the day on which the provision commences.

(3) Schedule 6 (1) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation
15 published in the Gazette.

(4) Except as provided by subsections (1), (2) and (3), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

20 3. The Strata Titles Act, 1973, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

- 25** SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.
SCHEDULE 2.—AMENDMENTS TO PART II OF THE PRINCIPAL ACT.
SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.
SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.
SCHEDULE 5.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.
SCHEDULE 6.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

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Amendment of Act No. 68, 1973.

5. The Principal Act is amended in the manner set forth in Schedules 1-6.

SCHEDULE 1.

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(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) Section 4—

Omit the section.

(2) (a) Section 5 (1), definition of “consent authority”—

10 After the definition of “company nominee”, insert:—

“consent authority” has the same meaning as it has in the
Environmental Planning and Assessment Act, 1979;

(b) Section 5 (1), definitions of “developer”, “development”,
15 “development application”, “development consent”,
“development lot”, “development scheme”, “development
statement”—

After the definition of “current plan”, insert:—

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

(a) the original proprietor; or

25 (b) a person, other than the original proprietor, who
is the proprietor of a development lot within the
strata plan;

“development” has the same meaning as it has in the
Environmental Planning and Assessment Act, 1979;

30 “development application” has the same meaning as it has
in the Environmental Planning and Assessment Act,
1979;

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SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

“development consent” has the same meaning as it has in the Environmental Planning and Assessment Act, 1979;

5 “development lot” means a lot in a strata plan that is identified by a development statement as a lot that is to be the subject of a strata plan of subdivision under the development scheme;

10 “development scheme” means the scheme of development provided for, and represented by, a development statement;

“development statement” means—

15 (a) instruments, plans and drawings that are deemed by section 28A (2) (a) to have been approved by a consent authority or are referred to in section 28B (2) (c); and

(b) amendments of those instruments, plans and drawings;

SCHEDULE 2.

(Sec. 5.)

20 AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) Section 7 (3)—

After “strata plan”, insert “and a strata plan of subdivision”.

(2) (a) Section 8 (1) (e)—

25 Omit “; and”, insert instead “or (1A), as the case may require;”.

(b) Section 8 (1) (f), (g)—

At the end of section 8 (1) (f), insert:—

; and

(g) where any proposed lot is a development lot—

0 (i) it is designated as such on that location plan; and

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- 5 (ii) the plan lodged for registration is accompanied by a copy of the relevant development statement, and the certificate, referred to in section 28A (4).

(c) Section 8 (4)—

Omit “Subsection (1) (e) does”, insert instead “The provisions of subsection (1) (e) and (g) do”.

(3) Section 8A—

10 After section 8, insert:—

Subdivision of development lots.

8A. (1) Land that is a development lot may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (2).

15 (2) A plan complies with this subsection if—

(a) it consists of—

(i) a location plan; and

(ii) a floor plan,

in respect of the land to which the plan relates;

20 (b) where no part of that land would become common property upon registration of the plan as a strata plan of subdivision, at least one of the proposed lots or part thereof to which the floor plan relates is superimposed upon another proposed lot or part thereof to which the floor plan relates;

25 (c) that location plan is accompanied by a schedule showing as a whole number the unit entitlement in respect of each lot into which the land is proposed to be subdivided, the aggregate of those unit entitlements being equal to the unit entitlement ascribed to the development lot on registration
30 of the strata plan of which the development lot forms part;

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(d) that location plan is accompanied by a certificate given by the local council in accordance with section 37 (1A); and

5 (e) that location plan is accompanied by a certificate given by a registered surveyor, certifying—

10 (i) that any wall, the inner surface or any part of which corresponds substantially with any line shown on the floor plan relating to any building erected on that land as a boundary of a proposed lot, exists;

(ii) that any floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, exists;

15 (iii) that any wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is to be ascertained, exists; and

20 (iv) that the building erected on that land and each proposed lot shown on that location plan are wholly within the perimeter of that land except to the extent of any encroachment referred to in section 38 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists.

25 (3) The provisions of section 8 (2) and (3) apply to the registration, as a strata plan of subdivision, of a plan illustrating a proposed subdivision of a development lot in the same way as they apply to the registration of a plan as a strata plan.

30 (4) Subsection (2) (d) does not apply to or in respect of a plan lodged for registration as a strata plan of subdivision of a development lot by a person or body who or which, but for section 3, would not be bound by this Act.

(4) (a) Section 9 (1)—

Omit the subsection, insert instead:—

35 (1) Lots (other than development lots) or common property, or lots (other than development lots) and common property,

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (3).

5 (b) Section 9 (3)—

Omit “shall not be registered as a strata plan of subdivision unless”, insert instead “complies with this subsection if”.

(5) Section 10 (1)—

After “5 (7) (a)”, insert “or 9 (1)”.

10 (6) Section 11—

After “or (d)”, insert “or 9 (1)”.

(7) Section 13—

Omit “One”, insert instead “Except as provided by section 28E, one”.

15 (8) Part II, Division 2A—

After Division 2, insert:—

DIVISION 2A.—*Development Schemes.*

Approval of development statement.

20 28A. (1) Where the development proposed in a development application lodged with a consent authority on or after the day appointed and notified under section 2 (4) of the Strata Titles (Development Schemes) Amendment Act, 1985, includes—

(a) the registration of a strata plan; and

25 (b) the subsequent subdivision, by a strata plan of subdivision, of a lot in the strata plan, being a lot no part of which is superimposed on any part of another lot in the strata plan,

development consent shall not be given by the consent authority unless the development application is accompanied by a proposed development statement.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (2) Where a development application referred to in subsection (1) is determined by the granting of consent to the application—
- (a) the consent authority shall be deemed to have approved the proposed development statement that accompanied the application; and
 - (b) the consent shall be deemed to have been granted subject to a condition (which shall be deemed to be a condition the imposition of which is authorised by section 91 of the Environmental Planning and Assessment Act, 1979) requiring the parcel to which the development statement relates to be developed as provided and represented by the development statement.
- (3) For the purposes of subsection (1), a proposed development statement shall comprise—
- (a) an instrument (which may comprise more than one document) that—
 - (i) describes the land that will comprise the parcel for the strata scheme to be initiated by registration of the strata plan;
 - (ii) describes, in the prescribed manner and by reference to the prescribed information, the stages by which the development of that land is proposed and the sequence in which it is proposed to implement those stages;
 - (iii) describes the proposed arrangements for the ingress, egress, movement and parking of vehicles to, from and on the parcel during development;
 - (iv) describes the manner in which it is proposed to landscape the parcel;
 - (v) specifies the obligations to be imposed, and the rights to be conferred, in relation to the use (including erection of structures) of common property and, before subdivision, of development lots;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (vi) includes the proposed schedule of unit entitlements under section 8 (1) (d);
- 5 (vii) includes the proposed schedule of unit entitlements under section 8A (2) (c) for each lot in each proposed strata plan of subdivision;
- 10 (viii) specifies the dates by which it is proposed to commence and complete each stage of the development of the parcel;
- (ix) contains the prescribed warning relating to possible amendments of the statement and the possibility that the development scheme concerned may not be completed; and
- 15 (x) includes such other matters as may be prescribed;
- (b) plans and drawings illustrating—
- (i) the matters referred to in paragraph (a);
- (ii) the location of buildings proposed to be erected or retained on the parcel;
- 20 (iii) elevations and sections of those buildings and their external finishes and heights;
- (iv) perspectives of those buildings;
- (v) the proposed finished levels of the land in relation to roads and those buildings; and
- 25 (vi) such other matters as may be prescribed;
- (c) illustrations of the proposed strata plan and each proposed strata plan of subdivision; and
- (d) such other instruments (including plans and drawings) as may be prescribed.
- 30 (4) Upon giving consent to a development application referred to in subsection (1), a consent authority shall provide the applicant for the consent with a copy of the development statement deemed by

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

subsection (2) (a) to have been approved by the consent authority together with the prescribed certificate by the consent authority.

5 **Registration of development statement.**

28B. (1) Where section 8 (1) (g) is complied with in relation to a plan lodged with the Registrar-General for registration as a strata plan, the Registrar-General may, upon registration of the plan as a strata plan, register the accompanying development statement.

10 (2) Where—

(a) a plan is lodged with the Registrar-General for registration as a strata plan;

15 (b) the person or body who or which would be the original proprietor on registration of the strata plan is a person who or which, but for section 3, would not be bound by this Act; and

20 (c) the plan is accompanied by instruments, plans and drawings that, if deemed by section 28A (2) (a) to have been approved by a development authority, would comprise a development statement,

the Registrar-General may, upon registration of the strata plan, register the instruments, plans and drawings as a development statement.

25 (3) Where a strata plan and a development statement have been registered as provided by subsection (1) or (2), the Registrar-General shall record in the folio of the Register created under section 18 (2) or 22 (1)—

30 (a) the existence of the development statement and of any subsequent amendment thereof registered from time to time; and

(b) such information relating to the development statement and any amendment thereof as the Registrar-General considers appropriate.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.***Amendment of development statement.**

5 28C. (1) Except to the extent that this section and the regulations otherwise provide, an amendment of a registered development statement does not have effect unless—

10 (a) where the development statement was registered under section 28B (1)—the consent authority concerned has given in relation to the amendment the certificate referred to in subsection (8) (b) and the amendment is registered as provided by section 28D or 28E, whichever is applicable; or

(b) where the development statement was registered under section 28B (2)—the amendment is registered as provided by section 28D or 28E, whichever is applicable.

15 (2) Subsection (1) does not apply to an amendment of a registered development statement ordered under section 28F (4), 28K (1), 32 (4) or 50 (6), or consequential upon an order under section 119 (1), and such an amendment does not have effect unless—

20 (a) in the case of an amendment ordered under section 28F (4) or 28K (1)—the amendment is recorded under section 28M;

(b) in the case of an amendment ordered under section 32 (4)—the amendment is recorded under section 48 (2);

25 (c) in the case of an amendment ordered under section 50 (6)—the amendment is recorded under section 48 (2) or 53 (1), whichever is applicable; or

(d) in the case of an amendment consequential upon an order under section 119 (1)—the amendment is recorded under section 141 (3) or (4).

30 (3) Subsection (1) does not apply to an amendment of a registered development statement that is consequential upon the revocation or modification, under section 103 of the Environmental Planning and Assessment Act, 1979, of a development consent.

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- 5 (4) Notwithstanding subsection (1) (a), a certificate referred to in subsection (8) (b) is not required in relation to an amendment of a development statement if—
- (a) the amendment effects a reallocation of the proposed unit entitlements of the lots to be created upon subdivision of a development lot and—
- 10 (i) the reallocation does not result in a change to the unit entitlement of the development lot; and
- (ii) the developer has given to the body corporate the prescribed period of notice of the reallocation in writing specifying the manner of reallocation; or
- 15 (b) the amendment effects a change, for reasons beyond the control of the developer, in a date referred to in section 28A (3) (a) (viii) and—
- (i) the change of date does not constitute a breach of a condition of a development consent; and
- 20 (ii) the developer has given to the body corporate the prescribed period of notice of the change in writing specifying the change and the reasons for the change.
- (5) Where application is made to a consent authority for a certificate referred to in subsection (8) (b) relating to an amendment of a development statement, the application shall be accompanied—
- 25 (a) by such instruments, plans and drawings of the nature referred to in section 28A as describe and illustrate the effect of the proposed amendment;
- (b) by a certificate under the seal of the body corporate to the effect that the body corporate has consented to the amendment and—
- 30 (i) unless there is more than one member of the body corporate—that there is only one member of the body corporate; or

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- 5 (ii) where there is more than one member of the body corporate—that the consent of the body corporate was given in accordance with subsection (6); and
- (c) by such other instruments (including plans and drawings) as may be prescribed.
- 10 (6) Consent to an amendment of a development statement is given by a body corporate in accordance with this subsection if it is given by means of a resolution passed at a duly convened general meeting of the body corporate at which—
- (a) where the amendment is not an amendment whereby a development lot is excluded wholly or partly from the development scheme or converted into common property—
- 15 (i) subsection (7) is applied in relation to the voting on the motion for the resolution; and
- (ii) any votes cast against the motion for the resolution total not more than one-half in number of all the persons who were entitled to vote on the motion; or
- 20 (b) where the amendment is an amendment whereby a development lot is excluded wholly or partly from the development scheme or converted into common property—the resolution is a unanimous resolution.
- 25 (7) For the purposes of voting on a motion for a resolution referred to in subsection (6) (a) and notwithstanding anything in section 57 (5)—
- (a) the developer (whether as proprietor of a lot or as a proxy or mortgagee) is not entitled to vote on the motion;
- 30 (b) a mortgagee of the developer (whether as mortgagee or as a proxy) is not entitled to vote on the motion;
- (c) any vote cast by a person not entitled to vote on the motion shall not be counted; and
- (d) all votes cast for or against the motion by persons entitled to vote on the motion are of equal value,

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5 but a person disqualified by this subsection from voting on a motion shall, for the purpose of moving the motion or requiring its inclusion in the agenda for a meeting, be deemed not to be so disqualified.

10 (8) Where a consent authority is satisfied that an application for an amendment of a development statement made to the consent authority under subsection (5) complies with this Act and the regulations and the consent authority approves an amendment of the development statement, the consent authority shall provide the applicant for the amendment with—

(a) a copy of the instruments, plans and drawings that describe and illustrate the approved amendment; and

(b) a certificate by the consent authority to the effect—

15 (i) that the copy referred to in paragraph (a) describes and illustrates the amendment approved by the consent authority; and

20 (ii) that the development statement, if amended in the manner approved by the consent authority, would not be inconsistent with the related development consent.

Registration of amendment that does not exclude or convert a development lot.

25 28D. (1) Where an amendment of a registered development statement is not an amendment whereby a development lot is excluded wholly or partly from the development scheme or is converted into common property, the Registrar-General may register the amendment if a request is made, in a form approved by the Registrar-General, for registration of the amendment and the request is accompanied by—

30 (a) the prescribed fee in the case of an amendment of a development statement registered under section 28B (1);

(b) the certificate of title for the common property;

35 (c) where the parcel or a part of the parcel is subject to a mortgage given by the developer and the amendment is not an amendment referred to in section 28C (2), (3) or (4)—the written consent of the mortgagee to the amendment;

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- (d) the documents prescribed by subsection (2) in relation to the amendment; and
- 5 (e) such other instruments (including plans and drawings) as may be prescribed by the regulations.
- (2) The documents prescribed by this subsection in relation to an amendment are—
- (a) where section 28C (1) (a) applies to the amendment—
- 10 (i) the instruments, plans and drawings referred to in section 28C (8) (a) that relate to the amendment;
- (ii) the certificate referred to in section 28C (8) (b) that relates to the amendment; and
- 15 (iii) a certificate by the developer to the effect that the amendment does not exclude a development lot wholly or partly from the development scheme or convert a development lot into common property;
- (b) where the amendment is an amendment referred to in section 28C (3)—
- 20 (i) a copy, certified by the developer to be a true copy, of the instrument under section 103 of the Environmental Planning and Assessment Act, 1979, that effected the revocation or modification upon which the amendment is consequential; and
- 25 (ii) the certificate referred to in paragraph (a) (iii);
- (c) where the amendment is not an amendment to which section 28C (4) applies and relates to a development statement registered under section 28B (2)—
- 30 (i) such instruments, plans and drawings of the nature referred to in section 28A as describe and illustrate the effect of the proposed amendment; and
- (ii) the certificate referred to in paragraph (a) (iii); or

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(d) where the amendment is an amendment to which section 28C (4) applies—

- 5 (i) such instruments as describe the effect of the proposed amendment;
- (ii) a copy, certified by the developer to be a true copy, of the notice under section 28C (4) (a) (ii) or (b) (ii) that relates to the amendment; and
- 10 (iii) the certificate referred to in paragraph (a) (iii).

Registration of amendment whereby development lot excluded or converted.

28E. (1) Where an amendment of a registered development statement is an amendment whereby a development lot is excluded wholly or partly from the development scheme or is converted into common property, the Registrar-General may register the amendment if a request is made, in a form approved by the Registrar-General, for registration of the amendment and the request is accompanied by—

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- 20 (a) the prescribed fee in the case of an amendment of a development statement registered under section 28B (1);
- (b) the certificate of title for the common property;
- (c) where the parcel or a part of the parcel is subject to a mortgage given by the developer and the amendment is not
- 25 an amendment referred to in section 28C (2) or (3)—the written consent of the mortgagee to the amendment; and
- (d) the documents prescribed by subsection (2) in relation to the amendment.

30 (2) The documents prescribed by this subsection in relation to an amendment are—

- (a) in the case of an amendment whereby a development lot is excluded wholly or partly from the development scheme—
- (i) such instruments, plans and drawings as are prescribed for the purposes of this paragraph;

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- 5 (ii) where section 28C (1) (a) applies to the amendment—
the certificate referred to in section 28C (8) (b) that
relates to the amendment; or
- (b) in the case of an amendment whereby a development lot is
converted into common property—
- 10 (i) a notice of conversion that is in a form approved by
the Registrar-General and is executed by the
proprietor of the lot and the body corporate; and
- (ii) where section 28C (1) (a) applies to the amendment—
the certificate referred to in section 28C (8) (b) that
relates to the amendment.
- 15 (3) A notice referred to in subsection (2) (b) (i) shall not be
registered unless every mortgage, charge, current lease, caveat or writ
recorded in the folio of the Register comprising the lot to which the
notice relates has, in so far as it affects the lot, been discharged or
surrendered, or withdrawn or disposed of, as the case may be.
- Amendment by order of Land and Environment Court.**
- 20 28F. (1) Where, in relation to a development statement, a
developer has failed to obtain a consent referred to in section 28C
(5) (b), 28D (1) (c) or 28E (1) (c) because—
- (a) in the case of a consent referred to in section 28C (5) (b)—
- 25 (i) a motion for the giving of the consent has been
defeated; or
- (ii) the notice relating to such a motion has been given
but a meeting of the body corporate to consider the
motion has not been held within a reasonable time
after the giving of the notice; or
- 30 (b) in the case of a consent referred to in section 28D (1) (c) or
28E (1) (c)—the consent has been sought and refused,
the developer may apply to the Land and Environment Court for an
order dispensing with any one or more of those consents.
- (2) Notice of an application under subsection (1) shall be served—
- 35 (a) where the application relates only to a mortgagee's consent—
on the mortgagee; or

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(b) in any other case—

(i) on each proprietor of a lot other than the applicant;

5 (ii) on each first mortgagee of a lot;

(iii) on the consent authority by which the development statement is deemed to have been approved; and

(iv) where the application relates to a mortgagee's consent in addition to any other consent—on the mortgagee,

10 and on such other persons as the Land and Environment Court may direct.

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

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(4) Where an application is made under subsection (1), the Land and Environment Court—

(a) may order that the only consent, or any one or more of the consents, to which the application relates be dispensed with and may make such other orders (including orders relating to the amendment of the development statement) as it considers to be appropriate; or

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(b) may dismiss the application.

(5) An order made under subsection (4) (a) has effect according to its tenor.

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(6) Without limiting the generality of subsection (4), an order may be made under that subsection with respect to one or both of the following matters:—

(a) the payment of money to or by the body corporate or the proprietors of lots or any one or more of them;

30

(b) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(7) Where the Land and Environment Court is of the opinion that an order should not be made under subsection (4) (a)—

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 28I; and

10 (b) where it gives such a direction—

(i) the application the subject of the direction shall be deemed to be made under section 28I by a person entitled to make the application; and

15 (ii) the applicant under subsection (1), as well as any other person entitled to appear and be heard under section 28I, is entitled to appear and be heard on the hearing of the application.

20 (8) The Land and Environment Court may, from time to time, vary an order made under subsection (4) (a) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

Binding effect of development statement.

28G. (1) On and from the registration of a development statement, each person who for the time being is—

25 (a) the developer;

(b) a proprietor of a lot (other than the developer);

(c) a registered or enrolled mortgagee of a lot;

(d) the lessee or occupier of a lot; or

(e) the body corporate,

30 under the strata scheme proposed by the development statement shall be deemed to have entered into an agreement under seal containing the covenants referred to in subsection (2).

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(2) The covenants referred to in this subsection are—

5 (a) a covenant whereby the developer agrees with the other parties jointly and each of them severally that the developer will develop the parcel—

(i) in accordance with the related development consent, as modified from time to time; and

10 (ii) as provided and represented by the development statement, as from time to time amended in accordance with this Act; and

15 (b) a covenant whereby the parties other than the developer jointly and severally agree with the developer that the developer will be permitted by them and each of them to develop the parcel as provided by paragraph (a).

(3) Subject to subsection (4), the agreement referred to in subsection (1) ceases to have effect—

20 (a) in relation to a party thereto who is a person referred to in subsection (1) (a), (b), (c) or (d)—upon that person ceasing to be a person so referred to; and

(b) in relation to all the parties thereto—upon the recording under section 28i (10) of the termination of the development scheme to which the agreement relates.

25 (4) Subsection (3) does not operate to prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement referred to in subsection (1) before the agreement ceased to have effect in relation to the person.

30 (5) Except as may be otherwise provided by this Act, a provision in any instrument whereby the agreement referred to in subsection (1) is excluded, modified or restricted is void.

(6) A covenant entered into under an agreement referred to in subsection (1) does not merge in a transfer of a lot.

(7) Part V does not apply to or in relation to matters arising under an agreement referred to in subsection (1).

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

5 (8) Subject to subsection (7), nothing in this section affects any right or remedy that a person may have apart from a right or remedy under an agreement referred to in subsection (1).

Use of common property, etc., by developer.

10 28H. (1) Where, pursuant to section 28G, rights exercisable by a developer include rights to use and enjoy common property or a development lot, or both, for the purpose of discharging the obligations imposed on the developer by that section, those rights may be exercised notwithstanding any inconsistency between them and the other provisions of this Act, or the provisions of the by-laws, if the rights are exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot.

15 (2) The agreement referred to in section 28G shall be deemed to include a covenant by the developer to make good any damage to the common property or a development lot, or both, caused by the exercise of rights referred to in subsection (1), whether or not the development statement contemplates or authorises the damage.

20 (3) Section 121 does not authorise the making of an order that is inconsistent with the rights referred to in subsection (1).

Termination of development scheme.

28I. (1) A development scheme terminates—

- 25 (a) if the related development consent is revoked;
- (b) upon performance of the obligations imposed on the developer by the agreement referred to in section 28G;
- (c) if the Supreme Court makes an order under section 51 terminating the development scheme;
- 30 (d) if the Land and Environment Court makes an order under subsection (5); or
- (e) if every proprietor of a lot and every registered or enrolled mortgagee of a lot so agree in writing.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- 5 (2) Except where an application has been made to the Supreme Court under section 51 (1) for an order under section 51 (4), an application to the Land and Environment Court for an order terminating a development scheme may be made by—
- (a) the developer;
 - (b) any proprietor, registered mortgagee or enrolled mortgagee of a lot; or
 - 10 (c) the body corporate.
- (3) Notice of an application under subsection (2) shall be served, in accordance with rules of court, on—
- (a) each person referred to in subsection (2), other than the applicant;
 - 15 (b) the consent authority by which the related development statement is deemed to have been approved;
 - (c) the Registrar-General; and
 - (d) such other persons (including creditors of the body corporate) as the Land and Environment Court may direct.
- 20 (4) The applicant and any person referred to in subsection (3) (whether or not that person has been served with notice of the application) are entitled to appear and be heard on the hearing of the application.
- 25 (5) The Land and Environment Court may, on an application made under subsection (2), make an order terminating the development scheme concerned.
- (6) An order made under subsection (5) shall take effect as provided in the order and the order shall have effect according to its tenor.
- 30 (7) An order under subsection (5) may make provision with respect to one or more of the following matters:—
- (a) such provisions in relation to the strata scheme as are, in the opinion of the Land and Environment Court, necessary as a consequence of the termination of the development scheme;

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

5 (b) the payment of money to or by the body corporate or the proprietors of lots or 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;

10 (c) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

(8) Where the Land and Environment Court is of the opinion that an order should not be made under subsection (5)—

15 (a) it may, upon application made by any person entitled to appear and be heard on the hearing of the application made under subsection (2) or of its own motion, direct that the application under that subsection be treated as an application for an order under section 28F (4); and

(b) where it gives such a direction—
 20 (i) the application the subject of the direction shall be deemed to be an application made under section 28F by a person entitled to make the application; and
 25 (ii) the applicant under subsection (2), as well as any other person entitled to appear and be heard under section 28F, is entitled to appear and be heard on the hearing of the application.

(9) The Land and Environment Court may, from time to time, vary an 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.

30 (10) Upon application made as prescribed and supported by such evidence as the Registrar-General requires, the Registrar-General may record the termination of a development scheme by making such recordings in the Register as the Registrar-General thinks fit.

Interchangeability of notices.

35 28J. Any notice served under section 28F or 28I shall, where it relates to an application which is required to be treated as an application under the other of those sections, be deemed to be a notice served under the other of those sections.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.***Misleading development statement.**

5 28K. (1) Where a development statement, as from time to time in force, is deficient by reason that—

- (a) it includes an untrue statement;
- (b) it fails to disclose material matter; or
- (c) it is inconsistent with the related development consent,

10 and the developer does not, within a reasonable time after becoming aware of the deficiency, obtain registration of an amendment of the development statement that rectifies the deficiency, the Land and Environment Court may, on application by the body corporate, a proprietor of a lot or the Commissioner (whether or not pursuant to section 28O)—

- 15 (d) order an amendment of the development statement, being an amendment that rectifies the deficiency; and
 - (e) make such other orders as it considers appropriate,
- or it may dismiss the application.

20 (2) Notice of an application under subsection (1) shall be served on—

- (a) the developer;
- (b) each proprietor of a lot other than the developer or an applicant proprietor;
- (c) each person who is first mortgagee of a lot;
- 25 (d) the consent authority by which the development statement is deemed to have been approved; and
- (e) such other persons as the Land and Environment Court may direct.

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

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

5 (4) Without prejudice to the generality of subsection (1), an order may be made under that subsection with respect to one or both of the following matters:—

- (a) the payment of money by the developer to the body corporate or the proprietors of lots or any one or more of them;
- 10 (b) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

Remedy for departure from development statement.

15 28L. (1) Where proceedings are brought under section 123 of the Environmental Planning and Assessment Act, 1979, by a body corporate or a proprietor of a lot in relation to an act or omission that constitutes a breach of the condition referred to in section 28A (2) (b), the Land and Environment Court may—

- (a) instead of making an order under section 124 of that Act restraining the breach; or
- 20 (b) instead of, or in addition to, making any order under that section other than an order restraining the breach,

make an award of damages pursuant to section 20 (2) (d) of the Land and Environment Court Act, 1979, for a breach, constituted by that act or omission, of the agreement referred to in section 28G.

25 (2) Where proceedings are brought under section 20 (2) (d) of the Land and Environment Court Act, 1979, in relation to an act or omission that constitutes a breach of the agreement referred to in section 28G, the Land and Environment Court may, instead of, or in addition to, making an award of damages in relation to the breach, make an order under section 124 of the Environmental
30 Planning and Assessment Act, 1979.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.***Duties of Registrar-General.**

5 28M. Where an order is made under section 28F (4), 28I (5) or 28K (1) in relation to a development statement and there is lodged with the Registrar-General a request in a form approved by the Registrar-General accompanied by—

- 10 (a) the prescribed fee in the case of a development statement registered under section 28B (1);
- (b) the certificate of title for the common property;
- (c) a certified or office copy of the order; and
- (d) such other documents as may be prescribed,

15 the Registrar-General may make such recordings in the Register as the Registrar-General considers to be appropriate to give effect to the order.

Investigation of application for assistance.

20 28N. (1) A body corporate or a proprietor of a lot (other than the developer) may apply in writing to the Commissioner for assistance in the institution or defence of proceedings before the Land and Environment Court in relation to a development statement, an agreement referred to in section 28G, a development consent granted pursuant to an application referred to in section 28A (1), or any amendment or modification of a development statement or of such a development consent.

25 (2) After receipt of an application under subsection (1), the Commissioner—

- 30 (a) may require the applicant to provide the Commissioner with such further information in relation to the application as, in the opinion of the Commissioner, may assist the investigation of the application;
- (b) may refuse to proceed with the application until a requirement made by him pursuant to paragraph (a) has been complied with; or
- 35 (c) shall determine whether to proceed with an investigation of the application or, having proceeded with such an investigation, whether to discontinue the investigation.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(3) In making a determination under subsection (2) (c), the Commissioner—

- 5 (a) shall have regard to whether, in the opinion of the Commissioner—
- (i) the application is frivolous, vexatious, misconceived or lacking in substance;
- 10 (ii) the applicant has unreasonably delayed complying with a requirement under subsection (2) (a);
- (iii) investigation, or further investigation, is a matter for a consent authority; or
- (iv) the applicant has an alternative and better means of redress; and
- 15 (b) may have regard to such other matters as the Commissioner considers to be appropriate.

(4) Where the Commissioner determines to proceed with an investigation of an application under subsection (1), the Commissioner shall—

- 20 (a) inform the applicant of the determination;
- (b) where the body corporate is not the applicant—inform the body corporate of the determination and of the subject-matter of the investigation;
- 25 (c) inform the developer and the relevant consent authority of the determination 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.

30 (5) Where the Commissioner determines not to proceed with an investigation of an application under subsection (1) or determines to discontinue such an investigation, the Commissioner shall so inform the applicant and, in the case of a discontinuance, each other person who, pursuant to subsection (4), was notified of the original decision to proceed with the investigation.

35

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

5 (6) For the purpose of investigating an application under subsection (1), the Commissioner, or a delegate of the Commissioner, may enter upon any lot the subject of the strata scheme concerned at any reasonable time on notice given to any occupier of that lot and may enter upon the common property.

10 (7) A person shall not obstruct or hinder the Commissioner, or the delegate of the Commissioner, in the exercise of the powers conferred by subsection (6).

Penalty: \$500.

(8) Sections 16C, 16D and 16E of the Consumer Protection Act, 1969, apply to and in respect of an investigation under this section as if—

15 (a) a reference in those sections to an investigation included a reference to an investigation under this section;

(b) a reference in those sections to an investigating officer included a reference to—

(i) the Commissioner; and

20 (ii) a person to whom the Commissioner has, pursuant to section 98, delegated the powers, authorities, duties and functions conferred or imposed on the Commissioner by the operation of subparagraph (i); and

25 (c) a reference in those sections to the Commissioner included a reference to the Strata Titles Commissioner.

30 (9) Where, in accordance with subsection (8), section 16E of the Consumer Protection Act, 1969, applies, subsections (2) and (4) of that section shall each be deemed to have been amended by inserting after the words "this Act" where firstly and secondly occurring the words "or the Strata Titles Act, 1973,".

35 (10) On completion of an investigation under this section by the Commissioner or a delegate of the Commissioner, the Commissioner shall report to the Commissioner for Consumer Affairs on the results of the investigation.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.***Grant of legal assistance, etc.**

5 28O. (1) Division 3A (sections 16G and 16J (6) excepted) of Part II of the Consumer Protection Act, 1969, applies to and in respect of an application under section 28N (1) in the same way as it applies to and in respect of an application under section 16G of that Act.

10 (2) Whether or not an investigation of an application under section 28N (1) has been completed, the Commissioner may, with the consent of the Minister administering the Consumer Protection Act, 1969, 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, and the interim order may be
15 granted without any undertaking being given by the Commissioner as to damages.

(3) For the purposes of subsection (1), an interim restraining order sought under subsection (2) shall be deemed to have been sought by the person who made the application under section 28N (1) in relation to which the restraining order is sought, and that person shall be deemed to be an assisted person under Division 3A of Part II of the Consumer Protection Act, 1969.
20

Resolution for application by body corporate.

25 28P. (1) In relation to a development statement, or a development consent granted pursuant to an application referred to in section 28A (1), or any variation or modification of such a statement or consent, a body corporate may—

(a) make an application under section 28K or 28N; or

(b) bring proceedings referred to in—

30 (i) section 123 of the Environmental Planning and Assessment Act, 1979; or

(ii) section 20 (1) (e) of the Land and Environment Court Act, 1979,

35 if authorised so to do by a resolution of the body corporate passed in accordance with subsection (2) at a duly convened general meeting of the body corporate.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

5 (2) A resolution is passed in accordance with this subsection if it is passed after disregarding any vote cast by the developer (whether as proprietor of a lot or as a proxy or mortgagee) or by a mortgagee of the developer (whether as mortgagee or as a proxy).

Functions of Commissioner.

28Q. The Commissioner may—

- 10 (a) give advice as to the remedies available in relation to matters arising under this Division;
- (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
- 15 (c) advise the appropriate consent authority of any departure from the terms of a development consent or development statement.

(9) Section 32 (4) (b1)—

After section 32 (4) (b), insert:—

- 20 (b1) the amendment of any development statement that relates to the parcel;

(10) (a) Section 37 (1)—

After “strata plan”, insert “that does not include a development lot or lots”.

(b) Section 37 (1A)—

25 After section 37 (1), insert:—

(1A) Subject to this Division, a local council shall, on application made to it for a certificate of approval 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 certificate of approval of that plan if it is satisfied—

30

- (a) as to either of the matters referred to in subsection (1) (a) and (b); and

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) that the plan and any building containing proposed lots to which the plan relates—

5 (i) satisfy any development consent conditions applicable thereto; and

(ii) give effect to the stage of the development statement to which they relate.

(c) Section 37 (2)—

10 After “subdivision” where firstly occurring, insert “(not being a proposed subdivision of a development lot)”.

(d) Section 37 (4)—

After “subdivision” where firstly occurring, insert “(not being a proposed subdivision of a development lot)”.

15 (11) Section 38 (2) (a)—

After “(1), ”, insert “(1A),”.

(12) (a) Section 40 (1) (b)—

Omit “or”.

(b) Section 40 (1) (c), (d)—

20 At the end of section 40 (1) (c), insert:—

; or

(d) a proposed amendment of a development statement.

(13) (a) Section 41 (2A)–(2C)—

After section 41 (2), insert:—

25 (2A) A development statement is registered when the Registrar-General makes in the Register such recordings with respect to the development statement as the Registrar-General considers appropriate.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

5 (2B) An amendment of a development statement is registered under section 28D when the Registrar-General makes in the Register such recordings with respect to the amendment as the Registrar-General considers appropriate.

(2C) An amendment of a development statement is registered under section 28E—

10 (a) in the case of exclusion of a development lot from the development scheme—when the Registrar-General makes in the Register such recordings with respect to the amendment as the Registrar-General considers appropriate; or

15 (b) in the case of conversion of a development lot into common property—by the registration under subsection (3) of the notice referred to in section 28E (2) (b).

(b) Section 41 (5)—

20 Omit “or building alteration plan”, insert instead “building alteration plan, development statement or amendment of a development statement”.

(14) (a) Section 42 (3)—

(i) After “plan” where firstly occurring, insert “, development statement or amendment of a development statement”.

25 (ii) After “plan” where secondly occurring, insert “, development statement or amendment”.

(b) Section 42 (4)—

(i) After “plan” where firstly occurring, insert “, development statement or amendment of a development statement”.

30 (ii) After “plan” where secondly occurring, insert “, development statement or amendment”.

(15) Section 43 (1)—

After “(d),” insert “8A (2) (c),”.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) Section 50 (6) (b1)—

5 After section 50 (6) (b), insert:—

(b1) the amendment of any development statement that relates to the parcel;

(2) Section 51 (6) (b1)—

10 After section 51 (6) (b), insert:—

(b1) the termination of any development scheme that relates to the parcel and the cancellation of the development statement concerned;

(3) Section 53 (1)—

15 After “Register”, insert “(including orders relating to amendments of any development statement or, in the case of an order under section 51, orders relating to cancellation of a development statement)”.

SCHEDULE 4.

(Sec. 5.)

20 AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 66 (1) (b)—

Omit “alter”, insert instead “except in accordance with a development statement, alter”.

(2) Section 67 (4) (a) (i)—

25 After “subdivision”, insert “of a lot other than a development lot”.

(3) Section 68 (1)—

After “concerned”, insert “, but subject to the provisions of any development statement affecting common property and to the operation of this Act in relation to the development statement”.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(4) Section 80 (2)—

At the end of section 80, insert:—

- 5 (2) The provisions of subsection (1) (b) and (c) do not operate to prevent the due exercise of rights conferred on a developer by the operation of section 28H.

(5) Section 81 (1)—

After “proprietor”, insert “, a developer”.

10

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 105 (4)—

Omit the subsection, insert instead:—

- 15 (4) Nothing in this Division authorises the Commissioner to make an order—

- 20 (a) of the kind that may be made by the Supreme Court under section 32, 50, 51 or 67;
- (b) of the kind that may be made under section 124 of the Environmental Planning and Assessment Act, 1979, in relation to a condition referred to in section 28A (2) (b); or
- (c) for the settlement of a dispute, or the rectification of a complaint, arising out of the agreement referred to in section 28G (1).

25 (2) Section 119 (1)—

After “that time”, insert “and, if a development statement is in force in relation to the strata scheme, such other matters as the Board considers to be relevant”.

SCHEDULE 6.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 5 (1), definition of "structural cubic space"—

5 Omit paragraph (b), insert instead:—

(b) any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one lot and—

10 (i) are in a building in relation to which a plan for registration as a strata plan was lodged with the Registrar-General before the day appointed and notified under section 2 (3) of the Strata Titles (Development Schemes) Amendment Act, 1985; or

(ii) in any other case—are in a building or in a part of a parcel that is not a building;

15 (2) Section 158 (3)—

Omit the subsection, insert instead:—

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- 20 (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,

25 or may do any combination of those things.

STRATA TITLES (DEVELOPMENT SCHEMES) AMENDMENT ACT
1985 No. 114

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 114, 1985

An Act to amend the Strata Titles Act, 1973, to provide for the regulation of schemes for the progressive development of land to which a proposed strata scheme relates, and for other purposes. [Assented to, 15th October, 1985.]

See also Land and Environment Court (Strata Titles) Amendment Act, 1985.

Strata Titles (Development Schemes) Amendment 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Strata Titles (Development Schemes) Amendment Act, 1985".

Commencement.

2. (1) Sections 1 and 2 and Schedule 6 (2) shall commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1–6, shall commence on the day on which the provision commences.

(3) Schedule 6 (1) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(4) Except as provided by subsections (1), (2) and (3), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Strata Titles Act, 1973, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

- SCHEDULE 1.—AMENDMENTS TO PART I OF THE PRINCIPAL ACT.
- SCHEDULE 2.—AMENDMENTS TO PART II OF THE PRINCIPAL ACT.
- SCHEDULE 3.—AMENDMENTS TO PART III OF THE PRINCIPAL ACT.
- SCHEDULE 4.—AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.
- SCHEDULE 5.—AMENDMENTS TO PART V OF THE PRINCIPAL ACT.
- SCHEDULE 6.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

Strata Titles (Development Schemes) Amendment 1985

Amendment of Act No. 68, 1973.

5. The Principal Act is amended in the manner set forth in Schedules 1-6.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO PART I OF THE PRINCIPAL ACT.

(1) Section 4—

Omit the section.

(2) (a) Section 5 (1), definition of “consent authority”—

After the definition of “company nominee”, insert:—

“consent authority” has the same meaning as it has in the Environmental Planning and Assessment Act, 1979;

(b) Section 5 (1), definitions of “developer”, “development”, “development application”, “development consent”, “development lot”, “development scheme”, “development statement”—

After the definition of “current plan”, insert:—

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

(a) the original proprietor; or

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

“development” has the same meaning as it has in the Environmental Planning and Assessment Act, 1979;

“development application” has the same meaning as it has in the Environmental Planning and Assessment Act, 1979;

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO PART I OF THE PRINCIPAL ACT—*continued.*

“development consent” has the same meaning as it has in the Environmental Planning and Assessment Act, 1979;

“development lot” means a lot in a strata plan that is identified by a development statement 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 development statement;

“development statement” means—

(a) instruments, plans and drawings that are deemed by section 28A (2) (a) to have been approved by a consent authority or are referred to in section 28B (2) (c); and

(b) amendments of those instruments, plans and drawings;

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO PART II OF THE PRINCIPAL ACT.

(1) Section 7 (3)—

After “strata plan”, insert “and a strata plan of subdivision”.

(2) (a) Section 8 (1) (e)—

Omit “; and”, insert instead “or (1A), as the case may require;”.

(b) Section 8 (1) (f), (g)—

At the end of section 8 (1) (f), insert:—

; and

(g) where any proposed lot is a development lot—

(i) it is designated as such on that location plan; and

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (ii) the plan lodged for registration is accompanied by a copy of the relevant development statement, and the certificate, referred to in section 28A (4).

(c) Section 8 (4)—

Omit “Subsection (1) (e) does”, insert instead “The provisions of subsection (1) (e) and (g) do”.

(3) Section 8A—

After section 8, insert:—

Subdivision of development lots.

8A. (1) Land that is a development lot 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—

(i) a location plan; and

(ii) a floor plan,

in respect of the land to which the plan relates;

(b) where no part of that land would become common property upon registration of the plan as a strata plan of subdivision, at least one of the proposed lots or part thereof to which the floor plan relates is superimposed upon another proposed lot or part thereof to which the floor plan relates;

(c) that location plan is accompanied by a schedule showing as a whole number the unit entitlement in respect of each lot into which the land is proposed to be subdivided, the aggregate of those unit entitlements being equal to the unit entitlement ascribed to the development lot on registration of the strata plan of which the development lot forms part;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (d) that location plan is accompanied by a certificate given by the local council in accordance with section 37 (1A); and
- (e) that location plan is accompanied by a certificate given by a registered surveyor, certifying—
 - (i) that any wall, the inner surface or any part of which corresponds substantially with any line shown on the floor plan relating to any building erected on that land as a boundary of a proposed lot, exists;
 - (ii) that any floor or ceiling, the upper or under surface or any part of which forms a boundary of a proposed lot, exists;
 - (iii) that any wall, floor, ceiling or structural cubic space, by reference to which any boundary of a proposed lot is to be ascertained, exists; and
 - (iv) that the building erected on that land and each proposed lot shown on that location plan are wholly within the perimeter of that land except to the extent of any encroachment referred to in section 38 (1) (b) or, where eaves encroach, or guttering encroaches, on land other than a public place, that an appropriate easement exists.

(3) The provisions of section 8 (2) and (3) apply to the registration, as a strata plan of subdivision, of a plan illustrating a proposed subdivision of a development lot in the same way as they apply to the registration of a plan as a strata plan.

(4) Subsection (2) (d) does not apply to or in respect of a plan lodged for registration as a strata plan of subdivision of a development lot by a person or body who or which, but for section 3, would not be bound by this Act.

(4) (a) Section 9 (1)—

Omit the subsection, insert instead:—

- (1) Lots (other than development lots) or common property, or lots (other than development lots) and common property,

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

may be subdivided by the registration, as a strata plan of subdivision, of a plan that complies with subsection (3).

(b) Section 9 (3)—

Omit “shall not be registered as a strata plan of subdivision unless”, insert instead “complies with this subsection if”.

(5) Section 10 (1)—

After “5 (7) (a)”, insert “or 9 (1)”.

(6) Section 11—

After “or (d)”, insert “or 9 (1)”.

(7) Section 13—

Omit “One”, insert instead “Except as provided by section 28E, one”.

(8) Part II, Division 2A—

After Division 2, insert:—

DIVISION 2A.—*Development Schemes.*

Approval of development statement.

28A. (1) Where the development proposed in a development application lodged with a consent authority on or after the day appointed and notified under section 2 (4) of the Strata Titles (Development Schemes) Amendment Act, 1985, includes—

- (a) the registration of a strata plan; and
- (b) the subsequent subdivision, by a strata plan of subdivision, of a lot in the strata plan, being a lot no part of which is superimposed on any part of another lot in the strata plan,

development consent shall not be given by the consent authority unless the development application is accompanied by a proposed development statement.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (2) Where a development application referred to in subsection (1) is determined by the granting of consent to the application—
- (a) the consent authority shall be deemed to have approved the proposed development statement that accompanied the application; and
 - (b) the consent shall be deemed to have been granted subject to a condition (which shall be deemed to be a condition the imposition of which is authorised by section 91 of the Environmental Planning and Assessment Act, 1979) requiring the parcel to which the development statement relates to be developed as provided and represented by the development statement.
- (3) For the purposes of subsection (1), a proposed development statement shall comprise—
- (a) an instrument (which may comprise more than one document) that—
 - (i) describes the land that will comprise the parcel for the strata scheme to be initiated by registration of the strata plan;
 - (ii) describes, in the prescribed manner and by reference to the prescribed information, the stages by which the development of that land is proposed and the sequence in which it is proposed to implement those stages;
 - (iii) describes the proposed arrangements for the ingress, egress, movement and parking of vehicles to, from and on the parcel during development;
 - (iv) describes the manner in which it is proposed to landscape the parcel;
 - (v) specifies the obligations to be imposed, and the rights to be conferred, in relation to the use (including erection of structures) of common property and, before subdivision, of development lots;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (vi) includes the proposed schedule of unit entitlements under section 8 (1) (d);
 - (vii) includes the proposed schedule of unit entitlements under section 8A (2) (c) for each lot in each proposed strata plan of subdivision;
 - (viii) specifies the dates by which it is proposed to commence and complete each stage of the development of the parcel;
 - (ix) contains the prescribed warning relating to possible amendments of the statement and the possibility that the development scheme concerned may not be completed; and
 - (x) includes such other matters as may be prescribed;
- (b) plans and drawings illustrating—
- (i) the matters referred to in paragraph (a);
 - (ii) the location of buildings proposed to be erected or retained on the parcel;
 - (iii) elevations and sections of those buildings and their external finishes and heights;
 - (iv) perspectives of those buildings;
 - (v) the proposed finished levels of the land in relation to roads and those buildings; and
 - (vi) such other matters as may be prescribed;
- (c) illustrations of the proposed strata plan and each proposed strata plan of subdivision; and
- (d) such other instruments (including plans and drawings) as may be prescribed.
- (4) Upon giving consent to a development application referred to in subsection (1), a consent authority shall provide the applicant for the consent with a copy of the development statement deemed by

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

subsection (2) (a) to have been approved by the consent authority together with the prescribed certificate by the consent authority.

Registration of development statement.

28B. (1) Where section 8 (1) (g) is complied with in relation to a plan lodged with the Registrar-General for registration as a strata plan, the Registrar-General may, upon registration of the plan as a strata plan, register the accompanying development statement.

(2) Where—

- (a) a plan is lodged with the Registrar-General for registration as a strata plan;
- (b) the person or body who or which would be the original proprietor on registration of the strata plan is a person who or which, but for section 3, would not be bound by this Act; and
- (c) the plan is accompanied by instruments, plans and drawings that, if deemed by section 28A (2) (a) to have been approved by a development authority, would comprise a development statement,

the Registrar-General may, upon registration of the strata plan, register the instruments, plans and drawings as a development statement.

(3) Where a strata plan and a development statement have been registered as provided by subsection (1) or (2), the Registrar-General shall record in the folio of the Register created under section 18 (2) or 22 (1)—

- (a) the existence of the development statement and of any subsequent amendment thereof registered from time to time; and
- (b) such information relating to the development statement and any amendment thereof as the Registrar-General considers appropriate.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

Amendment of development statement.

28C. (1) Except to the extent that this section and the regulations otherwise provide, an amendment of a registered development statement does not have effect unless—

- (a) where the development statement was registered under section 28B (1)—the consent authority concerned has given in relation to the amendment the certificate referred to in subsection (8) (b) and the amendment is registered as provided by section 28D or 28E, whichever is applicable; or
- (b) where the development statement was registered under section 28B (2)—the amendment is registered as provided by section 28D or 28E, whichever is applicable.

(2) Subsection (1) does not apply to an amendment of a registered development statement ordered under section 28F (4), 28K (1), 32 (4) or 50 (6), or consequential upon an order under section 119 (1), and such an amendment does not have effect unless—

- (a) in the case of an amendment ordered under section 28F (4) or 28K (1)—the amendment is recorded under section 28M;
- (b) in the case of an amendment ordered under section 32 (4)—the amendment is recorded under section 48 (2);
- (c) in the case of an amendment ordered under section 50 (6)—the amendment is recorded under section 48 (2) or 53 (1), whichever is applicable; or
- (d) in the case of an amendment consequential upon an order under section 119 (1)—the amendment is recorded under section 141 (3) or (4).

(3) Subsection (1) does not apply to an amendment of a registered development statement that is consequential upon the revocation or modification, under section 103 of the Environmental Planning and Assessment Act, 1979, of a development consent.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(4) Notwithstanding subsection (1) (a), a certificate referred to in subsection (8) (b) is not required in relation to an amendment of a development statement if—

- (a) the amendment effects a reallocation of the proposed unit entitlements of the lots to be created upon subdivision of a development lot and—
 - (i) the reallocation does not result in a change to the unit entitlement of the development lot; and
 - (ii) the developer has given to the body corporate the prescribed period of notice of the reallocation in writing specifying the manner of reallocation; or
- (b) the amendment effects a change, for reasons beyond the control of the developer, in a date referred to in section 28A (3) (a) (viii) and—
 - (i) the change of date does not constitute a breach of a condition of a development consent; and
 - (ii) the developer has given to the body corporate the prescribed period of notice of the change in writing specifying the change and the reasons for the change.

(5) Where application is made to a consent authority for a certificate referred to in subsection (8) (b) relating to an amendment of a development statement, the application shall be accompanied—

- (a) by such instruments, plans and drawings of the nature referred to in section 28A as describe and illustrate the effect of the proposed amendment;
- (b) by a certificate under the seal of the body corporate to the effect that the body corporate has consented to the amendment and—
 - (i) unless there is more than one member of the body corporate—that there is only one member of the body corporate; or

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (ii) where there is more than one member of the body corporate—that the consent of the body corporate was given in accordance with subsection (6); and
 - (c) by such other instruments (including plans and drawings) as may be prescribed.
- (6) Consent to an amendment of a development statement is given by a body corporate in accordance with this subsection if it is given by means of a resolution passed at a duly convened general meeting of the body corporate at which—
- (a) where the amendment is not an amendment whereby a development lot is excluded wholly or partly from the development scheme or converted into common property—
 - (i) subsection (7) is applied in relation to the voting on the motion for the resolution; and
 - (ii) any votes cast against the motion for the resolution total not more than one-half in number of all the persons who were entitled to vote on the motion; or
 - (b) where the amendment is an amendment whereby a development lot is excluded wholly or partly from the development scheme or converted into common property—the resolution is a unanimous resolution.
- (7) For the purposes of voting on a motion for a resolution referred to in subsection (6) (a) and notwithstanding anything in section 57 (5)—
- (a) the developer (whether as proprietor of a lot or as a proxy or mortgagee) is not entitled to vote on the motion;
 - (b) a mortgagee of the developer (whether as mortgagee or as a proxy) is not entitled to vote on the motion;
 - (c) any vote cast by a person not entitled to vote on the motion shall not be counted; and
 - (d) all votes cast for or against the motion by persons entitled to vote on the motion are of equal value,

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

but a person disqualified by this subsection from voting on a motion shall, for the purpose of moving the motion or requiring its inclusion in the agenda for a meeting, be deemed not to be so disqualified.

(8) Where a consent authority is satisfied that an application for an amendment of a development statement made to the consent authority under subsection (5) complies with this Act and the regulations and the consent authority approves an amendment of the development statement, the consent authority shall provide the applicant for the amendment with—

- (a) a copy of the instruments, plans and drawings that describe and illustrate the approved amendment; and
- (b) a certificate by the consent authority to the effect—
 - (i) that the copy referred to in paragraph (a) describes and illustrates the amendment approved by the consent authority; and
 - (ii) that the development statement, if amended in the manner approved by the consent authority, would not be inconsistent with the related development consent.

Registration of amendment that does not exclude or convert a development lot.

28D. (1) Where an amendment of a registered development statement is not an amendment whereby a development lot is excluded wholly or partly from the development scheme or is converted into common property, the Registrar-General may register the amendment if a request is made, in a form approved by the Registrar-General, for registration of the amendment and the request is accompanied by—

- (a) the prescribed fee in the case of an amendment of a development statement registered under section 28B (1);
- (b) the certificate of title for the common property;
- (c) where the parcel or a part of the parcel is subject to a mortgage given by the developer and the amendment is not an amendment referred to in section 28C (2), (3) or (4)—the written consent of the mortgagee to the amendment;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (d) the documents prescribed by subsection (2) in relation to the amendment; and
- (e) such other instruments (including plans and drawings) as may be prescribed by the regulations.

(2) The documents prescribed by this subsection in relation to an amendment are—

- (a) where section 28C (1) (a) applies to the amendment—
 - (i) the instruments, plans and drawings referred to in section 28C (8) (a) that relate to the amendment;
 - (ii) the certificate referred to in section 28C (8) (b) that relates to the amendment; and
 - (iii) a certificate by the developer to the effect that the amendment does not exclude a development lot wholly or partly from the development scheme or convert a development lot into common property;
- (b) where the amendment is an amendment referred to in section 28C (3)—
 - (i) a copy, certified by the developer to be a true copy, of the instrument under section 103 of the Environmental Planning and Assessment Act, 1979, that effected the revocation or modification upon which the amendment is consequential; and
 - (ii) the certificate referred to in paragraph (a) (iii);
- (c) where the amendment is not an amendment to which section 28C (4) applies and relates to a development statement registered under section 28B (2)—
 - (i) such instruments, plans and drawings of the nature referred to in section 28A as describe and illustrate the effect of the proposed amendment; and
 - (ii) the certificate referred to in paragraph (a) (iii); or

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (d) where the amendment is an amendment to which section 28C (4) applies—
- (i) such instruments as describe the effect of the proposed amendment;
 - (ii) a copy, certified by the developer to be a true copy, of the notice under section 28C (4) (a) (ii) or (b) (ii) that relates to the amendment; and
 - (iii) the certificate referred to in paragraph (a) (iii).

Registration of amendment whereby development lot excluded or converted.

28E. (1) Where an amendment of a registered development statement is an amendment whereby a development lot is excluded wholly or partly from the development scheme or is converted into common property, the Registrar-General may register the amendment if a request is made, in a form approved by the Registrar-General, for registration of the amendment and the request is accompanied by—

- (a) the prescribed fee in the case of an amendment of a development statement registered under section 28B (1);
 - (b) the certificate of title for the common property;
 - (c) where the parcel or a part of the parcel is subject to a mortgage given by the developer and the amendment is not an amendment referred to in section 28C (2) or (3)—the written consent of the mortgagee to the amendment; and
 - (d) the documents prescribed by subsection (2) in relation to the amendment.
- (2) The documents prescribed by this subsection in relation to an amendment are—
- (a) in the case of an amendment whereby a development lot is excluded wholly or partly from the development scheme—
 - (i) such instruments, plans and drawings as are prescribed for the purposes of this paragraph;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (ii) where section 28C (1) (a) applies to the amendment—
the certificate referred to in section 28C (8) (b) that
relates to the amendment; or
- (b) in the case of an amendment whereby a development lot is
converted into common property—
 - (i) a notice of conversion that is in a form approved by
the Registrar-General and is executed by the
proprietor of the lot and the body corporate; and
 - (ii) where section 28C (1) (a) applies to the amendment—
the certificate referred to in section 28C (8) (b) that
relates to the amendment.

(3) A notice referred to in subsection (2) (b) (i) shall not be registered unless every mortgage, charge, current lease, caveat or writ recorded in the folio of the Register comprising the lot to which the notice relates has, in so far as it affects the lot, been discharged or surrendered, or withdrawn or disposed of, as the case may be.

Amendment by order of Land and Environment Court.

28F. (1) Where, in relation to a development statement, a developer has failed to obtain a consent referred to in section 28C (5) (b), 28D (1) (c) or 28E (1) (c) because—

- (a) in the case of a consent referred to in section 28C (5) (b)—
 - (i) a motion for the giving of the consent has been
defeated; or
 - (ii) the notice relating to such a motion has been given
but a meeting of the body corporate to consider the
motion has not been held within a reasonable time
after the giving of the notice; or
- (b) in the case of a consent referred to in section 28D (1) (c) or
28E (1) (c)—the consent has been sought and refused,

the developer may apply to the Land and Environment Court for an order dispensing with any one or more of those consents.

- (2) Notice of an application under subsection (1) shall be served—
 - (a) where the application relates only to a mortgagee's consent—
on the mortgagee; or

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(b) in any other case—

- (i) on each proprietor of a lot other than the applicant;
- (ii) on each first mortgagee of a lot;
- (iii) on the consent authority by which the development statement is deemed to have been approved; and
- (iv) where the application relates to a mortgagee's consent in addition to any other consent—on the mortgagee,

and on such other persons as the Land and Environment Court may direct.

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

(4) Where an application is made under subsection (1), the Land and Environment Court—

- (a) may order that the only consent, or any one or more of the consents, to which the application relates be dispensed with and may make such other orders (including orders relating to the amendment of the development statement) as it considers to be appropriate; or
- (b) may dismiss the application.

(5) An order made under subsection (4) (a) has effect according to its tenor.

(6) Without limiting the generality of subsection (4), an order may be made under that subsection with respect to one or both of the following matters:—

- (a) the payment of money to or by the body corporate or the proprietors of lots or any one or more of them;
- (b) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(7) Where the Land and Environment Court is of the opinion that an order should not be made under subsection (4) (a)—

(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 28i; and

(b) where it gives such a direction—

(i) the application the subject of the direction shall be deemed to be made under section 28i 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 28i, is entitled to appear and be heard on the hearing of the application.

(8) The Land and Environment Court may, from time to time, vary an order made under subsection (4) (a) on the application of any person who was entitled to appear and be heard on the hearing of the application for that order.

Binding effect of development statement.

28G. (1) On and from the registration of a development statement, each person who for the time being is—

- (a) the developer;
- (b) a proprietor of a lot (other than the developer);
- (c) a registered or enrolled mortgagee of a lot;
- (d) the lessee or occupier of a lot; or
- (e) the body corporate,

under the strata scheme proposed by the development statement shall be deemed to have entered into an agreement under seal containing the covenants referred to in subsection (2).

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (2) The covenants referred to in this subsection are—
- (a) a covenant whereby the developer agrees with the other parties jointly and each of them severally that the developer will develop the parcel—
 - (i) in accordance with the related development consent, as modified from time to time; and
 - (ii) as provided and represented by the development statement, as from time to time amended in accordance with this Act; and
 - (b) a covenant whereby the parties other than the developer jointly and severally agree with the developer that the developer will be permitted by them and each of them to develop the parcel as provided by paragraph (a).
- (3) Subject to subsection (4), the agreement referred to in subsection (1) ceases to have effect—
- (a) in relation to a party thereto who is a person referred to in subsection (1) (a), (b), (c) or (d)—upon that person ceasing to be a person so referred to; and
 - (b) in relation to all the parties thereto—upon the recording under section 28I (10) of the termination of the development scheme to which the agreement relates.
- (4) Subsection (3) does not operate to prejudice or affect any obligation that was incurred by a person, or any right that accrued to a person, under the agreement referred to in subsection (1) before the agreement ceased to have effect in relation to the person.
- (5) Except as may be otherwise provided by this Act, a provision in any instrument whereby the agreement referred to in subsection (1) is excluded, modified or restricted is void.
- (6) A covenant entered into under an agreement referred to in subsection (1) does not merge in a transfer of a lot.
- (7) Part V does not apply to or in relation to matters arising under an agreement referred to in subsection (1).

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(8) Subject to subsection (7), nothing in this section affects any right or remedy that a person may have apart from a right or remedy under an agreement referred to in subsection (1).

Use of common property, etc., by developer.

28H. (1) Where, pursuant to section 28G, rights exercisable by a developer include rights to use and enjoy common property or a development lot, or both, for the purpose of discharging the obligations imposed on the developer by that section, those rights may be exercised notwithstanding any inconsistency between them and the other provisions of this Act, or the provisions of the by-laws, if the rights are exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot.

(2) The agreement referred to in section 28G shall be deemed to include a covenant by the developer to make good any damage to the common property or a development lot, or both, caused by the exercise of rights referred to in subsection (1), whether or not the development statement contemplates or authorises the damage.

(3) Section 121 does not authorise the making of an order that is inconsistent with the rights referred to in subsection (1).

Termination of development scheme.

28I. (1) A development scheme terminates—

- (a) if the related development consent is revoked;
- (b) upon performance of the obligations imposed on the developer by the agreement referred to in section 28G;
- (c) if the Supreme Court makes an order under section 51 terminating the development scheme;
- (d) if the Land and Environment Court makes an order under subsection (5); or
- (e) if every proprietor of a lot and every registered or enrolled mortgagee of a lot so agree in writing.

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(2) Except where an application has been made to the Supreme Court under section 51 (1) for an order under section 51 (4), an application to the Land and Environment Court for an order terminating a development scheme may be made by—

- (a) the developer;
- (b) any proprietor, registered mortgagee or enrolled mortgagee of a lot; or
- (c) the body corporate.

(3) Notice of an application under subsection (2) shall be served, in accordance with rules of court, on—

- (a) each person referred to in subsection (2), other than the applicant;
- (b) the consent authority by which the related development statement is deemed to have been approved;
- (c) the Registrar-General; and
- (d) such other persons (including creditors of the body corporate) as the Land and Environment Court may direct.

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

(5) The Land and Environment Court may, on an application made under subsection (2), make an order terminating the development scheme concerned.

(6) An order made under subsection (5) shall take effect as provided in the order and the order shall have effect according to its tenor.

(7) An order under subsection (5) may make provision with respect to one or more of the following matters:—

- (a) such provisions in relation to the strata scheme as are, in the opinion of the Land and Environment Court, necessary as a consequence of the termination of the development scheme;

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SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) the payment of money to or by the body corporate or the proprietors of lots or 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;
 - (c) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.
- (8) Where the Land and Environment 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 (2) or of its own motion, direct that the application under that subsection be treated as an application for an order under section 28F (4); and
 - (b) where it gives such a direction—
 - (i) the application the subject of the direction shall be deemed to be an application made under section 28F by a person entitled to make the application; and
 - (ii) the applicant under subsection (2), as well as any other person entitled to appear and be heard under section 28F, is entitled to appear and be heard on the hearing of the application.
- (9) The Land and Environment Court may, from time to time, vary an 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.
- (10) Upon application made as prescribed and supported by such evidence as the Registrar-General requires, the Registrar-General may record the termination of a development scheme by making such recordings in the Register as the Registrar-General thinks fit.

Interchangeability of notices.

28J. Any notice served under section 28F or 28I shall, where it relates to an application which is required to be treated as an application under the other of those sections, be deemed to be a notice served under the other of those sections.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

Misleading development statement.

28k. (1) Where a development statement, as from time to time in force, is deficient by reason that—

- (a) it includes an untrue statement;
- (b) it fails to disclose material matter; or
- (c) it is inconsistent with the related development consent,

and the developer does not, within a reasonable time after becoming aware of the deficiency, obtain registration of an amendment of the development statement that rectifies the deficiency, the Land and Environment Court may, on application by the body corporate, a proprietor of a lot or the Commissioner (whether or not pursuant to section 28o)—

- (d) order an amendment of the development statement, being an amendment that rectifies the deficiency; and
 - (e) make such other orders as it considers appropriate,
- or it may dismiss the application.

(2) Notice of an application under subsection (1) shall be served on—

- (a) the developer;
- (b) each proprietor of a lot other than the developer or an applicant proprietor;
- (c) each person who is first mortgagee of a lot;
- (d) the consent authority by which the development statement is deemed to have been approved; and
- (e) such other persons as the Land and Environment Court may direct.

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

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(4) Without prejudice to the generality of subsection (1), an order may be made under that subsection with respect to one or both of the following matters:—

- (a) the payment of money by the developer to the body corporate or the proprietors of lots or any one or more of them;
- (b) any matter in respect of which it is, in the opinion of the Land and Environment Court, just and equitable, in the circumstances of the case, to make provision in the order.

Remedy for departure from development statement.

28L. (1) Where proceedings are brought under section 123 of the Environmental Planning and Assessment Act, 1979, by a body corporate or a proprietor of a lot in relation to an act or omission that constitutes a breach of the condition referred to in section 28A (2) (b), the Land and Environment Court may—

- (a) instead of making an order under section 124 of that Act restraining the breach; or
- (b) instead of, or in addition to, making any order under that section other than an order restraining the breach,

make an award of damages pursuant to section 20 (2) (d) of the Land and Environment Court Act, 1979, for a breach, constituted by that act or omission, of the agreement referred to in section 28G.

(2) Where proceedings are brought under section 20 (2) (d) of the Land and Environment Court Act, 1979, in relation to an act or omission that constitutes a breach of the agreement referred to in section 28G, the Land and Environment Court may, instead of, or in addition to, making an award of damages in relation to the breach, make an order under section 124 of the Environmental Planning and Assessment Act, 1979.

*Strata Titles (Development Schemes) Amendment 1985*SCHEDULE 2—*continued.*AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.***Duties of Registrar-General.**

28M. Where an order is made under section 28F (4), 28I (5) or 28K (1) in relation to a development statement and there is lodged with the Registrar-General a request in a form approved by the Registrar-General accompanied by—

- (a) the prescribed fee in the case of a development statement registered under section 28B (1);
- (b) the certificate of title for the common property;
- (c) a certified or office copy of the order; and
- (d) such other documents as may be prescribed,

the Registrar-General may make such recordings in the Register as the Registrar-General considers to be appropriate to give effect to the order.

Investigation of application for assistance.

28N. (1) A body corporate or a proprietor of a lot (other than the developer) may apply in writing to the Commissioner for assistance in the institution or defence of proceedings before the Land and Environment Court in relation to a development statement, an agreement referred to in section 28G, a development consent granted pursuant to an application referred to in section 28A (1), or any amendment or modification of a development statement or of such a development consent.

(2) After receipt of an application under subsection (1), the Commissioner—

- (a) may require the applicant to provide the Commissioner with such further information in relation to the application as, in the opinion of the Commissioner, may assist the investigation of the application;
- (b) may refuse to proceed with the application until a requirement made by him pursuant to paragraph (a) has been complied with; or
- (c) shall determine whether to proceed with an investigation of the application or, having proceeded with such an investigation, whether to discontinue the investigation.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(3) In making a determination under subsection (2) (c), the Commissioner—

(a) shall have regard to whether, in the opinion of the Commissioner—

- (i) the application is frivolous, vexatious, misconceived or lacking in substance;
- (ii) the applicant has unreasonably delayed complying with a requirement under subsection (2) (a);
- (iii) investigation, or further investigation, is a matter for a consent authority; or
- (iv) the applicant has an alternative and better means of redress; and

(b) may have regard to such other matters as the Commissioner considers to be appropriate.

(4) Where the Commissioner determines to proceed with an investigation of an application under subsection (1), the Commissioner shall—

- (a) inform the applicant of the determination;
- (b) where the body corporate is not the applicant—inform the body corporate of the determination and of the subject-matter of the investigation;
- (c) inform the developer and the relevant consent authority of the determination 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.

(5) Where the Commissioner determines not to proceed with an investigation of an application under subsection (1) or determines to discontinue such an investigation, the Commissioner shall so inform the applicant and, in the case of a discontinuance, each other person who, pursuant to subsection (4), was notified of the original decision to proceed with the investigation.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(6) For the purpose of investigating an application under subsection (1), the Commissioner, or a delegate of the Commissioner, may enter upon any lot the subject of the strata scheme concerned at any reasonable time on notice given to any occupier of that lot and may enter upon the common property.

(7) A person shall not obstruct or hinder the Commissioner, or the delegate of the Commissioner, in the exercise of the powers conferred by subsection (6).

Penalty: \$500.

(8) Sections 16C, 16D and 16E of the Consumer Protection Act, 1969, apply to and in respect of an investigation under this section as if—

- (a) a reference in those sections to an investigation included a reference to an investigation under this section;
- (b) a reference in those sections to an investigating officer included a reference to—
 - (i) the Commissioner; and
 - (ii) a person to whom the Commissioner has, pursuant to section 98, delegated the powers, authorities, duties and functions conferred or imposed on the Commissioner by the operation of subparagraph (i); and
- (c) a reference in those sections to the Commissioner included a reference to the Strata Titles Commissioner.

(9) Where, in accordance with subsection (8), section 16E of the Consumer Protection Act, 1969, applies, subsections (2) and (4) of that section shall each be deemed to have been amended by inserting after the words “this Act” where firstly and secondly occurring the words “or the Strata Titles Act, 1973,”.

(10) On completion of an investigation under this section by the Commissioner or a delegate of the Commissioner, the Commissioner shall report to the Commissioner for Consumer Affairs on the results of the investigation.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

Grant of legal assistance, etc.

28O. (1) Division 3A (sections 16G and 16J (6) excepted) of Part II of the Consumer Protection Act, 1969, applies to and in respect of an application under section 28N (1) in the same way as it applies to and in respect of an application under section 16G of that Act.

(2) Whether or not an investigation of an application under section 28N (1) has been completed, the Commissioner may, with the consent of the Minister administering the Consumer Protection Act, 1969, 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, and the interim order may be granted without any undertaking being given by the Commissioner as to damages.

(3) For the purposes of subsection (1), an interim restraining order sought under subsection (2) shall be deemed to have been sought by the person who made the application under section 28N (1) in relation to which the restraining order is sought, and that person shall be deemed to be an assisted person under Division 3A of Part II of the Consumer Protection Act, 1969.

Resolution for application by body corporate.

28P. (1) In relation to a development statement, or a development consent granted pursuant to an application referred to in section 28A (1), or any variation or modification of such a statement or consent, a body corporate may—

- (a) make an application under section 28K or 28N; or
- (b) bring proceedings referred to in—
 - (i) section 123 of the Environmental Planning and Assessment Act, 1979; or
 - (ii) section 20 (1) (e) of the Land and Environment Court Act, 1979,

if authorised so to do by a resolution of the body corporate passed in accordance with subsection (2) at a duly convened general meeting of the body corporate.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(2) A resolution is passed in accordance with this subsection if it is passed after disregarding any vote cast by the developer (whether as proprietor of a lot or as a proxy or mortgagee) or by a mortgagee of the developer (whether as mortgagee or as a proxy).

Functions of Commissioner.

28Q. The Commissioner may—

- (a) give advice as to the remedies available in relation to matters arising under this Division;
- (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 development statement.

(9) Section 32 (4) (b1)—

After section 32 (4) (b), insert:—

- (b1) the amendment of any development statement that relates to the parcel;

(10) (a) Section 37 (1)—

After “strata plan”, insert “that does not include a development lot or lots”.

(b) Section 37 (1A)—

After section 37 (1), insert:—

(1A) Subject to this Division, a local council shall, on application made to it for a certificate of approval 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 certificate of approval of that plan if it is satisfied—

- (a) as to either of the matters referred to in subsection (1) (a) and (b); and

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

- (b) that the plan and any building containing proposed lots to which the plan relates—
- (i) satisfy any development consent conditions applicable thereto; and
 - (ii) give effect to the stage of the development statement to which they relate.
- (c) Section 37 (2)—
- After “subdivision” where firstly occurring, insert “(not being a proposed subdivision of a development lot)”.
- (d) Section 37 (4)—
- After “subdivision” where firstly occurring, insert “(not being a proposed subdivision of a development lot)”.
- (11) Section 38 (2) (a)—
- After “(1), ”, insert “(1A),”.
- (12) (a) Section 40 (1) (b)—
- Omit “or”.
- (b) Section 40 (1) (c), (d)—
- At the end of section 40 (1) (c), insert:—
- ; or
- (d) a proposed amendment of a development statement.
- (13) (a) Section 41 (2A)–(2C)—
- After section 41 (2), insert:—
- (2A) A development statement is registered when the Registrar-General makes in the Register such recordings with respect to the development statement as the Registrar-General considers appropriate.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 2—*continued.*

AMENDMENTS TO PART II OF THE PRINCIPAL ACT—*continued.*

(2B) An amendment of a development statement is registered under section 28D when the Registrar-General makes in the Register such recordings with respect to the amendment as the Registrar-General considers appropriate.

(2C) An amendment of a development statement is registered under section 28E—

- (a) in the case of exclusion of a development lot from the development scheme—when the Registrar-General makes in the Register such recordings with respect to the amendment as the Registrar-General considers appropriate; or
- (b) in the case of conversion of a development lot into common property—by the registration under subsection (3) of the notice referred to in section 28E (2) (b).

(b) Section 41 (5)—

Omit “or building alteration plan”, insert instead “building alteration plan, development statement or amendment of a development statement”.

(14) (a) Section 42 (3)—

- (i) After “plan” where firstly occurring, insert “, development statement or amendment of a development statement”.
- (ii) After “plan” where secondly occurring, insert “, development statement or amendment”.

(b) Section 42 (4)—

- (i) After “plan” where firstly occurring, insert “, development statement or amendment of a development statement”.
- (ii) After “plan” where secondly occurring, insert “, development statement or amendment”.

(15) Section 43 (1)—

After “(d),”, insert “8A (2) (c),”.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO PART III OF THE PRINCIPAL ACT.

(1) Section 50 (6) (b1)—

After section 50 (6) (b), insert:—

- (b1) the amendment of any development statement that relates to the parcel;

(2) Section 51 (6) (b1)—

After section 51 (6) (b), insert:—

- (b1) the termination of any development scheme that relates to the parcel and the cancellation of the development statement concerned;

(3) Section 53 (1)—

After “Register”, insert “(including orders relating to amendments of any development statement or, in the case of an order under section 51, orders relating to cancellation of a development statement)”.

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT.

(1) Section 66 (1) (b)—

Omit “alter”, insert instead “except in accordance with a development statement, alter”.

(2) Section 67 (4) (a) (i)—

After “subdivision”, insert “of a lot other than a development lot”.

(3) Section 68 (1)—

After “concerned”, insert “, but subject to the provisions of any development statement affecting common property and to the operation of this Act in relation to the development statement”.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO PART IV OF THE PRINCIPAL ACT—*continued.*

(4) Section 80 (2)—

At the end of section 80, insert:—

(2) The provisions of subsection (1) (b) and (c) do not operate to prevent the due exercise of rights conferred on a developer by the operation of section 28H.

(5) Section 81 (1)—

After “proprietor”, insert “, a developer”.

SCHEDULE 5.

(Sec. 5.)

AMENDMENTS TO PART V OF THE PRINCIPAL ACT.

(1) Section 105 (4)—

Omit the subsection, insert instead:—

(4) Nothing in this Division authorises the Commissioner to make an order—

- (a) of the kind that may be made by the Supreme Court under section 32, 50, 51 or 67;
- (b) of the kind that may be made under section 124 of the Environmental Planning and Assessment Act, 1979, in relation to a condition referred to in section 28A (2) (b); or
- (c) for the settlement of a dispute, or the rectification of a complaint, arising out of the agreement referred to in section 28G (1).

(2) Section 119 (1)—

After “that time”, insert “and, if a development statement is in force in relation to the strata scheme, such other matters as the Board considers to be relevant”.

Strata Titles (Development Schemes) Amendment 1985

SCHEDULE 6.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 5 (1), definition of "structural cubic space"—

Omit paragraph (b), insert instead:—

- (b) any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one lot and—
 - (i) are in a building in relation to which a plan for registration as a strata plan was lodged with the Registrar-General before the day appointed and notified under section 2 (3) of the Strata Titles (Development Schemes) Amendment Act, 1985; or
 - (ii) in any other case—are in a building or in a part of a parcel that is not a building;

(2) Section 158 (3)—

Omit the subsection, insert instead:—

(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.

BY AUTHORITY

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