

FIRST PRINT

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

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

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

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

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

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

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

Clause 4 gives effect to the Schedule of amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973

PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT

Definitions

Schedule 1 (1) amends section 5 (Definitions) because the instrument describing the development that is permitted to be carried out within a development lot will be called a *strata development contract* under the proposed scheme. Similar instruments are presently called "development statements". The changes are aimed at avoiding confusion with the kinds of instruments referred to in the Community Land Development Act 1989.

Strata plan registration

Schedule 1 (2) amends section 8 (Registration of strata plans) which lists the requirements that presently must be met by strata plans.

Schedule 1 (2) (a) removes the requirement that a development lot be illustrated on a location plan.

Schedule 1 (2) (b) requires the initial schedule of unit entitlement for a strata plan that includes a development lot to show the unit entitlement of each development lot and of the residue of the parcel apportioned in accordance with their relative land values. The unit entitlement of each of the developed lots must also be shown in the initial schedule as a proportion (calculated on a market value basis) of the unit entitlement of that residue.

Schedule 1 (2) (c) and (d) make amendments consequential on the changes in terminology and numbering of provisions in Division 2A of Part 2.

Subdivision after completion of a stage of development

Schedule 1 (3) substitutes section 8A (Subdivision of development lot) so as to restate, with appropriate modifications, the requirements for registration of a strata plan of subdivision of a development lot after development permitted by the strata development contract has been carried out. The unit entitlement of each of the new lots into which the development lot will be divided must be shown in a schedule of unit entitlement as a proportion (calculated on a market value basis) of the unit entitlement of the development lot.

Consequential amendments

Schedule 1 (4) amends section 13 (Conversion of lots into common property) to remove a reference to a repealed provision.

Schedule 1 (5) amends section 28 (Effect of dealings under this Division) to make it clear that the restrictions in that section do not prevent instruments executed in accordance with the proposed amendments from being registered under the 1973 Act.

Staged development schemes

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

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Section 28A (Explanation of staged development) describes in general terms the concept of staged development. As mentioned above, staged development consists of:

- the progressive development of reserve or development lots in a strata scheme (which may result in the construction of additional buildings and the carrying out of works such as landscaping); and
- the subdivision of those lots after that development has been carried out (which will create titles for each of the new lots, allowing them to be sold, leased or mortgaged separately); and
- the allocation of unit entitlements for the new lots. (Unit entitlements determine the proportions in which lot owners, or proprietors, will be required to contribute to maintenance of the building and other common property.)

Section 28B (Obligations of consent authorities) forbids a consent authority from granting development consent for a subdivision under the 1973 Act that would create a lot reserved for development and for the subsequent subdivision under that Act of that lot unless the lot is identified as a development lot and the consent authority is supplied with a proposed strata development contract describing the intended development.

Section 28C (Form and content of strata development contract) sets out the requirements for strata development contracts. Such a contract must separately describe any "warranted development" (which the developer may be compelled to carry out) and all "authorised proposals" (which the developer may carry out but cannot, merely because of the contract, be forced to carry out).

A strata development contract must include a concept plan illustrating the buildings and works that will result from the proposed development.

Section 28D (Concept plan) sets out the requirements for concept plans and is aimed at ensuring that there will be an up-to-date concept plan filed at the Land Titles Office.

Section 28E (Variation of liability for common property expenses) allows a strata development contract to apportion the liability for common property expenses between the developer and other lot proprietors differently from how they would be apportioned on a unit entitlement basis.

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

Section 28G (Registration of strata development contract and amendments) provides for the registration of strata development contracts by the Registrar-General and allows registration to be refused until the certificate of title for the body corporate and the common property (if any) has been produced.

Section 28H (Notice of strata development contract and amendments) requires the Registrar-General to record in the folio of the Real Property Act Register relating to the body corporate and the common property (if any) of a strata scheme particulars about any strata development contract affecting the strata scheme.

Section 28I (Effect of strata development contract) declares that such a contract has effect as an agreement under seal containing covenants that are binding on the

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

Section 28J (Amendment of strata development contract) sets out requirements for the amendment of a strata development contract similar to those for amendment of a development contract under the Community Land Management Act 1989.

Section 28K (Approval of amendments by Land and Environment Court) allows an amendment of a strata development contract to be made with the approval of the Land and Environment Court, instead of being supported by a resolution of the body corporate of the strata scheme concerned.

Section 28L (Use of common property and development lot by developer) authorises the developer to make such use of common property and the development lot as may be necessary to carry out all of the warranted development and authorised proposals contained in a strata development contract. That right must be exercised so as not to cause unreasonable inconvenience to the occupier of any lot in the strata scheme concerned.

Section 28M (Adding land to a parcel subject to a strata development contract) provides for the addition of land to a parcel containing a development lot by registration of a strata plan of subdivision. Land may be added so as to become common property, a further development lot or an addition to a current development lot, or any combination of them.

Section 28N (Right to complete permitted development) confers on a developer a sufficient vote to make a body corporate decision about a "development concern" even though the decision might otherwise need to be supported by a special or unanimous resolution.

Section 28O (What are "development concerns"?) lists various matters that are, or are not, development concerns. In general terms, carrying out any warranted development or authorised proposal contained in a strata development contract is such a concern, but the subdivision of common property already created and any amendment of the contract itself are not.

Section 28P (Meetings of body corporate relating to development concerns) requires motions relating to development concerns to be dealt with at body corporate meetings separately from other kinds of motions.

Section 28Q (Conclusion of development scheme) sets out the various circumstances in which a development scheme established by a strata development contract is concluded. Each strata development contract that does not predict a time for conclusion of the development scheme will be taken to predict the tenth anniversary of its registration as the time for its conclusion.

Section 28QA (Order for extension or conclusion of development scheme) allows the Land and Environment Court to alter the time at which a strata development scheme would otherwise be concluded.

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Further consequential amendments

Schedule 1 (7)–(9), (11) and (13)–(17) amend sections 32, 37, 40, 42, 50, 51, 53, 66 and 68, respectively, to change references to development statements to references to strata development contracts.

Schedule 1 (10) amends section 41 (Registration of plans and notices) to omit requirements relating to the registration of development statements and amendments to them. (Those kinds of requirements for strata development contracts are contained in the proposed Division 2A.)

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

Schedule 1 (18) updates a cross-reference in section 80 (Duties of proprietors and occupiers of lots).

Schedule 1 (21) extends the cross-reference in the heading to Schedule 1A (Requirements for strata plans) because surveyors' certificates referred to in proposed new section 8A will certify compliance with the requirements set out in that schedule.

Orders for the reallocation of unit entitlements

Schedule 1 (20) substitutes section 119:

- to expand a Strata Titles Board's current power to order an adjustment of unit entitlements so as to include cases in which there has been a change in the uses to which the parcel may be put; and
- to allow applications for such orders to be made by rating and taxing authorities (such as local councils) whose rates or taxes are related to the value of land.

Covenants implied in strata development contracts

Schedule 1 (22) inserts proposed Schedule 1BA which sets out covenants implied in strata development contracts. Among the more important covenants are those:

- that require the standard of materials, the heights of buildings and the density of development in all development carried out under such a contract not to be inferior or substantially different from those of completed buildings forming part of the parcel; and
- that require shelter and subjacent and lateral support, consistent with proper engineering and building practices, and insurance to be provided where vertical staged development is carried out.

Transitional provisions

Schedule 1 (23) inserts proposed Part 3 into Schedule 4 (Transitional and savings provisions).

Any development scheme provided by a development statement certified by a consent authority or lodged for registration before the commencement of Part 1 of Schedule 1 to the amending Act will be subject to the provisions of the 1973 Act as in force immediately before that commencement.

Any proceedings pending in the Land and Environment Court under the 1973 Act, the Strata Titles (Leasehold) Act 1986 or the Community Land Management Act 1989

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when amendments made to the Land and Environment Court Act 1979 by Schedule 2 to the amending Act commence will continue to be dealt with as if those amendments had not been made. Power is conferred to make further savings and transitional provisions by regulations.

PART 2—OTHER AMENDMENTS

Extension of provisions to additional encroachments

Schedule 1 (24) amends section 6 (Construction of Act) which extends certain provisions relating to lots and common property to encroachments shown on proposed strata plans so that those provisions will also apply to encroachments shown on proposed strata plans of subdivision.

Contiguous land

Schedule 1 (25) amends section 7 (Subdivision) to allow land that is divided by, or separated by, a natural feature (such as a watercourse), railway, public road, public reserve or drainage reserve to be the subject of a strata scheme.

Requirements for development consent to strata subdivisions

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

Termination of strata schemes

Schedule 1 (27) inserts proposed section 51A (Termination of strata scheme by Registrar-General) to empower the Registrar-General to terminate strata schemes in limited circumstances. A scheme that includes a development lot cannot be so terminated and an application for termination must be signed by all proprietors of lots and each registered mortgagee, chargee, covenant chargee and lessee of a lot, except where the Registrar-General agrees otherwise.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Environmental Planning and Assessment Act 1979

Section 99 (Lapsing of consent) is amended to substitute a reference to a development statement with a reference to a strata development contract.

Land and Environment Court Act 1979

Section 17 (Class 1—environmental planning and protection appeals) is amended to remove from that class of appeals applications for dispensing with certain consents or approvals otherwise required by the 1973 Act, the Strata Titles (Leasehold) Act 1986 or the Community Land Management Act 1989 because:

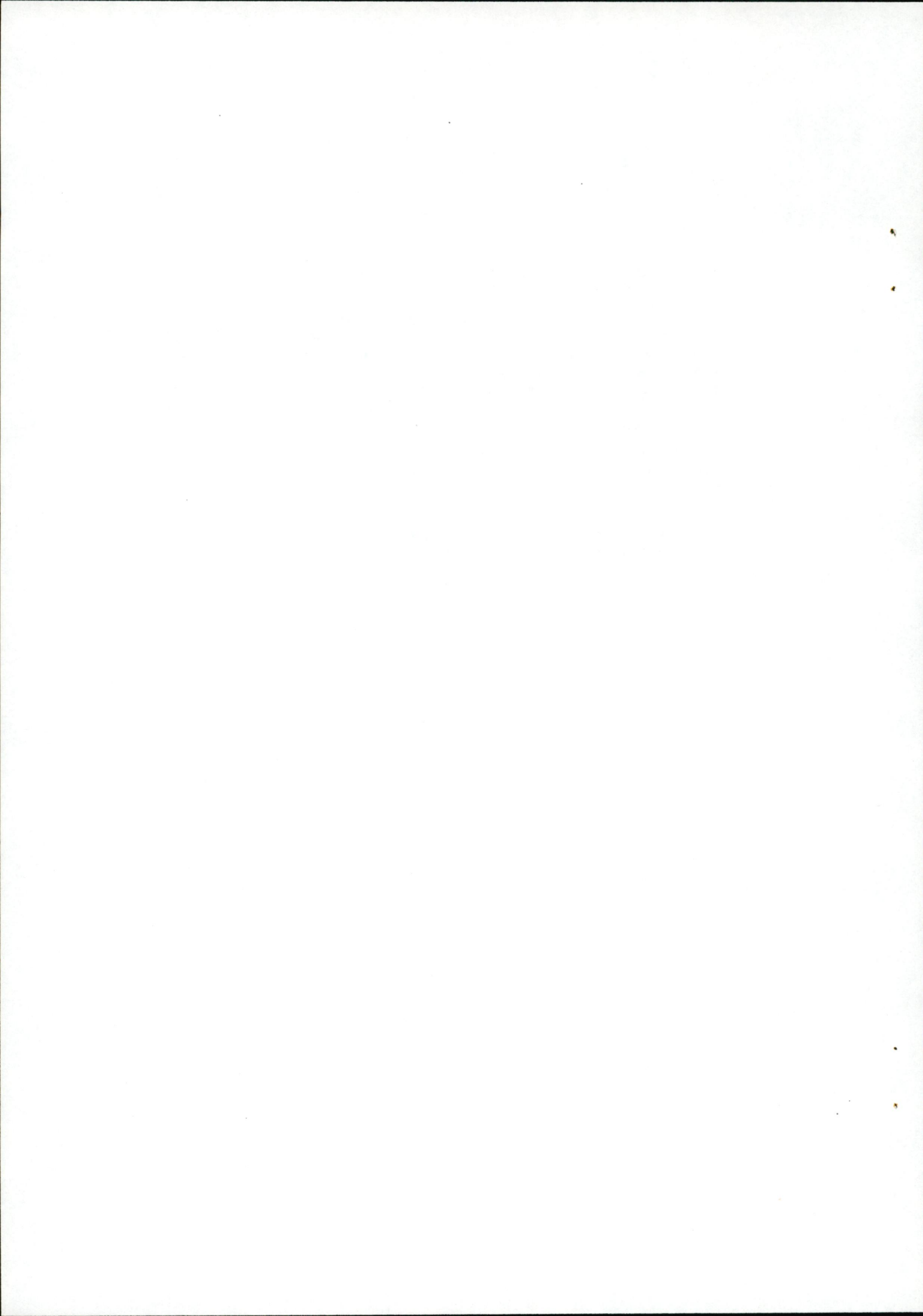
- in the case of the 1973 Act, the need for such a consent is abolished by amendments in the proposed Act; and
- in the case of the 1986 and 1989 Acts, such a consent or approval does not necessarily relate to environmental planning or protection.

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

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

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



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SCHEDULE 2—AMENDMENT OF OTHER ACTS

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

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No. , 1992

A BILL FOR

An Act to amend the Strata Titles Act 1973 to make more flexible provision for the staged development of land subject to a strata scheme and for other purposes; and to amend the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

Strata Titles (Staged Development) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Staged Development) Amendment Act 1992.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Strata Titles Act 1973 No. 68

3. The Strata Titles Act 1973 is amended as set out in Schedule 1.

10 Amendment of other Acts

4. The Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 are amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973

15

(Sec. 3)

**PART 1—AMENDMENTS RELATING TO STAGED
DEVELOPMENT**

(1) Section 5 (Definitions):

20 (a) From the definitions of “development lot” and “development scheme” in section 5 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.

(b) From section 5 (1), omit the definition of “development statement”.

25 (c) In section 5 (1), insert in alphabetical order the following definition:

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

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (2) Section 8 (**Registration of strata plans**):
- (a) From section 8 (2), omit “and any proposed development lot”. 5
- (b) Omit section 8 (4), insert instead:
- (4) The schedule of unit entitlement for a strata scheme that does not include a development lot must show as whole numbers the aggregate unit entitlement of all lots and the proposed unit entitlement of each lot. 10
- (4A) The schedule of unit entitlement for a strata scheme that includes a development lot must show as whole numbers:
- (a) the aggregate unit entitlement of all lots, whether or not development lots; and 15
- (b) apportioned on the basis of land value (within the meaning of the Valuation of Land Act 1916) and so as to total that aggregate unit entitlement:
- the proposed unit entitlement of each development lot; and 20
 - the proposed unit entitlement of all lots that are not development lots, being the unit entitlement attributable to the residue of the land in the proposed parcel; and
- (c) apportioned on a market value basis and so as to total the proposed unit entitlement of all lots that are not development lots, the proposed unit entitlement of each lot that is not a development lot. 25
- (c) From section 8 (5) (a), omit “development statement”, insert instead “strata development contract”. 30
- (d) From section 8 (5) (b), omit “section 28A (4)”, insert instead “section 28B (2)”.
- (3) Section 8A:
- Omit the section, insert instead:
- Subdivision of development lot** 35
- 8A. (1) A development lot (which cannot be land within a stratum parcel) may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan of subdivision.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5 (2) A plan intended to be registered under this section as a strata plan of subdivision must include, as sheets of the plan:
- (a) a location plan; and
- (b) a floor plan; and
- (c) a schedule of unit entitlement.
- 10 (3) The location plan must be endorsed with:
- (a) a certificate issued by the local council under section 37 in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown; and
- 15 (b) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met (but which need not certify any matter relating to a lot boundary that was certified in the strata plan or a previous strata plan of subdivision).
- 20 The location plan must also identify any encroachment by the building (whether or not on to a public place).
- (4) The schedule of unit entitlement must show as whole numbers:
- 25 (a) the current unit entitlement of the development lot intended to be subdivided; and
- (b) apportioned on a market value basis and so as to total that unit entitlement, the proposed unit entitlement of each lot intended to be created on registration of the strata plan of subdivision.
- 30 (4) Section 13 (**Conversion of lots into common property**):
From section 13 (1), omit "Except as provided by section 28E, one", insert instead "One".
- (5) Section 28 (**Effect of dealings under this Division**):
After section 28 (4), insert:
- 35 (5) This section does not prevent the execution in accordance with section 28N of a dealing by a body corporate, or by a developer on behalf of the body corporate, to give effect to a decision about a development concern (within the meaning of section 28O) or prevent the registration of a dealing so executed.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(6) Part 2, Division 2A:

Omit the Division, insert instead:

Division 2A—Staged Development

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Explanation of staged development

28A. (1) The purpose of this Division is to facilitate the development in stages of a parcel that is subject to a strata scheme.

(2) The development contemplated consists of:

10

- the progressive improvement of the parcel by the construction of buildings or the carrying out of works (or both) on a lot or lots reserved for future development (“development lots”); and
- the subsequent subdivision under this Act of each such lot and the consequential adjustment of unit entitlements within the scheme.

15

(3) Development lots may be situated wholly or partly above, below or alongside the building to which the strata scheme initially relates, but must be identified as such in the strata plan for the scheme when that plan is registered.

20

(4) The staged development of a parcel will be carried out subject to a strata development contract that describes separately:

(a) any proposed development that the developer for the development lot concerned warrants will be carried out and may be compelled to carry out (“warranted development”); and

25

(b) any other proposed development that the developer will be authorised but cannot be compelled to carry out (“authorised proposals”).

30

Warranted development and authorised proposals are referred to as “permitted development” because the body corporate for the strata scheme and other persons having estates or interests in lots included in the parcel must allow it to be carried out in accordance with the contract.

35

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

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Obligations of consent authorities

5 28B. (1) A consent authority must not, at the same time, grant development consent for the subdivision of land by a strata plan and the subsequent subdivision of a lot in that plan by a strata plan of subdivision unless:

- 10 (a) the lot intended to be subdivided is identified in the proposed strata plan as a development lot; and
(b) the development application is accompanied by a proposed strata development contract.

15 (2) When a consent authority grants such a consent, it must certify in the approved form that carrying out the permitted development would not contravene:

- 20 (a) any condition subject to which the consent was granted; or
(b) the provisions of any environmental planning instrument that were in force when the consent was granted, except to the extent (if any) specified in the certificate.

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

Form and content of strata development contract

25 28C. (1) A strata development contract and any amendment of such a contract must be in the approved form.

(2) A strata development contract must include a concept plan and a description:

- 30 (a) of the land comprising the parcel, identifying separately the development lot or lots to which it relates; and
(b) of any land proposed to be added to that parcel at a later time; and
35 (c) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out and may be compelled to carry out (identified in the contract as “warranted development—proposed development subject to a warranty”); and

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (d) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out but cannot, merely because it is described in the contract, be compelled to carry out (identified in the contract as “**authorised proposals**—proposed development *not* subject to a warranty”). 5
- (3) A strata development contract must include such other documents, particulars and information as may be required by the regulations. 10
- (4) A strata development contract cannot provide for the subdivision of common property without the consent, by special resolution, of the body corporate.
- Concept plan** 15
- 28D. (1) A concept plan must illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of the buildings and works that would result from the carrying out of all permitted development under the strata development contract of which the plan forms part. 20
- (2) A concept plan must separately illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of such of those buildings and works (if any) as would result from the carrying out of all warranted development. 25
- (3) The Registrar-General may refuse to register an amendment of a strata development contract if it does not include a revised concept plan so that this section will be complied with after the amendment has been registered.
- Variation of liability for common property expenses** 30
- 28E. (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of the common property of the strata scheme concerned differently from the way that liability would otherwise be apportioned by the schedule of unit entitlement applicable to lots under the scheme. 35
- (2) An apportionment under this section has effect despite the current schedule of unit entitlement, but does not apply to any liability that relates to the use or maintenance of the common property after the development scheme is concluded. 40

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Signing of strata development contract and amendments

5 28F. (1) The Registrar-General may register a strata development contract relating to a development lot in a strata plan or an amendment of such a contract only if the contract or amendment is signed by:

- 10 (a) the developer for the development lot; and
- (b) in the case of an amendment, the proprietor of each other lot; and
- (c) each registered mortgagee, chargee, covenant chargee and lessee of the development lot and, in the case of an amendment, of each other lot; and
- 15 (d) each registered mortgagee and chargee of a lease of the development lot and, in the case of an amendment, of a lease of any other lot.

 (2) A strata development contract must be accompanied by the certificate (if any) required to be given by section 28B (Obligations of consent authorities).

20 (3) The Registrar-General may refuse to register a strata development contract or an amendment of such a contract if there have not been lodged in the office of the Registrar-General written consents to the registration of the contract or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- 25 (a) the judgment creditor under any writ recorded in the folio for the development lot concerned or for any lease of that lot or, in the case of an amendment, in the folio for any other lot or for a lease of any other lot;
- 30 (b) the lessee under any lease of the common property of the strata scheme concerned;
- (c) the caveator under a caveat affecting any estate or interest of any person required to sign the contract because of that estate or interest or under a caveat affecting any such common property.
- 35 (4) Nothing prevents the same person from being more than one of the parties to a strata development contract.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Registration of strata development contract and amendments

28G. (1) The Registrar-General may register a strata development contract and any amendment of such a contract by making such recordings in the Register as the Registrar-General considers appropriate. 5

(2) The Registrar-General may refuse to register an amendment of a strata development contract if the certificate of title for the body corporate of the strata scheme concerned and the common property (if any) has not been produced to the Registrar-General. 10

(3) The Registrar-General must refuse to register a strata development contract or any amendment of such a contract that contravenes any requirement made of it by this Division. 15

Notice of strata development contract and amendments

28H. When a strata development contract is registered, the Registrar-General must record in the folio of the Register relating to the body corporate of the strata scheme concerned and the common property (if any): 20

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

(b) such information relating to the contract and any amendment of the contract as the Registrar-General considers appropriate. 25

Effect of strata development contract

28I. (1) A strata development contract relating to a strata scheme has effect as an agreement under seal containing the covenants specified in Schedule 1BA entered into by the body corporate and each person who for the time being is: 30

(a) the developer concerned; or

(b) a proprietor of a lot (other than that developer); or

(c) a registered or enrolled mortgagee, chargee, covenant chargee or lessee, or an occupier, of a lot. 35

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(2) The contract ceases to have effect:

5 (a) in relation to a person described in subsection (1) (a),
(b) or (c), on that person ceasing to be a person so
described; and

(b) in relation to all of the persons described in subsection
(1), when the development scheme to which the
contract relates is concluded.

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

15 (3) A strata development contract does not permit
development to be carried out in contravention of this or any
other Act or any other law.

20 (4) A lessee entitled under a lease to immediate possession
of a development lot is taken to be the developer, and the
person who would otherwise be the developer is taken not to
be the developer, for the purposes of this Act, the regulations
and the strata development contract concerned.

25 (5) A mortgagee, chargee or covenant chargee in
possession of a development lot is taken to be the developer,
and the person who would otherwise be the developer is
taken not to be the developer, for the purposes of this Act,
the regulations and the strata development contract
concerned.

30 (6) A provision in any other contract or instrument under
which a strata development contract is excluded, modified or
restricted is void.

(7) A covenant entered into under a strata development
contract does not merge on transfer of a lot.

35 (8) Nothing in this section affects any right or remedy a
person may have apart from a right or remedy under a strata
development contract, with the exception that Part 5 does not
apply to matters arising under any such contract.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Amendment of strata development contract

- 28J. (1) A strata development contract may be amended by the developer, but any such amendment has effect only if: 5
- (a) this section has been complied with in relation to the amendment; and
 - (b) the amendment is registered.
- (2) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may be made only if it is: 10
- (a) approved by the consent authority (if any); and
 - (b) except where the developer is the only proprietor of lots in the strata scheme concerned, supported by a unanimous resolution of the body corporate of the strata scheme concerned. 15
- (3) An amendment proposed in order to give effect to a change in the law or a change in the requirements of a consent authority may be made only if it is: 20
- (a) approved by the consent authority (if any); and
 - (b) notified to the body corporate of the strata scheme concerned.
- (4) Any other proposed amendment that would require a change in the terms of a development consent may be made only if it is: 25
- (a) approved by the consent authority; and
 - (b) supported by a special resolution of the body corporate of the strata scheme concerned.
- (5) Any other proposed amendment that would not require a change in the terms of a development consent may be made only if: 30
- (a) it is supported by an ordinary resolution of the body corporate of the strata scheme concerned; and
 - (b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the consent authority (if any), to the effect that a change in the terms of any development consent is not required. 35

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

5 (6) A consent authority that approves an amendment of a strata development contract must provide the applicant for the approval with a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate in the approved form to the effect:

- 10 (a) that the copy describes and illustrates the approved amendment; and
- (b) that the contract, if amended as approved by the authority, would not be inconsistent with any related development consent.

Approval of amendments by Land and Environment Court

15 28K. (1) An amendment of a strata development contract is not required to be supported by a resolution of a body corporate if the amendment is approved by the Land and Environment Court.

20 (2) Such an approval may be given only if the Court is satisfied:

- (a) that a motion supporting the amendment has been defeated; or
- 25 (b) that the notice of intention to move such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice; or
- (c) that the consent to the amendment of a mortgagee, chargee or covenant chargee or of a lessee has been sought but has been refused.

30 (3) An application for such an approval must be served on:

- (a) the consent authority; and
- (b) the body corporate; and
- (c) each person (other than the applicant) who is the proprietor of a development lot; and
- 35 (d) each registered or enrolled mortgagee, chargee, covenant chargee and lessee of a lot in the strata scheme concerned.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(4) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application. 5

Use of common property and development lot by developer

28L. (1) When carrying out permitted development under a strata development contract, a developer is entitled to use any common property or development lot to which the contract relates: 10

- (a) to the extent necessary to carry out the development; or
- (b) to such other extent as may be specified in the contract, which may confer on the developer an exclusive (or any lesser) right to occupy specified common property. 15

(2) A right conferred by this section may be exercised despite any other provision of this Act or any provision of the by-laws or of an order under section 121, but must be exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot. 20

(3) Any provisions of a strata development contract that relate to the maintenance or upkeep of common property to which the contract relates have effect despite any provision of the by-laws or of an order under section 121.

Adding land to a parcel subject to a strata development contract 25

28M. (1) Land may be added to a parcel containing a development lot by registration of a strata plan of subdivision in accordance with the regulations.

(2) A strata plan of subdivision that adds land may be registered only if: 30

- (a) the land consisting of the former parcel and the additional land could be the subject of a strata plan had the land in the former parcel not already been subdivided under this Act; and 35
- (b) the strata development contract, as in force when the strata plan of subdivision is registered, provides for the land to be added to the parcel and states whether, on its being added to the parcel, the land will become

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

5 common property, a further development lot or an addition to an existing development lot, or any specified combination of them; and

(c) a plan showing as a single lot the additional land and the former parcel has been lodged in the office of the Registrar-General for registration under the Conveyancing Act 1919.

10 (3) On registration of such a strata plan of subdivision, the land becomes common property, a further development lot or an addition to an existing development lot, or any specified combination of them, as provided by the strata development contract.

15 **Right to complete permitted development**

20 28N. (1) The vote of a developer who is permitted to carry out development because it is included in a strata development contract is sufficient to pass or defeat a motion included in the notice for a meeting of the body corporate or of the council of the body corporate if the passing or defeat of the motion would have the effect of making a decision about a development concern.

25 (2) It is not necessary for a decision about a development concern to be supported by a special or unanimous resolution of a body corporate, despite any other provision of this Act.

(3) A dealing, plan or other instrument may be executed either by the body corporate or by a developer on behalf of the body corporate for the purpose of giving effect to a decision about a development concern.

30 (4) The regulations may impose requirements for the execution of dealings, plans and other instruments by bodies corporate and developers and may require verification by statutory declaration of the circumstances in which they were executed.

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

28O. (1) The following are development concerns for the purposes of this Division:

40 (a) erecting structures, carrying out works or effecting other improvements in accordance with the strata development contract;

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (b) creating easements, dedicating land, making by-laws or entering into covenants or management or other agreements in accordance with that contract; 5
 - (c) creating or using common property in accordance with that contract;
 - (d) creating or using a development lot in accordance with that contract;
 - (e) using water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone or other services available to the parcel, or installing additional services, in accordance with that contract; 10
 - (f) providing and using means of access or egress to or from a development lot, or to or from the common property, in accordance with that contract; 15
 - (g) subdivision of a development lot, or excising a development lot from the parcel, in accordance with that contract;
 - (h) carrying out any other development that is permitted to be carried out because it is included in that contract. 20
- (2) The following are not development concerns for the purposes of this Division:
- (a) subdivision of common property that has been created by a registered plan; 25
 - (b) amendment of a strata development contract, regardless of whether the subject-matter involved is, or relates to, a development concern.
- Meetings of body corporate relating to development concerns** 30
- 28P. (1) A motion, the passing or defeat of which at a meeting of the body corporate or of the council of the body corporate would have the effect of making a decision about a development concern, must be:
- (a) identified as relating to a development concern in the notice for the meeting; and 35
 - (b) moved separately from any other kind of motion.

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continued

5 (2) An extraordinary general meeting of the body corporate for the purpose of making a decision about a development concern may be convened under Schedule 2 by the developer or the proprietors of not fewer than one quarter of the lots in the strata scheme concerned that are not development lots.

10 (3) In convening any such extraordinary general meeting, the developer or any of those proprietors may give notice of the meeting on behalf of the council of the body corporate.

15 (4) The presence of the developer (or, if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the body corporate or of the council of the body corporate of which notice has been duly given, but only while business relating to a development concern is being dealt with.

20 (5) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or, if the developer is a corporation, the company nominee of the corporation) may exercise such of the other functions of a body corporate bound by the contract or of any other person having functions under the strata scheme concerned as may be prescribed by the regulations.

25 (6) This section has effect despite any other provision of this Act.

Conclusion of development scheme

30 28Q. (1) For the purposes of this Division, a development scheme to which a strata development contract relates is concluded when any of the following occurs:

- 35 (a) any development consent required for carrying out the scheme is revoked;
- (b) a strata plan of subdivision is registered which subdivides the development lot to which the contract relates or subdivides the residue of that development lot after excision of part of that lot in accordance with the contract;
- (c) the time predicted by the contract for conclusion of the development scheme arrives;

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continued

- (d) a notice in the approved form, signed in accordance with subsection (3) and stating that the development scheme to which the contract relates has concluded, is registered by the Registrar-General; 5
- (e) the development scheme is concluded under section 28QA by an order of the Land and Environment Court;
- (f) the strata scheme concerned is terminated under Part 3 by an order of the Supreme Court. 10
- (2) A strata development contract is taken to predict, as the time for conclusion of the development scheme to which it relates:
- (a) the time for completion of that development scheme specified in the contract; or 15
- (b) if no such time is specified, the tenth anniversary of the day on which the contract was registered.
- (3) A notice is signed in accordance with this subsection only if:
- (a) it is signed by the developer concerned; and 20
- (b) it is signed by each registered mortgagee, chargee, covenant chargee and lessee of the development lot; and
- (c) it is accompanied by a certificate, given in the approved form by the body corporate for the strata scheme concerned, certifying that the relevant agreement is supported by a unanimous resolution of the body corporate. 25
- (4) The Registrar-General is required to make an appropriate record of the conclusion of a development scheme in the folio for the body corporate and the common property (if any) of the strata scheme concerned. 30
- Order for extension or conclusion of development scheme**
- 28QA. (1) On application made to it by any person bound by a strata development contract, the Land and Environment Court may, by its order, do either or both of the following: 35
- (a) defer (either generally or to a specified time) the time at which a development scheme would otherwise be concluded;

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5 (b) fix a time for the conclusion of a development scheme, whether it is an earlier or a later time than it would otherwise be.
- (2) Notice of such an application is to be served, in accordance with rules of court, on:
- 10 (a) the developer concerned; and
(b) each proprietor, and each registered or enrolled mortgagee, chargee, covenant chargee and lessee, of a lot; and
(c) the body corporate; and
(d) the consent authority (if any) that granted the relevant development consent; and
15 (e) the Registrar-General; and
(f) such other persons (if any) as the Land and Environment Court may direct.
- 20 (3) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application.
- (4) An order under this section may:
- 25 (a) contain such provisions relating to the strata scheme as are, in the opinion of the Land and Environment Court, necessary because of the conclusion of the development scheme; and
(b) require the payment of money to or by the body corporate or the proprietors of lots to any one or more of them in addition to, or instead of, any award of damages in the exercise of the jurisdiction conferred by section 20 (2) (d) of the Land and Environment Court Act 1979; and
30 (c) contain such other provisions and make such other requirements as, in the opinion of the Land and Environment Court, are just and equitable in the circumstances of the case.
- 35 (5) The Land and Environment Court may, from time to time, vary an order under this section on the application of any person entitled to apply for such an order.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (7) Section 32 (**Readjustment of strata scheme for purposes of resumption**): 5
 From section 32 (4) (b1), omit “development statement”,
 insert instead “strata development contract”.
- (8) Section 37 (**Approval of proposed strata plans and strata plans of subdivision and of conversion of lots into common property**): 10
 From section 37 (1A) (b) (ii), omit “development statement”, insert instead “strata development contract”.
- (9) Section 40 (**Appeal against local council refusing approval**):
 From section 40 (1) (d), omit “development statement”, insert instead “strata development contract”.
- (10) Section 41 (**Registration of plans and notices**): 15
 (a) Omit section 41 (2A)–(2C).
 (b) From section 41 (5), omit “, building alteration plan, development statement or amendment of a development statement”, insert instead “or building alteration plan”.
- (11) Section 42 (**Provisions applying to strata plans etc.**): 20
 From section 42 (3) and (4), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (12) Section 43 (**Registrar-General’s power to adjust unit entitlements**): 25
 From section 43 (1), omit “referred to in section 8 (1) (d), 8A (2) (c), 10 (1) or 11 (a)”, insert instead “of unit entitlement”.
- (13) Section 50 (**Variation of strata scheme consequent on damage to or destruction of building**): 30
 From section 50 (6) (b1), omit “development statement”, insert instead “strata development contract”.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (14) Section 51 (**Termination of strata scheme**):
5 From section 51 (6) (b1), omit “development statement”,
 insert instead “strata development contract”.
- (15) Section 53 (**Consequences of making an order under section 50
or 51**):
10 From section 53 (1), omit “development statement”
 wherever occurring, insert instead “strata development
 contract”.
- (16) Section 66 (**Statutory restrictions on powers of body
corporate**):
 From section 66 (1) (b), omit “development statement”,
 insert instead “strata development contract”.
- 15 (17) Section 68 (**Duties of body corporate**):
 From section 68 (1), omit “development statement”
 wherever occurring, insert instead “strata development
 contract”.
- (18) Section 80 (**Duties of proprietors and occupiers of lots**):
20 From section 80 (2), omit “section 28H”, insert instead
 “section 28L”.
- (19) Section 105 (**General powers of Commissioner to make
orders**):
25 Omit section 105 (4), insert instead:
 (4) Nothing in this Division authorises the Commissioner
 to make an order of the kind that may be made under section
 32, 50, 51 or 67 by the Supreme Court.
- (20) Section 119:
30 Omit the section, insert instead:
 Order for reallocation of unit entitlements
 119. (1) A Board may make an order allocating unit
 entitlements among the lots that are subject to a strata scheme
 in the manner specified in the order.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(2) An order may be made only if the Board considers, after having regard to the respective values of the lots and (if a strata development contract is in force in relation to the strata scheme) to such other matters as the Board considers relevant, that the allocation of unit entitlements among the lots: 5

(a) was unreasonable when the strata plan was registered or when a strata plan of subdivision was registered; or 10

(b) became unreasonable because of a change in the permitted land use, being a change (whether or not because of a rezoning) in the ways in which the whole or any part of the parcel could lawfully be used, whether with or without development consent. 15

(3) An application for an order may be made:

(a) by a proprietor of a lot (whether or not a development lot) within the parcel; or

(b) by the body corporate; or

(c) by the local council, or by any other public or local authority constituted by or under an Act or any statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land. 20

(4) An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates. 25

(5) The certificate must have been given by the holder of a current certificate of registration under the Valuers Registration Act 1975 as a practising real estate valuer authorised under that Act to make such a valuation (a "qualified valuer"). 30

(6) A Board may, if it makes an order reallocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Board, were allocated unreasonably by a developer, also order: 35

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5 (a) despite section 116, the payment by the developer to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer; and
- 10 (b) the payment by the developer to proprietors or to the body corporate, or both, of such amounts as may be assessed by the Board to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order.
- 15 (7) An amount ordered to be paid under this section may be recovered as a debt in a court of competent jurisdiction.

(21) Schedule 1A (**Requirements for strata plans**):

From the heading, omit “(Sec. 8)”, insert instead “(Secs. 8, 8A)”.

(22) Schedule 1BA:

20 After Schedule 1B, insert:

**SCHEDULE 1BA—COVENANTS IMPLIED IN
STRATA DEVELOPMENT CONTRACTS**

(Sec. 28I)

Warranted development

- 25 1. The developer agrees with the other parties jointly, and with each of them severally:
- that the developer must carry out the development (if any) described and identified as “**warranted development**—proposed development subject to a warranty” in the strata development contract; and
 - that the developer must carry out any such development in accordance with the covenants set out and implied in the contract.
- 30

35 **Permission to carry out warranted development and authorised proposals**

2. The parties, other than the developer, jointly and severally agree with the developer that the developer is

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

permitted to carry out, in accordance with the covenants set out or implied in the contract:

- the warranted development (if any); and 5
- such other development as is described and identified as “**authorised proposals**—proposed development *not* subject to a warranty” in the contract.

Body corporate expenses

3. The developer agrees with the body corporate that the developer will pay the reasonable expenses incurred by the body corporate: 10

- in repairing damage to the common property caused in carrying out the permitted development, except damage due to normal wear and tear; and 15
- for any water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air or telephone service (and any other service prescribed by the regulations) used in carrying out that development; and
- for additional administrative costs connected with that development, such as the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision. 20

Standard of development

4. The developer agrees with the other parties that: 25

- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths; and
- the heights of buildings, other structures and works and the density of development, 30

in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, except to the extent (if any) that the contract specifies. 35

Unauthorised use of the parcel

5. The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used except:

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5
- to the extent necessary to carry out the development permitted to be carried out by the strata development contract; or
 - to such other extent as may be specified in the contract.

Restoration of common property

10 6. The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

Restoration of development lot

15 7. The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

20 For the purposes of this covenant, “**damage**” does not include damage necessarily resulting from having carried out (in accordance with the contract) development that is permitted by the contract to be carried out.

Additional covenants for vertical staged development

25 8. If the contract permits development to be carried out within a development lot that is wholly or partly directly above a part of the parcel that is not a development lot, the developer agrees with the other parties:

- 30
- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise; and
 - to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided to such other parts of the parcel as are capable of being sheltered or of enjoying that support; and
- 35
- to keep the developer insured, while permitted development is being carried out, under a policy of indemnity (that complies with the regulations) with an insurer approved for the purposes of Division 5 of Part

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

4 against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development. 5

(23) Schedule 4 (Transitional and savings provisions):

After Part 2, insert:

**PART 3—TRANSITIONAL PROVISIONS
RELATING TO THE STRATA TITLES (STAGED
DEVELOPMENT) AMENDMENT ACT 1992** 10

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Strata Titles (Staged Development) Amendment Act 1992.

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to that Act or on a later date. 15

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or 20

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication. 25

Transitional arrangements for certain development schemes

2. (1) This Act, as in force immediately before the commencement of Part 1 of Schedule 1 to the Strata Titles (Staged Development) Amendment Act 1992, applies to a development scheme provided for, and represented by, a development statement: 30

(a) that was certified under section 28A (4) before that commencement; or 35

(b) that, not needing to be so certified, was duly lodged for registration before that commencement.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

5 (2) The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1992, applies to any proceedings:

- 10 (a) that are commenced after that commencement in the Land and Environment Court; and
(b) that relate to any such development scheme or development statement.

Proceedings pending in Land and Environment Court

15 3. The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1992, applies to any proceedings that are pending at that commencement in the Land and Environment Court under:

this Act;
the Strata Titles (Leasehold) Act 1986; or
the Community Land Management Act 1989.

20 **PART 2—OTHER AMENDMENTS**

(24) Section 6 (**Construction of Act**):

In section 6 (3), after “strata plan” wherever occurring, insert “or strata plan of subdivision”.

25 (25) Section 7 (**Subdivision**):

After section 7 (1), insert:

(1A) For the purposes of this section, land is contiguous to other land even if it is divided by, or separated from the other land by, a natural feature (such as a watercourse), a railway, a public road, a public reserve or a drainage reserve.

30 (26) Section 36 (**Other Acts not to apply to subdivisions under Division 1**):

At the end of section 36, insert:

35 (2) This section does not affect any requirement to obtain development consent under the Environmental Planning and Assessment Act 1979 to a subdivision to be effected under Division 1.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(27) Section 51A:

After section 51, insert:

Termination of strata scheme by Registrar-General 5

51A. (1) On receiving an application for termination of a strata scheme under this section, the Registrar-General may:

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

A refusal by the Registrar-General to terminate a strata scheme does not preclude an application to the Supreme Court under section 51 for termination of the scheme. 10

(2) An application must relate to a parcel that is not subject to a strata development contract.

(3) Except where the Registrar-General agrees otherwise, the application must be signed by: 15

- (a) each proprietor of a lot under the scheme; and
- (b) each registered lessee of a lot under the scheme; and
- (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease of a lot or of the common property (if any) under the scheme. 20

(4) The application must bear the consent of the consent authority (if any) for subdivision of the land to which it relates.

(5) Details of the proposed termination, and a statement of intention to make the application, must, except where the Registrar-General otherwise agrees, be published at least 14 days before the application is made: 25

- (a) in a daily newspaper circulating generally in Sydney; and 30
- (b) in a local newspaper circulating generally in the area in which the parcel is situated; and
- (c) in the Gazette.

(6) The application must be accompanied by:

- (a) the certificates of title for all the lots in the scheme and the common property (if any), except where the Registrar-General agrees otherwise; and 35

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5 (b) such other documents, consents and evidence as the Registrar-General may require; and
- (c) if the Registrar-General so requires, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of Part 23 of the Conveyancing Act 1919.
- 10 (7) An order terminating a strata scheme takes effect on being recorded by the Registrar-General in the folio for the land comprising the parcel.
- (8) When an order terminating a strata scheme takes effect:
- 15 (a) the body corporate is dissolved and the strata scheme is terminated; and
- (b) the land in the former parcel immediately before the scheme was terminated and the assets of the former body corporate at that time vest in the former proprietors as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former proprietors or such other proportions as may be set out in the application); and
- 20 (c) the estate or interest of the former proprietors in land vested by this section is subject to any estate or interest registered or recorded, immediately before termination of the scheme, in the folios for the lots and the common property (if any) in the former parcel; and
- 25 (d) the former proprietors of lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots; and
- 30 (e) any legal proceedings begun by or against the body corporate may be completed by or against the former proprietors.
- (9) On recording an order terminating a strata scheme, the Registrar-General:
- 35 (a) is to cancel the folios for the lots and common property (if any) in the former parcel; and
- (b) is to create a folio or folios of the Register for the land in the former parcel; and

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
*continued***

- 5
- (c) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

Environmental Planning and Assessment Act 1979 No. 203

Section 99 (Lapsing of consent):

Omit section 99 (5A) (a), insert instead: 10

- (a) a proposed strata development contract referred to in the Strata Titles Act 1973; or

Land and Environment Court Act 1979 No. 204

- (1) Section 17 (Class 1—environmental planning and protection appeals): 15

(a) Omit section 17 (bb).

(b) At the end of section 17 (ea), insert “and”.

(c) From section 17 (f), omit “Act; and”, insert instead “Act.”.

(d) Omit section 17 (g).

- (2) Section 18 (Class 2—local government and miscellaneous appeals and applications): 20

(a) From section 18 (d), omit “and”.

(b) At the end of section 18 (e), insert:

; and

(f) proceedings under sections 28K and 28QA of the Strata Titles Act 1973, under sections 46, 49 and 51 of the Strata Titles (Leasehold) Act 1986 and under section 107 of the Community Land Management Act 1989. 25

- (3) Section 20 (Class 4—environmental planning and protection and development contract civil enforcement): 30

(a) Omit section 20 (1) (da).

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) In section 20 (2) (a) and (b), after “law” wherever occurring, insert “or a development contract”.
- 5 (c) From section 20 (2) (d), omit “an agreement referred to in subsection (3) (c)”, insert instead “a development contract”.
- (d) Omit section 20 (3) (c).
- (e) After section 20 (4), insert:
- 10 (5) In this section, “**development contract**” means an agreement implied by section 15 of the Community Land Management Act 1989, section 28I of the Strata Titles Act 1973 or section 47 of the Strata Titles (Leasehold) Act 1986.
- (4) Section 71:
- Omit the section, insert instead:
- 15 **Proceedings in Supreme Court**
71. (1) Proceedings referred to in section 20 that relate to the enforcement of development contracts may not be commenced or maintained in the Supreme Court.
- (2) This section has effect subject to section 58 which provides for appeals to the Supreme Court.
-

FIRST PRINT

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

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

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

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

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

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

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

Clause 4 gives effect to the Schedule of amendments to the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973

PART 1—AMENDMENTS RELATING TO STAGED DEVELOPMENT

Definitions

Schedule 1 (1) amends section 5 (Definitions) because the instrument describing the development that is permitted to be carried out within a development lot will be called a *strata development contract* under the proposed scheme. Similar instruments are presently called "development statements". The changes are aimed at avoiding confusion with the kinds of instruments referred to in the Community Land Development Act 1989.

Strata plan registration

Schedule 1 (2) amends section 8 (Registration of strata plans) which lists the requirements that presently must be met by strata plans.

Schedule 1 (2) (a) removes the requirement that a development lot be illustrated on a location plan.

Schedule 1 (2) (b) requires the initial schedule of unit entitlement for a strata plan that includes a development lot to show the unit entitlement of each development lot and of the residue of the parcel apportioned in accordance with their relative land values. The unit entitlement of each of the developed lots must also be shown in the initial schedule as a proportion (calculated on a market value basis) of the unit entitlement of that residue.

Schedule 1 (2) (c) and (d) make amendments consequential on the changes in terminology and numbering of provisions in Division 2A of Part 2.

Subdivision after completion of a stage of development

Schedule 1 (3) substitutes section 8A (Subdivision of development lot) so as to restate, with appropriate modifications, the requirements for registration of a strata plan of subdivision of a development lot after development permitted by the strata development contract has been carried out. The unit entitlement of each of the new lots into which the development lot will be divided must be shown in a schedule of unit entitlement as a proportion (calculated on a market value basis) of the unit entitlement of the development lot.

Consequential amendments

Schedule 1 (4) amends section 13 (Conversion of lots into common property) to remove a reference to a repealed provision.

Schedule 1 (5) amends section 28 (Effect of dealings under this Division) to make it clear that the restrictions in that section do not prevent instruments executed in accordance with the proposed amendments from being registered under the 1973 Act.

Staged development schemes

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

Strata Titles (Staged Development) Amendment 1992

Section 28A (Explanation of staged development) describes in general terms the concept of staged development. As mentioned above, staged development consists of:

- the progressive development of reserve or development lots in a strata scheme (which may result in the construction of additional buildings and the carrying out of works such as landscaping); and
- the subdivision of those lots after that development has been carried out (which will create titles for each of the new lots, allowing them to be sold, leased or mortgaged separately); and
- the allocation of unit entitlements for the new lots. (Unit entitlements determine the proportions in which lot owners, or proprietors, will be required to contribute to maintenance of the building and other common property.)

Section 28B (Obligations of consent authorities) forbids a consent authority from granting development consent for a subdivision under the 1973 Act that would create a lot reserved for development and for the subsequent subdivision under that Act of that lot unless the lot is identified as a development lot and the consent authority is supplied with a proposed strata development contract describing the intended development.

Section 28C (Form and content of strata development contract) sets out the requirements for strata development contracts. Such a contract must separately describe any "warranted development" (which the developer may be compelled to carry out) and all "authorised proposals" (which the developer may carry out but cannot, merely because of the contract, be forced to carry out).

A strata development contract must include a concept plan illustrating the buildings and works that will result from the proposed development.

Section 28D (Concept plan) sets out the requirements for concept plans and is aimed at ensuring that there will be an up-to-date concept plan filed at the Land Titles Office.

Section 28E (Variation of liability for common property expenses) allows a strata development contract to apportion the liability for common property expenses between the developer and other lot proprietors differently from how they would be apportioned on a unit entitlement basis.

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

Section 28G (Registration of strata development contract and amendments) provides for the registration of strata development contracts by the Registrar-General and allows registration to be refused until the certificate of title for the body corporate and the common property (if any) has been produced.

Section 28H (Notice of strata development contract and amendments) requires the Registrar-General to record in the folio of the Real Property Act Register relating to the body corporate and the common property (if any) of a strata scheme particulars about any strata development contract affecting the strata scheme.

Section 28I (Effect of strata development contract) declares that such a contract has effect as an agreement under seal containing covenants that are binding on the

Strata Titles (Staged Development) Amendment 1992

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

Section 28J (Amendment of strata development contract) sets out requirements for the amendment of a strata development contract similar to those for amendment of a development contract under the Community Land Management Act 1989.

Section 28K (Approval of amendments by Land and Environment Court) allows an amendment of a strata development contract to be made with the approval of the Land and Environment Court, instead of being supported by a resolution of the body corporate of the strata scheme concerned.

Section 28L (Use of common property and development lot by developer) authorises the developer to make such use of common property and the development lot as may be necessary to carry out all of the warranted development and authorised proposals contained in a strata development contract. That right must be exercised so as not to cause unreasonable inconvenience to the occupier of any lot in the strata scheme concerned.

Section 28M (Adding land to a parcel subject to a strata development contract) provides for the addition of land to a parcel containing a development lot by registration of a strata plan of subdivision. Land may be added so as to become common property, a further development lot or an addition to a current development lot, or any combination of them.

Section 28N (Right to complete permitted development) confers on a developer a sufficient vote to make a body corporate decision about a "development concern" even though the decision might otherwise need to be supported by a special or unanimous resolution.

Section 28O (What are "development concerns"?) lists various matters that are, or are not, development concerns. In general terms, carrying out any warranted development or authorised proposal contained in a strata development contract is such a concern, but the subdivision of common property already created and any amendment of the contract itself are not.

Section 28P (Meetings of body corporate relating to development concerns) requires motions relating to development concerns to be dealt with at body corporate meetings separately from other kinds of motions.

Section 28Q (Conclusion of development scheme) sets out the various circumstances in which a development scheme established by a strata development contract is concluded. Each strata development contract that does not predict a time for conclusion of the development scheme will be taken to predict the tenth anniversary of its registration as the time for its conclusion.

Section 28QA (Order for extension or conclusion of development scheme) allows the Land and Environment Court to alter the time at which a strata development scheme would otherwise be concluded.

Strata Titles (Staged Development) Amendment 1992

Further consequential amendments

Schedule 1 (7)–(9), (11) and (13)–(17) amend sections 32, 37, 40, 42, 50, 51, 53, 66 and 68, respectively, to change references to development statements to references to strata development contracts.

Schedule 1 (10) amends section 41 (Registration of plans and notices) to omit requirements relating to the registration of development statements and amendments to them. (Those kinds of requirements for strata development contracts are contained in the proposed Division 2A.)

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

Schedule 1 (18) updates a cross-reference in section 80 (Duties of proprietors and occupiers of lots).

Schedule 1 (21) extends the cross-reference in the heading to Schedule 1A (Requirements for strata plans) because surveyors' certificates referred to in proposed new section 8A will certify compliance with the requirements set out in that schedule.

Orders for the reallocation of unit entitlements

Schedule 1 (20) substitutes section 119:

- to expand a Strata Titles Board's current power to order an adjustment of unit entitlements so as to include cases in which there has been a change in the uses to which the parcel may be put; and
- to allow applications for such orders to be made by rating and taxing authorities (such as local councils) whose rates or taxes are related to the value of land.

Covenants implied in strata development contracts

Schedule 1 (22) inserts proposed Schedule 1BA which sets out covenants implied in strata development contracts. Among the more important covenants are those:

- that require the standard of materials, the heights of buildings and the density of development in all development carried out under such a contract not to be inferior or substantially different from those of completed buildings forming part of the parcel; and
- that require shelter and subjacent and lateral support, consistent with proper engineering and building practices, and insurance to be provided where vertical staged development is carried out.

Transitional provisions

Schedule 1 (23) inserts proposed Part 3 into Schedule 4 (Transitional and savings provisions).

Any development scheme provided by a development statement certified by a consent authority or lodged for registration before the commencement of Part 1 of Schedule 1 to the amending Act will be subject to the provisions of the 1973 Act as in force immediately before that commencement.

Any proceedings pending in the Land and Environment Court under the 1973 Act, the Strata Titles (Leasehold) Act 1986 or the Community Land Management Act 1989

Strata Titles (Staged Development) Amendment 1992

when amendments made to the Land and Environment Court Act 1979 by Schedule 2 to the amending Act commence will continue to be dealt with as if those amendments had not been made. Power is conferred to make further savings and transitional provisions by regulations.

PART 2—OTHER AMENDMENTS

Extension of provisions to additional encroachments

Schedule 1 (24) amends section 6 (Construction of Act) which extends certain provisions relating to lots and common property to encroachments shown on proposed strata plans so that those provisions will also apply to encroachments shown on proposed strata plans of subdivision.

Contiguous land

Schedule 1 (25) amends section 7 (Subdivision) to allow land that is divided by, or separated by, a natural feature (such as a watercourse), railway, public road, public reserve or drainage reserve to be the subject of a strata scheme.

Requirements for development consent to strata subdivisions

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

Termination of strata schemes

Schedule 1 (27) inserts proposed section 51A (Termination of strata scheme by Registrar-General) to empower the Registrar-General to terminate strata schemes in limited circumstances. A scheme that includes a development lot cannot be so terminated and an application for termination must be signed by all proprietors of lots and each registered mortgagee, chargee, covenant chargee and lessee of a lot, except where the Registrar-General agrees otherwise.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

Environmental Planning and Assessment Act 1979

Section 99 (Lapsing of consent) is amended to substitute a reference to a development statement with a reference to a strata development contract.

Land and Environment Court Act 1979

Section 17 (Class 1—environmental planning and protection appeals) is amended to remove from that class of appeals applications for dispensing with certain consents or approvals otherwise required by the 1973 Act, the Strata Titles (Leasehold) Act 1986 or the Community Land Management Act 1989 because:

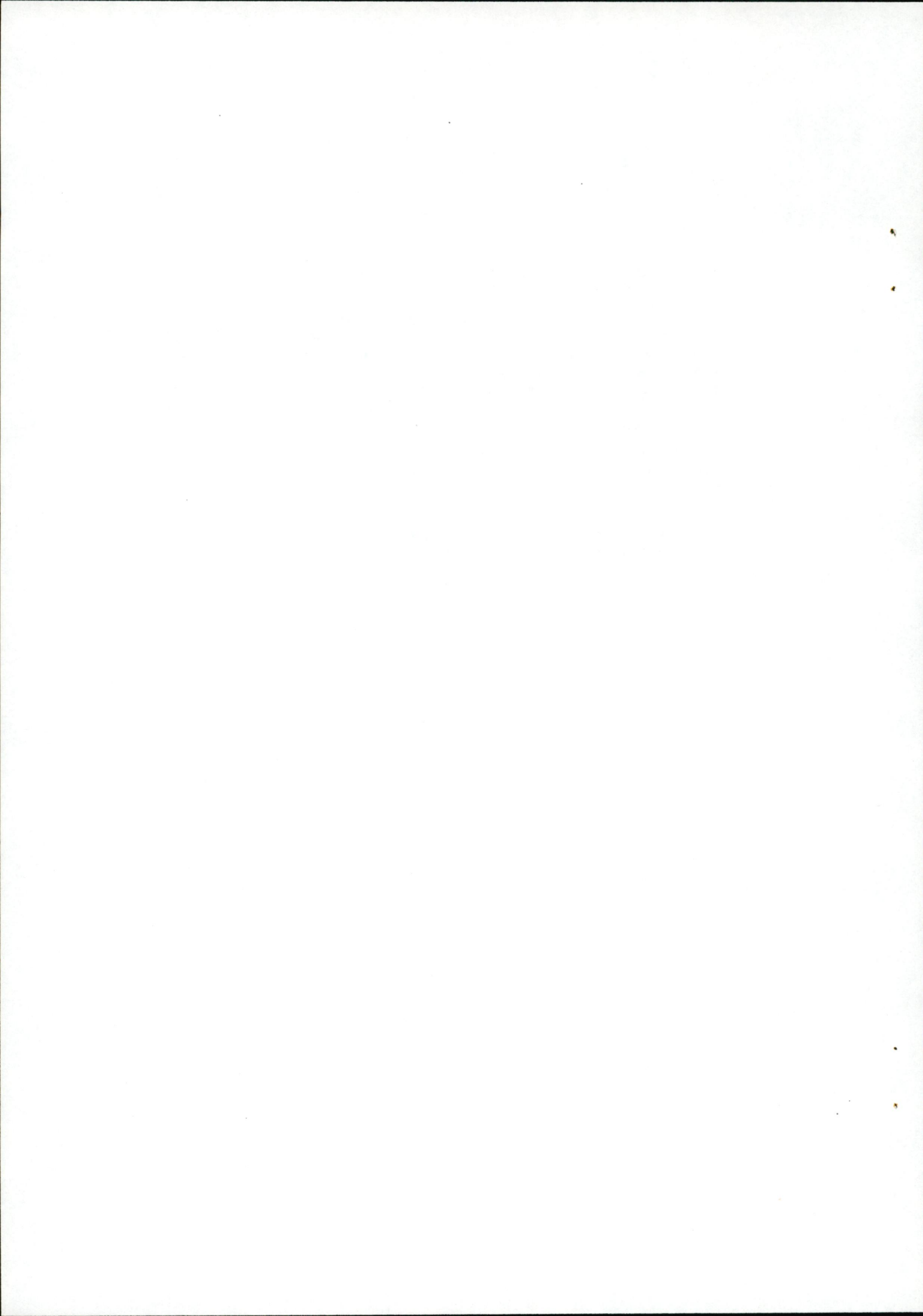
- in the case of the 1973 Act, the need for such a consent is abolished by amendments in the proposed Act; and
- in the case of the 1986 and 1989 Acts, such a consent or approval does not necessarily relate to environmental planning or protection.

Strata Titles (Staged Development) Amendment 1992

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

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

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



FIRST PRINT

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

NEW SOUTH WALES



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SCHEDULE 2—AMENDMENT OF OTHER ACTS

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

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Strata Titles Act 1973 to make more flexible provision for the staged development of land subject to a strata scheme and for other purposes; and to amend the Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979.

See also Strata Titles (Leasehold Staged Development) Amendment Bill 1992.

Strata Titles (Staged Development) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Strata Titles (Staged Development) Amendment Act 1992.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Strata Titles Act 1973 No. 68

3. The Strata Titles Act 1973 is amended as set out in Schedule 1.

10 Amendment of other Acts

4. The Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979 are amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973

15

(Sec. 3)

**PART 1—AMENDMENTS RELATING TO STAGED
DEVELOPMENT**

(1) Section 5 (Definitions):

20 (a) From the definitions of “development lot” and “development scheme” in section 5 (1), omit “development statement” wherever occurring, insert instead “strata development contract”.

(b) From section 5 (1), omit the definition of “development statement”.

25 (c) In section 5 (1), insert in alphabetical order the following definition:

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

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (2) Section 8 (**Registration of strata plans**):
- (a) From section 8 (2), omit “and any proposed development lot”. 5
- (b) Omit section 8 (4), insert instead:
- (4) The schedule of unit entitlement for a strata scheme that does not include a development lot must show as whole numbers the aggregate unit entitlement of all lots and the proposed unit entitlement of each lot. 10
- (4A) The schedule of unit entitlement for a strata scheme that includes a development lot must show as whole numbers:
- (a) the aggregate unit entitlement of all lots, whether or not development lots; and 15
- (b) apportioned on the basis of land value (within the meaning of the Valuation of Land Act 1916) and so as to total that aggregate unit entitlement:
- the proposed unit entitlement of each development lot; and 20
 - the proposed unit entitlement of all lots that are not development lots, being the unit entitlement attributable to the residue of the land in the proposed parcel; and
- (c) apportioned on a market value basis and so as to total the proposed unit entitlement of all lots that are not development lots, the proposed unit entitlement of each lot that is not a development lot. 25
- (c) From section 8 (5) (a), omit “development statement”, insert instead “strata development contract”. 30
- (d) From section 8 (5) (b), omit “section 28A (4)”, insert instead “section 28B (2)”.
- (3) Section 8A:
- Omit the section, insert instead:
- Subdivision of development lot** 35
- 8A. (1) A development lot (which cannot be land within a stratum parcel) may be subdivided into lots, or into lots and common property, by the registration of a plan as a strata plan of subdivision.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5 (2) A plan intended to be registered under this section as a strata plan of subdivision must include, as sheets of the plan:
- (a) a location plan; and
- (b) a floor plan; and
- (c) a schedule of unit entitlement.
- 10 (3) The location plan must be endorsed with:
- (a) a certificate issued by the local council under section 37 in the approved form, unless the plan is lodged by the Crown or a statutory body representing the Crown; and
- 15 (b) a certificate given by a registered surveyor in the approved form certifying that each applicable requirement of Schedule 1A has been met (but which need not certify any matter relating to a lot boundary that was certified in the strata plan or a previous strata plan of subdivision).
- 20 The location plan must also identify any encroachment by the building (whether or not on to a public place).
- (4) The schedule of unit entitlement must show as whole numbers:
- 25 (a) the current unit entitlement of the development lot intended to be subdivided; and
- (b) apportioned on a market value basis and so as to total that unit entitlement, the proposed unit entitlement of each lot intended to be created on registration of the strata plan of subdivision.
- 30 (4) Section 13 (**Conversion of lots into common property**):
From section 13 (1), omit "Except as provided by section 28E, one", insert instead "One".
- (5) Section 28 (**Effect of dealings under this Division**):
After section 28 (4), insert:
- 35 (5) This section does not prevent the execution in accordance with section 28N of a dealing by a body corporate, or by a developer on behalf of the body corporate, to give effect to a decision about a development concern (within the meaning of section 28O) or prevent the registration of a dealing so executed.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(6) Part 2, Division 2A:

Omit the Division, insert instead:

Division 2A—Staged Development

5

Explanation of staged development

28A. (1) The purpose of this Division is to facilitate the development in stages of a parcel that is subject to a strata scheme.

(2) The development contemplated consists of:

10

- the progressive improvement of the parcel by the construction of buildings or the carrying out of works (or both) on a lot or lots reserved for future development (“development lots”); and
- the subsequent subdivision under this Act of each such lot and the consequential adjustment of unit entitlements within the scheme.

15

(3) Development lots may be situated wholly or partly above, below or alongside the building to which the strata scheme initially relates, but must be identified as such in the strata plan for the scheme when that plan is registered.

20

(4) The staged development of a parcel will be carried out subject to a strata development contract that describes separately:

(a) any proposed development that the developer for the development lot concerned warrants will be carried out and may be compelled to carry out (“warranted development”); and

25

(b) any other proposed development that the developer will be authorised but cannot be compelled to carry out (“authorised proposals”).

30

Warranted development and authorised proposals are referred to as “permitted development” because the body corporate for the strata scheme and other persons having estates or interests in lots included in the parcel must allow it to be carried out in accordance with the contract.

35

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

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Obligations of consent authorities

5 28B. (1) A consent authority must not, at the same time, grant development consent for the subdivision of land by a strata plan and the subsequent subdivision of a lot in that plan by a strata plan of subdivision unless:

- 10 (a) the lot intended to be subdivided is identified in the proposed strata plan as a development lot; and
(b) the development application is accompanied by a proposed strata development contract.

15 (2) When a consent authority grants such a consent, it must certify in the approved form that carrying out the permitted development would not contravene:

- 15 (a) any condition subject to which the consent was granted; or
20 (b) the provisions of any environmental planning instrument that were in force when the consent was granted, except to the extent (if any) specified in the certificate.

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

Form and content of strata development contract

25 28C. (1) A strata development contract and any amendment of such a contract must be in the approved form.

(2) A strata development contract must include a concept plan and a description:

- 30 (a) of the land comprising the parcel, identifying separately the development lot or lots to which it relates; and
(b) of any land proposed to be added to that parcel at a later time; and
35 (c) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out and may be compelled to carry out (identified in the contract as “warranted development—proposed development subject to a warranty”); and

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (d) of so much (if any) of the proposed development as the developer is permitted by the contract to carry out but cannot, merely because it is described in the contract, be compelled to carry out (identified in the contract as “**authorised proposals**—proposed development *not* subject to a warranty”). 5
- (3) A strata development contract must include such other documents, particulars and information as may be required by the regulations. 10
- (4) A strata development contract cannot provide for the subdivision of common property without the consent, by special resolution, of the body corporate.
- Concept plan** 15
- 28D. (1) A concept plan must illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of the buildings and works that would result from the carrying out of all permitted development under the strata development contract of which the plan forms part. 20
- (2) A concept plan must separately illustrate, in the manner approved by the Registrar-General, the sites proposed for and the nature of such of those buildings and works (if any) as would result from the carrying out of all warranted development. 25
- (3) The Registrar-General may refuse to register an amendment of a strata development contract if it does not include a revised concept plan so that this section will be complied with after the amendment has been registered.
- Variation of liability for common property expenses** 30
- 28E. (1) A strata development contract may apportion the liability for expenses relating to the use or maintenance of the common property of the strata scheme concerned differently from the way that liability would otherwise be apportioned by the schedule of unit entitlement applicable to lots under the scheme. 35
- (2) An apportionment under this section has effect despite the current schedule of unit entitlement, but does not apply to any liability that relates to the use or maintenance of the common property after the development scheme is concluded. 40

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Signing of strata development contract and amendments

5 28F. (1) The Registrar-General may register a strata development contract relating to a development lot in a strata plan or an amendment of such a contract only if the contract or amendment is signed by:

- 10 (a) the developer for the development lot; and
- (b) in the case of an amendment, the proprietor of each other lot; and
- (c) each registered mortgagee, chargee, covenant chargee and lessee of the development lot and, in the case of an amendment, of each other lot; and
- 15 (d) each registered mortgagee and chargee of a lease of the development lot and, in the case of an amendment, of a lease of any other lot.

 (2) A strata development contract must be accompanied by the certificate (if any) required to be given by section 28B (Obligations of consent authorities).

20 (3) The Registrar-General may refuse to register a strata development contract or an amendment of such a contract if there have not been lodged in the office of the Registrar-General written consents to the registration of the contract or amendment signed by (or by an agent authorised by) such one or more of the following as the Registrar-General determines:

- 25 (a) the judgment creditor under any writ recorded in the folio for the development lot concerned or for any lease of that lot or, in the case of an amendment, in the folio for any other lot or for a lease of any other lot;
- 30 (b) the lessee under any lease of the common property of the strata scheme concerned;
- (c) the caveator under a caveat affecting any estate or interest of any person required to sign the contract because of that estate or interest or under a caveat affecting any such common property.
- 35 (4) Nothing prevents the same person from being more than one of the parties to a strata development contract.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Registration of strata development contract and amendments

28G. (1) The Registrar-General may register a strata development contract and any amendment of such a contract by making such recordings in the Register as the Registrar-General considers appropriate. 5

(2) The Registrar-General may refuse to register an amendment of a strata development contract if the certificate of title for the body corporate of the strata scheme concerned and the common property (if any) has not been produced to the Registrar-General. 10

(3) The Registrar-General must refuse to register a strata development contract or any amendment of such a contract that contravenes any requirement made of it by this Division. 15

Notice of strata development contract and amendments

28H. When a strata development contract is registered, the Registrar-General must record in the folio of the Register relating to the body corporate of the strata scheme concerned and the common property (if any): 20

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

(b) such information relating to the contract and any amendment of the contract as the Registrar-General considers appropriate. 25

Effect of strata development contract

28I. (1) A strata development contract relating to a strata scheme has effect as an agreement under seal containing the covenants specified in Schedule 1BA entered into by the body corporate and each person who for the time being is: 30

(a) the developer concerned; or

(b) a proprietor of a lot (other than that developer); or

(c) a registered or enrolled mortgagee, chargee, covenant chargee or lessee, or an occupier, of a lot. 35

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(2) The contract ceases to have effect:

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

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

15 (3) A strata development contract does not permit
development to be carried out in contravention of this or any
other Act or any other law.

20 (4) A lessee entitled under a lease to immediate possession
of a development lot is taken to be the developer, and the
person who would otherwise be the developer is taken not to
be the developer, for the purposes of this Act, the regulations
and the strata development contract concerned.

25 (5) A mortgagee, chargee or covenant chargee in
possession of a development lot is taken to be the developer,
and the person who would otherwise be the developer is
taken not to be the developer, for the purposes of this Act,
the regulations and the strata development contract
concerned.

30 (6) A provision in any other contract or instrument under
which a strata development contract is excluded, modified or
restricted is void.

(7) A covenant entered into under a strata development
contract does not merge on transfer of a lot.

35 (8) Nothing in this section affects any right or remedy a
person may have apart from a right or remedy under a strata
development contract, with the exception that Part 5 does not
apply to matters arising under any such contract.

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

Amendment of strata development contract

- 28J. (1) A strata development contract may be amended by the developer, but any such amendment has effect only if: 5
- (a) this section has been complied with in relation to the amendment; and
 - (b) the amendment is registered.
- (2) A proposed amendment that involves a change in the basic architectural or landscaping design of the development, or in its essence or theme, may be made only if it is: 10
- (a) approved by the consent authority (if any); and
 - (b) except where the developer is the only proprietor of lots in the strata scheme concerned, supported by a unanimous resolution of the body corporate of the strata scheme concerned. 15
- (3) An amendment proposed in order to give effect to a change in the law or a change in the requirements of a consent authority may be made only if it is: 20
- (a) approved by the consent authority (if any); and
 - (b) notified to the body corporate of the strata scheme concerned.
- (4) Any other proposed amendment that would require a change in the terms of a development consent may be made only if it is: 25
- (a) approved by the consent authority; and
 - (b) supported by a special resolution of the body corporate of the strata scheme concerned.
- (5) Any other proposed amendment that would not require a change in the terms of a development consent may be made only if: 30
- (a) it is supported by an ordinary resolution of the body corporate of the strata scheme concerned; and
 - (b) the application for registration, or the contract as intended to be amended, is accompanied by a certificate, given in the approved form by the consent authority (if any), to the effect that a change in the terms of any development consent is not required. 35

Strata Titles (Staged Development) Amendment 1992

SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

5 (6) A consent authority that approves an amendment of a strata development contract must provide the applicant for the approval with a copy of the instruments, plans and drawings that describe and illustrate the amendment and a certificate in the approved form to the effect:

- 10 (a) that the copy describes and illustrates the approved amendment; and
- (b) that the contract, if amended as approved by the authority, would not be inconsistent with any related development consent.

Approval of amendments by Land and Environment Court

15 28K. (1) An amendment of a strata development contract is not required to be supported by a resolution of a body corporate if the amendment is approved by the Land and Environment Court.

20 (2) Such an approval may be given only if the Court is satisfied:

- (a) that a motion supporting the amendment has been defeated; or
- 25 (b) that the notice of intention to move such a motion has been given but a meeting to consider the motion has not been held within a reasonable time after the giving of the notice; or
- (c) that the consent to the amendment of a mortgagee, chargee or covenant chargee or of a lessee has been sought but has been refused.

30 (3) An application for such an approval must be served on:

- (a) the consent authority; and
- (b) the body corporate; and
- (c) each person (other than the applicant) who is the proprietor of a development lot; and
- 35 (d) each registered or enrolled mortgagee, chargee, covenant chargee and lessee of a lot in the strata scheme concerned.

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continued

(4) Each person entitled to be served with notice of the application is entitled to appear and be heard in proceedings relating to the application. 5

Use of common property and development lot by developer

28L. (1) When carrying out permitted development under a strata development contract, a developer is entitled to use any common property or development lot to which the contract relates: 10

(a) to the extent necessary to carry out the development; or

(b) to such other extent as may be specified in the contract, which may confer on the developer an exclusive (or any lesser) right to occupy specified common property. 15

(2) A right conferred by this section may be exercised despite any other provision of this Act or any provision of the by-laws or of an order under section 121, but must be exercised in a manner that does not cause unreasonable inconvenience to the occupier of any lot. 20

(3) Any provisions of a strata development contract that relate to the maintenance or upkeep of common property to which the contract relates have effect despite any provision of the by-laws or of an order under section 121.

Adding land to a parcel subject to a strata development contract 25

28M. (1) Land may be added to a parcel containing a development lot by registration of a strata plan of subdivision in accordance with the regulations.

(2) A strata plan of subdivision that adds land may be registered only if: 30

(a) the land consisting of the former parcel and the additional land could be the subject of a strata plan had the land in the former parcel not already been subdivided under this Act; and 35

(b) the strata development contract, as in force when the strata plan of subdivision is registered, provides for the land to be added to the parcel and states whether, on its being added to the parcel, the land will become

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

5 common property, a further development lot or an addition to an existing development lot, or any specified combination of them; and

(c) a plan showing as a single lot the additional land and the former parcel has been lodged in the office of the Registrar-General for registration under the Conveyancing Act 1919.

10 (3) On registration of such a strata plan of subdivision, the land becomes common property, a further development lot or an addition to an existing development lot, or any specified combination of them, as provided by the strata development contract.

15 **Right to complete permitted development**

20 28N. (1) The vote of a developer who is permitted to carry out development because it is included in a strata development contract is sufficient to pass or defeat a motion included in the notice for a meeting of the body corporate or of the council of the body corporate if the passing or defeat of the motion would have the effect of making a decision about a development concern.

25 (2) It is not necessary for a decision about a development concern to be supported by a special or unanimous resolution of a body corporate, despite any other provision of this Act.

(3) A dealing, plan or other instrument may be executed either by the body corporate or by a developer on behalf of the body corporate for the purpose of giving effect to a decision about a development concern.

30 (4) The regulations may impose requirements for the execution of dealings, plans and other instruments by bodies corporate and developers and may require verification by statutory declaration of the circumstances in which they were executed.

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

28O. (1) The following are development concerns for the purposes of this Division:

40 (a) erecting structures, carrying out works or effecting other improvements in accordance with the strata development contract;

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- | | |
|---|----|
| (b) creating easements, dedicating land, making by-laws or entering into covenants or management or other agreements in accordance with that contract; | 5 |
| (c) creating or using common property in accordance with that contract; | |
| (d) creating or using a development lot in accordance with that contract; | |
| (e) using water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air, telephone or other services available to the parcel, or installing additional services, in accordance with that contract; | 10 |
| (f) providing and using means of access or egress to or from a development lot, or to or from the common property, in accordance with that contract; | 15 |
| (g) subdivision of a development lot, or excising a development lot from the parcel, in accordance with that contract; | |
| (h) carrying out any other development that is permitted to be carried out because it is included in that contract. | 20 |
| (2) The following are not development concerns for the purposes of this Division: | |
| (a) subdivision of common property that has been created by a registered plan; | 25 |
| (b) amendment of a strata development contract, regardless of whether the subject-matter involved is, or relates to, a development concern. | |
| Meetings of body corporate relating to development concerns | 30 |
| 28P. (1) A motion, the passing or defeat of which at a meeting of the body corporate or of the council of the body corporate would have the effect of making a decision about a development concern, must be: | |
| (a) identified as relating to a development concern in the notice for the meeting; and | 35 |
| (b) moved separately from any other kind of motion. | |

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continued

5 (2) An extraordinary general meeting of the body corporate for the purpose of making a decision about a development concern may be convened under Schedule 2 by the developer or the proprietors of not fewer than one quarter of the lots in the strata scheme concerned that are not development lots.

10 (3) In convening any such extraordinary general meeting, the developer or any of those proprietors may give notice of the meeting on behalf of the council of the body corporate.

15 (4) The presence of the developer (or, if the developer is a corporation, of the company nominee of the corporation) constitutes a sufficient quorum for any meeting of the body corporate or of the council of the body corporate of which notice has been duly given, but only while business relating to a development concern is being dealt with.

20 (5) For the purpose only of allowing development permitted by a strata development contract to be carried out, a developer (or, if the developer is a corporation, the company nominee of the corporation) may exercise such of the other functions of a body corporate bound by the contract or of any other person having functions under the strata scheme concerned as may be prescribed by the regulations.

25 (6) This section has effect despite any other provision of this Act.

Conclusion of development scheme

30 28Q. (1) For the purposes of this Division, a development scheme to which a strata development contract relates is concluded when any of the following occurs:

- 35 (a) any development consent required for carrying out the scheme is revoked;
- (b) a strata plan of subdivision is registered which subdivides the development lot to which the contract relates or subdivides the residue of that development lot after excision of part of that lot in accordance with the contract;
- (c) the time predicted by the contract for conclusion of the development scheme arrives;

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continued

- (d) a notice in the approved form, signed in accordance with subsection (3) and stating that the development scheme to which the contract relates has concluded, is registered by the Registrar-General; 5
- (e) the development scheme is concluded under section 28QA by an order of the Land and Environment Court;
- (f) the strata scheme concerned is terminated under Part 3 by an order of the Supreme Court. 10
- (2) A strata development contract is taken to predict, as the time for conclusion of the development scheme to which it relates:
- (a) the time for completion of that development scheme specified in the contract; or 15
- (b) if no such time is specified, the tenth anniversary of the day on which the contract was registered.
- (3) A notice is signed in accordance with this subsection only if:
- (a) it is signed by the developer concerned; and 20
- (b) it is signed by each registered mortgagee, chargee, covenant chargee and lessee of the development lot; and
- (c) it is accompanied by a certificate, given in the approved form by the body corporate for the strata scheme concerned, certifying that the relevant agreement is supported by a unanimous resolution of the body corporate. 25
- (4) The Registrar-General is required to make an appropriate record of the conclusion of a development scheme in the folio for the body corporate and the common property (if any) of the strata scheme concerned. 30
- Order for extension or conclusion of development scheme**
- 28QA. (1) On application made to it by any person bound by a strata development contract, the Land and Environment Court may, by its order, do either or both of the following: 35
- (a) defer (either generally or to a specified time) the time at which a development scheme would otherwise be concluded;

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continued

- 5 (b) fix a time for the conclusion of a development scheme,
whether it is an earlier or a later time than it would
otherwise be.
- (2) Notice of such an application is to be served, in
accordance with rules of court, on:
- 10 (a) the developer concerned; and
(b) each proprietor, and each registered or enrolled
mortgagee, chargee, covenant chargee and lessee, of a
lot; and
(c) the body corporate; and
(d) the consent authority (if any) that granted the relevant
development consent; and
15 (e) the Registrar-General; and
(f) such other persons (if any) as the Land and
Environment Court may direct.
- 20 (3) Each person entitled to be served with notice of the
application is entitled to appear and be heard in proceedings
relating to the application.
- (4) An order under this section may:
- 25 (a) contain such provisions relating to the strata scheme as
are, in the opinion of the Land and Environment Court,
necessary because of the conclusion of the
development scheme; and
(b) require the payment of money to or by the body
corporate or the proprietors of lots to any one or more
of them in addition to, or instead of, any award of
30 damages in the exercise of the jurisdiction conferred by
section 20 (2) (d) of the Land and Environment Court
Act 1979; and
(c) contain such other provisions and make such other
requirements as, in the opinion of the Land and
Environment Court, are just and equitable in the
35 circumstances of the case.
- (5) The Land and Environment Court may, from time to
time, vary an order under this section on the application of
any person entitled to apply for such an order.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (7) Section 32 (**Readjustment of strata scheme for purposes of resumption**): 5
 From section 32 (4) (b1), omit “development statement”, insert instead “strata development contract”.
- (8) Section 37 (**Approval of proposed strata plans and strata plans of subdivision and of conversion of lots into common property**): 10
 From section 37 (1A) (b) (ii), omit “development statement”, insert instead “strata development contract”.
- (9) Section 40 (**Appeal against local council refusing approval**):
 From section 40 (1) (d), omit “development statement”, insert instead “strata development contract”.
- (10) Section 41 (**Registration of plans and notices**): 15
 (a) Omit section 41 (2A)–(2C).
 (b) From section 41 (5), omit “, building alteration plan, development statement or amendment of a development statement”, insert instead “or building alteration plan”.
- (11) Section 42 (**Provisions applying to strata plans etc.**): 20
 From section 42 (3) and (4), omit “development statement” wherever occurring, insert instead “strata development contract”.
- (12) Section 43 (**Registrar-General’s power to adjust unit entitlements**): 25
 From section 43 (1), omit “referred to in section 8 (1) (d), 8A (2) (c), 10 (1) or 11 (a)”, insert instead “of unit entitlement”.
- (13) Section 50 (**Variation of strata scheme consequent on damage to or destruction of building**): 30
 From section 50 (6) (b1), omit “development statement”, insert instead “strata development contract”.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- (14) Section 51 (**Termination of strata scheme**):
5 From section 51 (6) (b1), omit “development statement”,
 insert instead “strata development contract”.
- (15) Section 53 (**Consequences of making an order under section 50
or 51**):
10 From section 53 (1), omit “development statement”
 wherever occurring, insert instead “strata development
 contract”.
- (16) Section 66 (**Statutory restrictions on powers of body
corporate**):
 From section 66 (1) (b), omit “development statement”,
 insert instead “strata development contract”.
- 15 (17) Section 68 (**Duties of body corporate**):
 From section 68 (1), omit “development statement”
 wherever occurring, insert instead “strata development
 contract”.
- (18) Section 80 (**Duties of proprietors and occupiers of lots**):
20 From section 80 (2), omit “section 28H”, insert instead
 “section 28L”.
- (19) Section 105 (**General powers of Commissioner to make
orders**):
25 Omit section 105 (4), insert instead:
 (4) Nothing in this Division authorises the Commissioner
 to make an order of the kind that may be made under section
 32, 50, 51 or 67 by the Supreme Court.
- (20) Section 119:
30 Omit the section, insert instead:
 Order for reallocation of unit entitlements
 119. (1) A Board may make an order allocating unit
 entitlements among the lots that are subject to a strata scheme
 in the manner specified in the order.

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continued

(2) An order may be made only if the Board considers, after having regard to the respective values of the lots and (if a strata development contract is in force in relation to the strata scheme) to such other matters as the Board considers relevant, that the allocation of unit entitlements among the lots: 5

(a) was unreasonable when the strata plan was registered or when a strata plan of subdivision was registered; or 10

(b) became unreasonable because of a change in the permitted land use, being a change (whether or not because of a rezoning) in the ways in which the whole or any part of the parcel could lawfully be used, whether with or without development consent. 15

(3) An application for an order may be made:

(a) by a proprietor of a lot (whether or not a development lot) within the parcel; or

(b) by the body corporate; or

(c) by the local council, or by any other public or local authority constituted by or under an Act or any statutory body representing the Crown, being an authority or body that is empowered to impose a rate, tax or other charge by reference to a valuation of land. 20

(4) An application for an order must be accompanied by a certificate specifying the valuation, at the relevant time of registration or immediately after the change in the permitted land use, of each of the lots to which the application relates. 25

(5) The certificate must have been given by the holder of a current certificate of registration under the Valuers Registration Act 1975 as a practising real estate valuer authorised under that Act to make such a valuation (a "qualified valuer"). 30

(6) A Board may, if it makes an order reallocating unit entitlements that were not allocated in accordance with a valuation of a qualified valuer and, in the opinion of the Board, were allocated unreasonably by a developer, also order: 35

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continued

- 5 (a) despite section 116, the payment by the developer to the applicant for the order of the costs incurred by the applicant, including fees and expenses reasonably incurred in obtaining the valuation and the giving of evidence by a qualified valuer; and
- 10 (b) the payment by the developer to proprietors or to the body corporate, or both, of such amounts as may be assessed by the Board to represent any overpayments (due to the unreasonable allocation) for which liability arose not earlier than 6 years before the date of the order.
- 15 (7) An amount ordered to be paid under this section may be recovered as a debt in a court of competent jurisdiction.

(21) Schedule 1A (**Requirements for strata plans**):

From the heading, omit “(Sec. 8)”, insert instead “(Secs. 8, 8A)”.

(22) Schedule 1BA:

20 After Schedule 1B, insert:

**SCHEDULE 1BA—COVENANTS IMPLIED IN
STRATA DEVELOPMENT CONTRACTS**

(Sec. 28I)

Warranted development

- 25 1. The developer agrees with the other parties jointly, and with each of them severally:
- that the developer must carry out the development (if any) described and identified as “**warranted development**—proposed development subject to a warranty” in the strata development contract; and
 - that the developer must carry out any such development in accordance with the covenants set out and implied in the contract.
- 30

35 **Permission to carry out warranted development and authorised proposals**

2. The parties, other than the developer, jointly and severally agree with the developer that the developer is

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

permitted to carry out, in accordance with the covenants set out or implied in the contract:

- the warranted development (if any); and 5
- such other development as is described and identified as “**authorised proposals**—proposed development *not* subject to a warranty” in the contract.

Body corporate expenses

3. The developer agrees with the body corporate that the developer will pay the reasonable expenses incurred by the body corporate: 10

- in repairing damage to the common property caused in carrying out the permitted development, except damage due to normal wear and tear; and 15
- for any water, sewerage, drainage, gas, electricity, oil, garbage, conditioned air or telephone service (and any other service prescribed by the regulations) used in carrying out that development; and
- for additional administrative costs connected with that development, such as the cost of giving notice of and holding any meeting required to obtain approval of a strata plan of subdivision. 20

Standard of development

4. The developer agrees with the other parties that: 25

- the standard of materials used, finishes effected, common property improvements, landscaping, roadways and paths; and
- the heights of buildings, other structures and works and the density of development, 30

in all development permitted to be carried out by the contract must not be inferior to or substantially different from those of the completed buildings and other structures and works forming part of the parcel, except to the extent (if any) that the contract specifies. 35

Unauthorised use of the parcel

5. The developer agrees with the other parties that the developer will not use any part of the parcel or cause any part of the parcel to be used except:

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5
- to the extent necessary to carry out the development permitted to be carried out by the strata development contract; or
 - to such other extent as may be specified in the contract.

Restoration of common property

10 6. The developer agrees with the other parties to make good, as soon as is practicable, any damage to the common property arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

Restoration of development lot

15 7. The developer agrees with the other parties to make good, as soon as is practicable, any damage to a development lot arising out of performance of the contract, whether or not the contract contemplates or permits the damage.

20 For the purposes of this covenant, “**damage**” does not include damage necessarily resulting from having carried out (in accordance with the contract) development that is permitted by the contract to be carried out.

Additional covenants for vertical staged development

25 8. If the contract permits development to be carried out within a development lot that is wholly or partly directly above a part of the parcel that is not a development lot, the developer agrees with the other parties:

- 30
- to minimise any disruption caused to other occupiers of the parcel by the carrying out of permitted development or otherwise; and
 - to ensure that, while permitted development is being carried out, shelter and subjacent and lateral support, consistent with proper engineering and building practices, are provided to such other parts of the parcel as are capable of being sheltered or of enjoying that support; and
- 35
- to keep the developer insured, while permitted development is being carried out, under a policy of indemnity (that complies with the regulations) with an insurer approved for the purposes of Division 5 of Part

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continued

4 against claims for damage to property, or for death or personal injury, arising out of or resulting from the carrying out of permitted development. 5

(23) Schedule 4 (Transitional and savings provisions):

After Part 2, insert:

**PART 3—TRANSITIONAL PROVISIONS
RELATING TO THE STRATA TITLES (STAGED
DEVELOPMENT) AMENDMENT ACT 1992** 10

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the Strata Titles (Staged Development) Amendment Act 1992.

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to that Act or on a later date. 15

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or 20

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of that publication. 25

Transitional arrangements for certain development schemes

2. (1) This Act, as in force immediately before the commencement of Part 1 of Schedule 1 to the Strata Titles (Staged Development) Amendment Act 1992, applies to a development scheme provided for, and represented by, a development statement: 30

(a) that was certified under section 28A (4) before that commencement; or 35

(b) that, not needing to be so certified, was duly lodged for registration before that commencement.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

5 (2) The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1992, applies to any proceedings:

- 10 (a) that are commenced after that commencement in the Land and Environment Court; and
(b) that relate to any such development scheme or development statement.

Proceedings pending in Land and Environment Court

15 3. The Land and Environment Court Act 1979, as in force immediately before the commencement of Schedule 2 to the Strata Titles (Staged Development) Amendment Act 1992, applies to any proceedings that are pending at that commencement in the Land and Environment Court under:

this Act;
the Strata Titles (Leasehold) Act 1986; or
the Community Land Management Act 1989.

20 **PART 2—OTHER AMENDMENTS**

(24) Section 6 (**Construction of Act**):

In section 6 (3), after “strata plan” wherever occurring, insert “or strata plan of subdivision”.

25 (25) Section 7 (**Subdivision**):

After section 7 (1), insert:

(1A) For the purposes of this section, land is contiguous to other land even if it is divided by, or separated from the other land by, a natural feature (such as a watercourse), a railway, a public road, a public reserve or a drainage reserve.

30 (26) Section 36 (**Other Acts not to apply to subdivisions under Division 1**):

At the end of section 36, insert:

35 (2) This section does not affect any requirement to obtain development consent under the Environmental Planning and Assessment Act 1979 to a subdivision to be effected under Division 1.

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

(27) Section 51A:

After section 51, insert:

Termination of strata scheme by Registrar-General 5

51A. (1) On receiving an application for termination of a strata scheme under this section, the Registrar-General may:

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

A refusal by the Registrar-General to terminate a strata scheme does not preclude an application to the Supreme Court under section 51 for termination of the scheme. 10

(2) An application must relate to a parcel that is not subject to a strata development contract.

(3) Except where the Registrar-General agrees otherwise, the application must be signed by: 15

- (a) each proprietor of a lot under the scheme; and
- (b) each registered lessee of a lot under the scheme; and
- (c) each registered mortgagee, chargee and covenant chargee of a lot or of a registered lease of a lot or of the common property (if any) under the scheme. 20

(4) The application must bear the consent of the consent authority (if any) for subdivision of the land to which it relates.

(5) Details of the proposed termination, and a statement of intention to make the application, must, except where the Registrar-General otherwise agrees, be published at least 14 days before the application is made: 25

- (a) in a daily newspaper circulating generally in Sydney; and 30
- (b) in a local newspaper circulating generally in the area in which the parcel is situated; and
- (c) in the Gazette.

(6) The application must be accompanied by:

- (a) the certificates of title for all the lots in the scheme and the common property (if any), except where the Registrar-General agrees otherwise; and 35

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SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
continued

- 5 (b) such other documents, consents and evidence as the Registrar-General may require; and
- (c) if the Registrar-General so requires, a plan for the parcel acceptable for registration as a deposited plan and signed or consented to as required by Division 3 of Part 23 of the Conveyancing Act 1919.
- 10 (7) An order terminating a strata scheme takes effect on being recorded by the Registrar-General in the folio for the land comprising the parcel.
- (8) When an order terminating a strata scheme takes effect:
- 15 (a) the body corporate is dissolved and the strata scheme is terminated; and
- (b) the land in the former parcel immediately before the scheme was terminated and the assets of the former body corporate at that time vest in the former proprietors as tenants in common in shares proportional to the unit entitlements of their former lots (or in such of the former proprietors or such other proportions as may be set out in the application); and
- 20 (c) the estate or interest of the former proprietors in land vested by this section is subject to any estate or interest registered or recorded, immediately before termination of the scheme, in the folios for the lots and the common property (if any) in the former parcel; and
- 25 (d) the former proprietors of lots are liable for the liabilities of the body corporate in shares proportional to the unit entitlements of their former lots; and
- 30 (e) any legal proceedings begun by or against the body corporate may be completed by or against the former proprietors.
- (9) On recording an order terminating a strata scheme, the Registrar-General:
- 35 (a) is to cancel the folios for the lots and common property (if any) in the former parcel; and
- (b) is to create a folio or folios of the Register for the land in the former parcel; and

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**SCHEDULE 1—AMENDMENT OF STRATA TITLES ACT 1973—
*continued***

- (c) may make such other recordings in the Register as the Registrar-General considers appropriate to give effect to the termination and its consequences. 5

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

Environmental Planning and Assessment Act 1979 No. 203

Section 99 (Lapsing of consent):

Omit section 99 (5A) (a), insert instead: 10

- (a) a proposed strata development contract referred to in the Strata Titles Act 1973; or

Land and Environment Court Act 1979 No. 204

- (1) Section 17 (Class 1—environmental planning and protection appeals): 15

(a) Omit section 17 (bb).

(b) At the end of section 17 (ea), insert “and”.

(c) From section 17 (f), omit “Act; and”, insert instead “Act.”.

(d) Omit section 17 (g).

- (2) Section 18 (Class 2—local government and miscellaneous appeals and applications): 20

(a) From section 18 (d), omit “and”.

(b) At the end of section 18 (e), insert:

; and

(f) proceedings under sections 28K and 28QA of the Strata Titles Act 1973, under sections 46, 49 and 51 of the Strata Titles (Leasehold) Act 1986 and under section 107 of the Community Land Management Act 1989. 25

- (3) Section 20 (Class 4—environmental planning and protection and development contract civil enforcement): 30

(a) Omit section 20 (1) (da).

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) In section 20 (2) (a) and (b), after “law” wherever occurring, insert “or a development contract”.
- 5 (c) From section 20 (2) (d), omit “an agreement referred to in subsection (3) (c)”, insert instead “a development contract”.
- (d) Omit section 20 (3) (c).
- (e) After section 20 (4), insert:
- 10 (5) In this section, “**development contract**” means an agreement implied by section 15 of the Community Land Management Act 1989, section 28I of the Strata Titles Act 1973 or section 47 of the Strata Titles (Leasehold) Act 1986.
- (4) Section 71:
- Omit the section, insert instead:
- 15 **Proceedings in Supreme Court**
71. (1) Proceedings referred to in section 20 that relate to the enforcement of development contracts may not be commenced or maintained in the Supreme Court.
- (2) This section has effect subject to section 58 which provides for appeals to the Supreme Court.
-