



# Regulatory Impact Statement

## Strata Schemes Development Regulation 2016

*A Regulation under the Strata Schemes Development Act 2015*

**April 2016**

Submissions accepted until: COB Friday 27 May 2016

Forward all submissions to:

Email: [Strataconsultation@finance.nsw.gov.au](mailto:Strataconsultation@finance.nsw.gov.au)

Mail: Strata Schemes Development Regulation 2016  
Legal Services  
Land and Property Information  
GPO Box 15  
SYDNEY NSW 2001



**Land & Property  
Information**

Title: Regulatory Impact Statement *Strata Schemes Development Regulation 2016*

Land and Property Information

1 Prince Albert Road

Queens Square

Sydney NSW 2000

T: 1300 052 637 - cost of local call Australia wide

T: 61 2 9228 6666 – international

E: [legalservices@lpi.nsw.gov.au](mailto:legalservices@lpi.nsw.gov.au)

[www.lpi.nsw.gov.au](http://www.lpi.nsw.gov.au)

## Copyright

© Crown in right of New South Wales through Land and Property Information 2016.



This copyright work is licensed under a Creative Commons Australia Attribution 4.0 licence,

<http://creativecommons.org/licenses/by-nd/4.0/au/>

## Disclaimer

This information is correct at the date of publication; changes after the time of publication may impact upon the accuracy of the material.

Any enquiries relating to this publication may be addressed to Land and Property Information

E: [legalservices@lpi.nsw.gov.au](mailto:legalservices@lpi.nsw.gov.au)

# Table of Contents

---

<b>1. Executive Summary</b>	<b>4</b>
<b>2. The Consultation Process</b>	<b>6</b>
<b>3. Assessment of options to achieve objectives</b>	<b>7</b>
Option 1 - Best practice procedures (self-regulation)	7
Option 2 – Include matters in the <i>Strata Schemes Development Act 2015</i>	8
Option 3 – Make the proposed Regulation	8
<b>4. Discussion of the Proposed Regulation</b>	<b>9</b>
Plans, administration sheets and unit entitlements	9
Staged Development	10
Certification	11
Lodgment	12
Strata Renewal	13
Miscellaneous	15
Schedule 1 – Requirements for lodging plans	15
Schedule 2 – Location plans	15
Schedule 3 – Floor plans	15
Schedule 7 – Fees	15
<b>Appendix 1</b>	<b>16</b>
Background information	16
<b>Appendix 2</b>	<b>17</b>
Summary of the Regulation	17
<b>Appendix 3</b>	<b>20</b>
List of Stakeholders	20

# 1. Executive Summary

---

*The Strata Schemes Development Regulation 2016* (the proposed Regulation) will be made under the new *Strata Schemes Development Act 2015* (the Act) which is proposed to commence by the end of 2016. The Act will repeal and replace the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*.

The Act will provide the legislative basis for the creation of lots and common property in strata schemes including the creation of a leasehold strata scheme. The Act also deals with other matters including:

- subdivision and consolidation of strata schemes
- conversion of lots into common property
- staged development of strata schemes and strata development contracts
- dealings with common property including the acquisition of land or the leasing of land for the purpose of creating or creating additional common property
- requirements for the issue of strata certificates by local councils or by accredited certifiers
- variation, termination and renewal of strata schemes.

By amalgamating the previous separate freehold and leasehold legislative instruments, the Act has removed unnecessary duplication and the need to reference separate legislation. The Act has been developed following extensive consultation with the strata industry, other stakeholders groups and the wider community.

Important reforms introduced in the Act include the following:

- Greater flexibility will be given to an owners corporation to lease additional common property. The Act will now also allow an owners corporation to lease land within the parcel as well as non-contiguous land outside the parcel that has some relevance to the scheme.
- A qualified valuer must determine the unit entitlement when the strata scheme is established. A valuer must certify that the unit entitlement was apportioned in the way that the Act requires. This will provide a fair base for assessing levies.
- Refinements have been introduced for part strata schemes. A building management statement registered before a strata scheme is established in the building can become a strata management statement on registration of the first strata plan. All strata management statements must include details of the method used to apportion costs and shared expenses and a review process must be implemented to make sure the allocation of costs and expenses remains fair.
- Part 10 of the Act introduces a significant reform by providing owners with an alternative mechanism to facilitate the collective sale or redevelopment of the strata scheme where not all (but at least 75%) of owners agree. Important protections and safeguards are included and several stages, as more fully set out in the legislation, must be followed before a strata renewal plan can be put into effect.

Regulations are required to provide necessary administrative and procedural detail. The proposed Regulation is made under the general regulation-making power under the Act as well as various sections of the Act that specifically allow or require regulations to be made. The proposed Regulation will help to ensure that the objectives of the Act, including the new reforms introduced, are achieved in an efficient and effective manner.

The proposed Regulation makes provision for:

- the form and content of location plans, floor plans, administration sheets and schedules of unit entitlement that relate to strata schemes
- the carrying out of development in stages of a parcel subject to a strata scheme
- the issuing of strata certificates and the giving of certificates by owners corporations
- the lodgment of plans and documents with the Registrar General
- the collective sale or redevelopment of strata schemes
- interests (such as easements) that affect a parcel subject to a strata scheme
- the designation by a plan of the site of a proposed affecting interest
- the payment of fees.

The proposed Regulation is a draft. It has been released with this Regulatory Impact Statement (RIS) so that interested parties can review it and provide comments and suggestions. This RIS sets out the objectives and rationale of the proposed Regulation and various options for achieving those objectives as well as an assessment of the costs and benefits of each of the alternative options. The making of the proposed Regulation is the best option available to achieve the objectives of the Act.

Submissions are invited on any of the matters raised in the discussion or anything else contained in the proposed Regulation. All submissions will be considered and may result in amendments to the proposed Regulation.

The proposed Regulation will then be finalised and published on the NSW Legislation website to enable it to commence by the end of 2016.



## 2. The Consultation Process

---

### Making a submission

This Regulatory Impact Statement and proposed Regulation give stakeholders groups, other interested organisations and the wider community an opportunity to provide comments and suggestions on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS.

Please forward all submissions to:

Email: [Strataconsultation@finance.nsw.gov.au](mailto:Strataconsultation@finance.nsw.gov.au)

or

Mail: Strata Schemes Development Regulation 2016  
Legal Services  
Land and Property Information  
GPO Box 15  
SYDNEY NSW 2001

**The closing date for submissions is COB Friday, 27 May 2016**

#### Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

### Identified Stakeholders

This Regulatory Impact Statement will be published on the Land and Property Information (LPI) website and a notice will be placed in the Government Gazette and the Sydney Morning Herald.

The Regulatory Impact Statement has been also provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 3.

### Evaluation of Submissions and commencement of the Regulation

Submissions received will be considered and may result in amendments to the proposed Regulation. Depending on the nature and scale of the issues raised in submissions, the proposed Regulation will then be finalised and published on the NSW Legislation website to enable commencement by the end of 2016.

## 3. Assessment of options to achieve objectives

---

This part of the RIS deals with options available to provide the necessary support required to achieve the objectives of the Act. Three options are considered and the costs and benefits of each option is assessed. After careful appraisal, it is considered that the making of the proposed Regulation (Option 3) is the best option for providing the necessary administrative and operational support to achieve the objectives of the Act.

### Option 1 - Best practice procedures (self-regulation)

An alternative to statutory regulation would be to implement best practice guidelines. The Registrar General provides extensive documentation by way of Registrar General Directions and other publications such as LPI Circulars to provide guidance about matters including the preparation of plans and other instruments for registration. These publications are, however, supplementary to the matters provided for within the Regulation.

Allowing practitioners, the survey or conveyancing industries or, the general community to adopt their own standards rather than conforming to regulatory requirements would not encourage consistency. If this Option was adopted, a number of provisions under the Act would not be workable and the objectives of the Act could not be achieved. The Act allows for necessary regulations to be made and administrative and operational details are needed for the Act to operate effectively.

The preparation of strata plans and other matters dealt with under the Regulation require the meeting of technical detail as well as requisite expertise. If minimum standards were not adhered to, or a system of standardised plans was not able to be insisted upon, the Registrar General would not be able to maintain compliance with the standards currently required. In addition, there is no guarantee that the documents would be compatible with the Torrens Register and may not evolve with changes to systems used by the Registrar General to maintain the Torrens Register.

Similarly, the Act requires some aspects of the strata renewal process to be prescribed. This makes sure, for example, that a strata renewal proposal gives sufficient detail of the proposal and that the appointment of a returning officer is fair and transparent. Allowing matters of disclosure to be self-regulated could lead to exploitation through the renewal process.

#### Costs

This Option would represent a significant cost to Government in establishing an alternate method for dealing with the matters currently dealt with by regulation. Without regulations, it could be expected that instruments lodged in LPI would not be consistent, complete or in an approved format necessitating the raising of requisitions. Without regulation, there is a higher margin for error in the preparation of instruments and in their assessment by LPI. This would also represent in some instances significant delays in registration.

Costs to the public as well as a cost to the community in dealing with those requisitions are also at issue. Non-monetary costs in dealing with requisitions and deficiencies must also be considered. In the absence of regulations that specify requirements for the preparation of strata plans and dealings with strata plans to ensure they are in a form capable for registration, the objects of the Act could not be properly fulfilled and many provisions of the Act may become inoperable.

#### Benefits

The primary benefit of this option is that it would allow more flexibility for industry to design plan standards and develop other forms. However, as noted previously, there is great benefit to the strata community in having standardised plans that can be readily interpreted and understood.

#### Conclusion

Accepted standards represents to the community an effective, cost saving and efficient way of ensuring timely registration. As well, the Act introduces new laws and the proposed Regulation provides important instruction and guidance in dealing with those new provisions.

It is considered that without regulation the objectives of the Act would be undermined. This Option is not considered viable.

## Option 2 – Include matters in the Strata Schemes Development Act 2015

It may be possible to include the matters prescribed in the proposed Regulation within the Act or in Schedules to the Act. However, the technical and administrative matters currently provided for in the Regulation are continually reviewed and changed where necessary. It is more efficient and speedier to amend the Regulation than to amend the Act.

There is an ongoing need for flexibility in the matters covered by the proposed Regulation to facilitate responses to changing needs for example, to support the continual development of electronic plan lodgment, to prescribe appropriate minimum insurance requirements and to adapt to the introduction of new technologies. Keeping the regulatory matters separate from the Act and the making of the proposed Regulation is the preferred option.

Regulations form a customary part of legislation and are intended to contain details of a technical and ancillary nature. It is considered that the proposed Regulation achieves this purpose.

### Conclusion

This Option is not considered viable.

## Option 3 – Make the proposed Regulation

### Costs

Commencement of the Act may result in some implementation costs to industry and the strata community but, generally, the implementation costs should not be great.

The Act introduces a new strata renewal process that enables collective decisions to be made about sale or redevelopment of a strata scheme with the support of 75% of lot owners. The strata renewal process could proceed with a minority of owners opposing the plan. However, the Act and Regulations provide safeguards throughout the process to make sure full disclosure is provided, owners have ample time to consider their options, the voting process is fair, the amount received is at least the compensation value of the lot and the terms of settlement are just and equitable in all the circumstances.

Fair Trading and LPI will assist owners with information and other support services through the process. Fair Trading will establish a Strata Renewal Advice and Advocacy Program. The Registrar General will develop guidelines containing information about the process. This will help to ensure that individual considerations are not overlooked throughout the process.

### Benefits

The Act and Regulation consolidate all matters about registration of strata plans and dealing with lots and common property in both freehold and leasehold strata schemes. The new legislation has also simplified and clarified provisions and streamlined current requirements. Introduction of the new legislation will bring many benefits.

The proposed Regulation deals with important administrative and operational issues. For example, it prescribes the matters that must be addressed in a strata development contract for staged development. The proposed Regulation also addresses certification requirements, whether certificates are issued by a local council or by an accredited certifier, or, where certificates are given by an owners corporation.

The current Regulations provide well-recognised and acceptable standardised requirements for the lodgment of strata plans. This includes requirements relating to the form and content of instruments making up a plan, such as plan forms, administration sheets and other documents lodged with strata plans and, also with certifications. The proposed Regulation has comprehensively reviewed and streamlined the current regulatory requirements, made necessary amendments to best support the provisions of the Act and, to include requirements to support the reforms introduced by the Act.

The making of regulations is provided for in various sections of the Act. The proposed Regulation represents an improved and simplified regulatory scheme to best serve the objectives of the Act. The consolidation of the current Regulations offers the best option to ensure that recognised requirements are maintained and enforced and, to support new reforms introduced.

### Conclusion

Making the proposed Regulation is the preferred Option.



## 4. Discussion of the Proposed Regulation

---

The proposed Regulation is to be made under the *Strata Schemes Development Act 2015* (the “Act”) and will prescribe the requirements for both freehold and leasehold strata schemes. As with the *Strata Schemes Development Act 2015*, the Regulation has been completely rewritten and the language simplified, however, most of the requirements for the preparation and lodgment of strata plans remain unchanged. Current plan requirements reflect accepted practice and provide a standardised form of presentation that makes interpretation of strata plans uniform and reliable.

The Regulation has introduced some new requirements, in particular, new provisions necessary to support the strata renewal process. Other changes include a requirement for a change of by-laws to be registered as a consolidated set of by-laws and further amendments to support authentication of a schedule of unit entitlements by a valuer.

Key features of the Regulation are discussed below. Feedback is welcome on these issues, and the Regulation more generally.

A summary of the proposed Regulation is provided at Appendix 2.

### Plans, administration sheets and unit entitlements

The objective of the proposed Regulation is to provide the detailed specifications for the preparation of plans and other instruments, as required by the Act. The draft Regulation attempts to provide the required detail with less complexity and in a more streamlined manner than the current Regulation.

#### Requirements for location plans, floor plans (clause 5) and administration sheets (clause 6)

The requirements for lodgment of plans and the preparation of location plans, floor plans and administration sheets have been simplified and clarified. The requirements have been consolidated and included with Schedules to the Regulations, for ease of reference. Discussion on each of the Schedules is included further on in this Part of the Regulatory Impact Statement.

#### Schedules of unit entitlement (clause 7)

Clause 7 supports the requirements of Schedule 2 of the Act, which requires each lot in the scheme to be allocated a unit entitlement as a proportion of the aggregate unit entitlement for the scheme. Clause 7 requires a proposed schedule of unit entitlement to set out each lot in the scheme, except where a strata plan of subdivision subdivides a development lot. There, only the lots created by the subdivision need to be separately detailed.

The clause also prescribes the “market value basis” that is to be used by the valuer when setting the unit entitlement for the scheme. The regulation uses a well-accepted definition of market value. It is consistent with the definition of market value used in clause 26. Determining the unit entitlement on the market value of each lot will allow for a fair unit entitlement to be set, based on a comparison between those values.

To make sure the unit entitlement is up to date the valuation must be made no more than 2 months before the day on which the relevant plan is lodged for registration.

**Q. 1** Does the definition of “market value basis” provide a clear description of the basis to be used to apportion unit entitlements?

**Q. 2** Is the requirement for the valuation to be made “no more than 2 months before the plan is lodged for registration” appropriate?

## Numbering of lots (clause 8)

Clause 8 requires all lots to be numbered consecutively, without gaps. New lots created by a strata plan of subdivision or consolidation, are also to be numbered consecutively, starting from the next number after the last lot in the scheme.

## Requirements specific to strata plans of consolidation, strata plans of subdivision and building alteration plans (clauses 9, 10 and 11)

Clauses 9 and 11 prescribe the plan sheets that must be included with a strata plan of consolidation and a building alteration plan respectively.

Clause 10 supports the requirements of section 13(4) of the Act that limits the ability of the original owner to subdivide a lot during the initial period. In these circumstances, the strata plan of subdivision must be accompanied either by a certificate of the owners corporation in the approved form certifying that the initial period has expired or, by an order under section 27 of the *Strata Schemes Management Act 2015* that authorised the registration of the plan.

## Staged Development

### Strata Development Contracts (clause 12)

Part 5 of the Act provides a mechanism to allow a strata scheme to be developed in stages. All strata plans that include a development lot are to be accompanied by a development contract that binds the developer, the owners corporation and each lot in the scheme. Section 76 of the Act provides for the form and content of a strata development contract. It also allows the Regulations to prescribe any further information or document to be included with a strata development contract.

Clause 12 prescribes a number of additional matters that are to be included in a development contract, such as details of the style and type of proposed buildings to be constructed and any proposed common property amenities. A strata development contract must deal separately with each of the prescribed matters in relation to each stage of the development and must specify whether the matter is an "*authorised proposals*" or a "*warranted development*", as defined in the Act.

**Q. 3** Are there any other matters that should be included in the development contract or could the form of the development contract be improved in any way?

### Execution by developer on behalf of owners corporation (clause 13)

Clause 13 provides that where a dealing, plan or other instrument is signed by a developer on behalf of an owners corporation under section 87 of the Act it must be executed in the approved form. A statutory declaration is to be provided to the Registrar General that described the steps taken and justifies the signing, as required by the Act.

**Q. 4** Are there any other matters that should be addressed where a developer signs a dealing, plan or instrument on behalf of an owners corporation under section 87 of the Act?

### Notices relating to development concerns (clause 14)

Section 88 of the Act allows a developer to exercise certain functions of an owners corporation (if it is bound by a development contract), but only to the extent necessary to allow permitted development to be carried out. Regulations can be made to prescribe special requirements for calling and holding meetings relating to a development concern.

Clause 14 requires that notices of a meeting of the owners corporation, or a requisition for a meeting, that relate to a development concern must be clearly identified as such and refer to sections 87 or 88 of the Act.

**Q. 5** Are there any other special requirements that should be prescribed for notices or for meetings called by or on behalf of a developer to give effect to a development contract?

## **Insurance for vertical stages development (clause 15)**

Clause 15 provides for the purposes of clause 8(c) of Schedule 3 to the Act, the insurance requirements for a policy of indemnity indemnifying the developer for vertical staged development. This provision repeats the insurance requirements for vertical staged development required by the 2012 Regulation.

**Q. 6 Are the current insurance requirements for vertical staged development adequate?**

## **Certification**

### **Notice of proposed strata plan of subdivision given by a local council (clause 16)**

Clause 16 provides that a notice given by a local council under section 55(1) of the Act relating to a proposed strata plan of subdivision must be in an approved form and be accompanied by a copy of the proposed strata plan of subdivision.

### **Inspection required prior to issuing a strata certificate (clause 17)**

Clause 17 requires that an inspection must be made by a local council or accredited certifier before a strata certificate can be issued for a proposed strata plan or a proposed strata plan of subdivision.

Subsection (2) changes the wording of the 2012 Regulation, but has a similar effect. The provision ensures that the inspection is made after all of the buildings and common property have been constructed. There is, however, some leeway given to allow the inspection to be made when the construction works are substantially complete. This minimises potential for delay in finalising the plan but ensures that all the buildings have been constructed before the inspection takes place.

**Q. 7 Are the requirements adequate for the inspection that must be made by a local council or accredited certifier before a strata certificate is issued for a proposed strata plan or strata plan of subdivision?**

### **Accredited certifier strata certificates (clause 18)**

Clause 18 requires that an accredited certifier must give a copy of each strata certificate (and other associated documents) to the local council (and any relevant planning authority) within 7 days of issuing the certificate. The clause also provides for the record keeping requirements of an accredited certifier.

**Q. 8 Are the notice and record keeping requirements sufficient?**

### **Records to be kept by local councils in respect of strata certificates (clause 19)**

Clause 19 is concerned with the records about strata certificates that are to be kept by local councils and with the availability for inspection of those records. Records about strata certificates issued by the council or an accredited certifier must be kept as part of the register maintained by the council under clause 264 or 265 of the *Environmental Planning and Assessment Regulation 2000*.

### **Certificates given by owners corporations (clause 20)**

Clause 20 ensures that where an owners corporation deals with common property under the provision of the Act, the certificate they are required to give is in the approved form. Further provision is made for the purposes of identification where a certificate is given by an owners corporation under section 55(3) of the Act.

### **Category 1 fire safety provisions (clause 21)**

Section 57 of the Act prevents a local council issuing a strata certificate where there is no relevant planning approval unless the council has considered certain things, including whether the building complies (or will comply) with the Category 1 fire safety provisions applicable to the building's proposed use. Clause 21 prescribes what is meant by Category 1 fire safety provisions.

The fire safety provisions required by the 2012 Regulation have been retained.

**Q. 9** Where there is no relevant planning approval, are the fire safety provisions that must be met before a strata certificate can be issued for a building adequate?

## Lodgment

### Lodgment of plans by hand and electronically (clauses 22 and 23)

Clauses 22 and 23 deal with the lodgment requirements where a plan is lodged by hand or lodged electronically. The existing provisions have been consolidated.

### Lodgment of consolidated by-laws (clause 24)

Clause 24 is a new provision requiring the lodgment of a consolidated version of the by-laws.

Section 141 of the *Strata Schemes Management Act 2015* allows an owners corporation to change the by-laws of a strata scheme. A change of by-laws has no effect until recorded by the Registrar General. The section specifically requires the secretary of the owners corporation to keep a consolidated up to date copy of the by-laws for the strata scheme.

Section 31(3) of the Development Act allows particulars of the by-laws to be recorded on the folio of the common property in the way the Registrar General considers appropriate. Clause 24 will now require a change of by-laws to be lodged in the form of a consolidated version of the by-laws that incorporates the change. Model by-laws are not required to be included in the consolidated version.

There will be some inconvenience and cost involved in requiring changes of all by-laws to be amalgamated with a full list of the current by-laws (excluding model by-laws) whenever any change of by-laws is lodged for registration, no matter how small. This may impose an impost particularly where a lot owner wants to arrange registration of an exclusive use by-law that benefits only one lot. To deal with this situation, Clause 24 permits the Registrar General to allow a separate by-law to be registered provided there are no more than 5 separate changes of by-law recorded on the folio.

There are, however, considerable advantages in requiring all of the by-laws to be compiled in one document. It will make it much easier for owners and prospective buyers to know what by-laws apply to the scheme. In any event, the *Strata Schemes Management Act 2015* will require the secretary to keep a consolidated up to date copy of the by-laws for the strata scheme. This updated list should be able to be readily amended when further changes need to be made.

**Q. 10** Is it appropriate that the registered consolidated version of the by-laws exclude applicable model by-laws? Is the Registrar General's discretion to allow up to 5 changes of by-laws without consolidation appropriate?

### Periods for retention of lodged documents (clause 25)

Section 196 of the Act requires a person who lodges a plan electronically to retain the original signed administration sheet for the prescribed period. Clause 25 prescribes 7 years as the period for which documents are to be retained.

**Q. 11** Is 7 years an appropriate amount of time for the retention of records?

## Strata Renewal

The proposed Regulation contains new provisions to support the introduction of the reforms introduced by Part 10 of the Act, which facilitate the collective sale or redevelopment of a freehold strata scheme.

### **Market Value (clause 26)**

Section 179 requires that an application to the Land and Environment Court for an order to give effect to a strata renewal plan must be accompanied by a report of an independent valuer that includes details of the market value for the whole building and its site. This valuation will be used to help the Land and Environment Court determine whether the amount to be paid to each owner in a collective sale, or the dissenting owners in a redevelopment, is just and equitable. The market value is provided as a comparison and safeguard and is not the amount that the owners will receive. The Act requires lots owners in a collective sale and dissenting owners in a redevelopment receive at least the compensation value of the lot, which will be an amount more than the market value of the lot.

Section 154 of the Act defines the market value of a building and its site to be the value determined in accordance with the regulations. Clause 26 prescribes market value for this purpose. The method required is the standard methodology used for determining market value. It is to be determined by "... estimating the amount for which the building and the site would be sold for in an arms length transaction between a buyer and seller who both act, knowledgeably, prudently and without compulsion".

**Q. 12** Are there any other specific factors that should be required to be considered when determining market value for the purpose of Part 10?

### **Returning officer (clause 27)**

Section 174 of the Act requires that where lot owners have been given a strata renewal plan for consideration the voting process is to be administered by a returning officer. The purpose of appointing a specific returning officer for this function is to make sure that the voting process is independent from the strata scheme and from the proposed sale or redevelopment. The definition of '*returning officer*' in s 156 of the Act requires that the Regulation will prescribe who may be appointed and how the appointment is to be made.

Clause 27 requires that the returning officer is to be appointed by an ordinary resolution of the owners corporation. The person appointed must be independent of the owners corporation and cannot be a lot owner, a member of the strata committee, the managing agent or a person with a pecuniary interest in the sale or redevelopment. Apart from this, the returning officer does not need to have any specialist qualifications.

**Q. 13** Is it appropriate that the returning officer is appointed by a majority of votes at the meeting of the owners corporation?

**Q. 14** Are there any other specific qualifications or exclusions that should be prescribed?

### **Strata renewal proposal (clause 28)**

Section 156 of the Act requires that where a person wants to make a proposal for the collective sale or redevelopment of a strata scheme, the person must give a written proposal to the owners corporation. The written proposal is to include the information and matters prescribed by the regulations.

Clause 28 details the matters that are to be addressed in the proposal.

The proponent must state their full name and address and must give details of any financial interest they may have in any of the lots in the scheme. A general description is to be given of the proposal and its purpose and owners are to be advised of any potential to buy back into the scheme after the sale or redevelopment.

Further information is required depending on whether the proposal is for a collective sale or redevelopment. The prescribed information aims to achieve a balance between requiring sufficient information to allow owners to assess whether the proposal might have merit but also recognising that it is a proposal only and specific details may not be available.



**Q. 15** Are there any other matters that should be addressed in a strata renewal proposal?

**Notice of decision to establish strata renewal committee (clause 29)**

Section 162 requires that where a strata renewal committee is established the secretary of the owners corporation is to give written notice of the establishment to the owner of each lot in the strata scheme. The information that must be included in the notice is to be prescribed by the Regulations.

For this purpose clause 29 requires that the notice must be given in the form set out in Schedule 6 of the Regulation and must include the information required.

The Notice is intended to give owners information about the functions of the strata renewal committee and how it is to operate. The Notice will identify the committee members and detail any specific arrangements about a budget and how the committee is to engage specialists to assist with preparation of the plan.

**Q. 16** Is there any other information that should be included in the prescribed form of notice that must be sent when a strata renewal committee is established?

**Costs and expenses deducted from sale price (clause 30)**

Section 170 of the Act sets out the information that must be included in a strata renewal plan. If the plan relates to a collective sale of the scheme, the plan must include the prescribed details about costs and expenses to be deducted from the sale price.

The required details are prescribed in clause 30. The proposed Regulation provides that the exact amount must be included. However, if the exact amount is not known, an estimation may be provided with a detailed explanation as to how the estimation has been determined. By requiring all relevant deductions to be specified upfront owners will know what amount they will receive on completion of a collective sale.

**Q. 17** Are there any other details about costs and expenses that should be prescribed?

**Copy of strata renewal plan given to owners (clause 31)**

Section 173 of the Act provides that where the owners corporation decides by special resolution to give a copy of the strata renewal plan to the owners for their consideration, further information must accompany the plan, as prescribed.

It is intended that a comprehensive information sheet will be developed by LPI and Fair Trading that will provide information about the strata renewal process and where further assistance can be found. Clause 31 requires that this information sheet accompany the copy of the strata renewal plan when given to the owners. The approved form of a support notice and details of the returning officer's address for service must be included.

**Q. 18** Is there any other information that should accompany the strata renewal plan when it is given to owners?

## Miscellaneous

### Proposed affecting interests (clause 32)

Clause 32 provides that a plan may designate the site of a proposed affecting interest (such as an easement) that is intended to be created otherwise than under section 88B of the *Conveyancing Act 1919*. A previous requirement that also allowed the site of a proposed variation of easement to be shown has been removed. This change will help remove clutter and encourage readability of plans.

### Schedule 1 – Requirements for lodging plans

Schedule 1 deals with requirements for plans generally and includes things like the type of paper required (for plans lodged by hand) and the format required for plans lodged electronically. These requirements are consistent with the requirements for all deposited plans and are in line with the requirements of the *Conveyancing (General) Regulation*.

Some specific matters to be noted include:

**Alterations – Item 7** - Where there is an alteration that may affect unit entitlement, the Registrar General may now require the qualified valuer to certify that the schedule of unit entitlements accurately reflects a plan following an alteration by signing and dating the valuer's certificate. This requirement will help to ensure the accuracy of unit entitlements where it appears that an alteration may have made changes to a lot that would have an impact on the unit entitlement for the scheme.

The Registrar General may also require the registered proprietor, or other person, to authenticate an alteration.

**Signatures – Item 12** – no signatures or seals are to appear on the plan drawing sheets, the exception being signatures and seals that may be needed to authenticate an alteration.

### Schedule 2 – Location plans

Schedule 2 simplifies the requirements for preparation of location plans. Item 2 sets out the requirements for a location plan for a conventional strata plan while Item 3 deals with the requirements specific to part strata plans.

### Schedule 3 – Floor plans

Schedule 3 more particularly describes requirements specific to floor plans.

**Item 3** – A new definition of "*structural boundaries*" and "*line boundaries*" has been provided to distinguish boundaries defined by walls or structural features from other boundaries shown in a floor plan. The Regulation continues the existing practice of showing structural boundaries by the use of a thick line and other boundaries (the line boundaries) shown by way of a thin line.

**Item 4** – The Regulation has been tightened up to now require that a floor plan must be ordered to show the lowest level through to the highest level, and those levels must be numbered consecutively without gaps. This will mean that it will not be possible to omit certain floor numbers, for instance "Floor 4", that may be perceived to be unlucky. The Regulation has been tightened to ensure that practices in floor numbering are standardised, to minimise differences and confusion between what is shown on the plan and what appears on the ground.

**Q. 19** Do you agree with the Regulation being tightened so that floors are shown on the plan as numbered consecutively, without gaps?

### Schedule 7 – Fees

The fees that are included in Schedule 7 are the current LPI fees. All LPI fees are to be reviewed and revised on 1 July 2016. The fees that will be included in the finalised Regulation will be different to the fees shown in the consultation draft Regulation.

# Appendix 1

---

## Background Information

In NSW, strata schemes are regulated by two legislative frameworks – a management Act, which is administered by NSW Fair Trading and a development Act, administered by NSW Land and Property Information.

On 27 October 2015, the NSW Parliament passed the *Strata Schemes Management Act 2015*, together with the *Strata Schemes Development Act 2015*. The new laws contain around 90 changes to the existing laws and will replace the *Strata Schemes Management Act 1996*, the *Strata Schemes (Freehold Development) Act 1973*, and the *Strata Schemes (Leasehold Development) Act 1986*.

The development of the new Acts followed over four years of exhaustive consultation with the community and industry, beginning in late 2011 with an online consultation forum hosted by Global Access Partners. In September 2012, the release of the Strata and Community Title Law Reform Discussion Paper attracted more than 1,900 submissions. A series of roundtable meetings were then held with key stakeholders in 2013 which examined options for reform in more detail.

In November 2013, a Position Paper was released proposing a range of wide-ranging reforms. Further targeted consultation was then undertaken on two drafts of the Strata Schemes Management Bill in mid-2015.

Over 3,000 submissions and comments were received from the community during these extensive rounds of consultation and emerging from this process was a blueprint for reform of strata title laws in NSW.

These reforms signal one of the biggest overhauls of the laws since 1961 when strata schemes were introduced. The changes will update the 50-year-old laws and improve day-to-day strata living for the 2 million people living and working in strata schemes across the state.

The new laws seek to create a modern framework for managing strata schemes providing flexibility, encouraging participation, improving governance and accountability and ensuring that schemes are supported to manage their community's needs into the future.

# Appendix 2

---

## Summary of the Regulation

### Part 1 - Preliminary

**Clauses 1 and 2** provide the name and date of commencement of the Regulation.

**Clause 3** provides references to definitions used in the Regulation.

**Clause 4** provides for the application of other legislative instruments to the Regulation.

### Part 2 - Plans, administration sheets and unit entitlements

**Clause 5** provides that a location plan must comply with the requirements set out in Schedules 1 and 2 of the Regulation and a floor plan must comply with the requirements set out in Schedules 1 and 3 of the Regulation.

**Clause 6** requires that an administration sheet must comply with Schedule 4 (if lodged by hand) and Schedules 4 and 5 (if lodged electronically) to the Regulation.

**Clause 7** provides how schedules of unit entitlement should be set out and defines the “market value basis” and “valuation day” that is to be used to apportion the unit entitlement.

**Clause 8** provides for the numbering of lots in a strata plan, strata plan of subdivision, strata plan of consolidation and building alteration plan.

**Clauses 9** requires that a strata plan of consolidation must include a floor plan.

**Clause 10** sets out the certification necessary to satisfy the initial period restrictions where some but not all of the land in a strata plan of subdivision is held by the original owner.

**Clauses 11** clarifies the plan sheets needed for a building alteration plan.

### Part 3 Staged Development

**Clause 12** provides, for the purposes of section 76 of the Act, the further information and documents to be included in a strata development contract.

**Clause 13** provides the requirements for execution of a dealing, plan or other instrument by a developer on behalf of an owners corporation under section 87 of the Act, to give effect to a decision about a development concern.

**Clause 14** requires that notices of a meeting of the owners corporation, or a requisition for a meeting, that relate to a development concern must be clearly identified as such and refer to sections 87 or 88 of the Act.

**Clause 15** provides for the purposes of clause 8(c) of Schedule 3 to the Act the insurance requirements for a policy of indemnity indemnifying the developer for vertical staged development.

### Part 4 Certification

**Clause 16** requires that where a strata plan of subdivision (not affecting common property) is lodged for approval, the local council must serve notice on the owners corporation in the approved form and with a copy of the plan.

**Clause 17** requires that an inspection must be made by a local council or accredited certifier before a strata certificate can be issued for a proposed strata plan or a proposed strata plan of subdivision, and provides details of the inspection required.

**Clause 18** provides that an accredited certifier must send a copy of certain documents to the planning authority (and/or the local council) after issuing a strata certificate and, also provides for the record keeping requirements of an accredited certifier.

**Clause 19** provides for the keeping of records to be kept by local councils in respect of strata certificates and the availability for inspection of those records.

**Clause 20** provides for the giving of certificates by an owners corporation under sections 26(2)(c), 36(2), 55(3) or (5)(a) or 56(1)(a), of the Act or under Clause 4(c) of Schedule 2 to the Act to be in an approved form. Further provision is made for the purposes of identification where a certificate is given by an owners corporation under section 55(3) of the Act.

**Clause 21** defines *Category 1 fire safety provisions* for the purposes of section 57 of the Act.

## **Part 5 Lodgment**

**Clause 22** provides the requirements for plans lodged by hand.

**Clause 23** provides the requirements for plans lodged electronically.

**Clause 24** requires that changes of by-laws are to be lodged as a consolidated version of the by-laws, with power for the Registrar General to allow separate changes to be lodged if no more than 5 separate changes of by-laws have been recorded in the Register for the common property.

**Clause 25** provides the periods for retention of documents for the purposes of section 196(2) (b) or (c) of the Act.

## **Part 6 Strata Renewal**

**Clause 26** provides for the purposes of the definition in section 154 of the Act, how the "*market value*" of a building and its site is to be determined.

**Clause 27** sets out who may be appointed as a "*returning officer*" for a vote on a strata renewal plan and how an appointment is to be made.

**Clause 28** prescribes for the purposes of section 156 of the Act the information that must be addressed in a strata renewal proposal.

**Clause 29** requires that where notice of a decision to establish a strata renewal committee is given under section 162 of the Act, the notice must be in the form set out in Schedule 6 to the Regulation.

**Clause 30** provides, for the purposes of section 170(1)(c)(v) of the Act, that all costs and expenses that are to be deducted from the sale price of a collective sale must be included in a strata renewal plan.

**Clause 31** provides for the purposes of section 173(2) of the Act the information and documents which must accompany the copy of a strata renewal plan given to owners.

## **Part 7 Miscellaneous**

**Clause 32** provides the requirements for the designation on plans of proposed affecting interests intended to be created otherwise than under section 88B of the *Conveyancing Act 1919*.

### **Schedule 1**

Schedule 1 sets out the technical requirements that apply generally to any plan lodged under the Act including plan sheets, lettering, and information to be included on plans, area dimensions and how alterations are to be made.

### **Schedule 2**

Schedule 2 details the technical requirements specific to location plans, including the requirement that the location plan must be in the approved form, requirements where the location plan relates to the whole or part of a building, and the showing of affecting interests.

### **Schedule 3**

Schedule 3 sets out the technical requirements specific to floor plans, including the requirement that the floor plan must be in the approved form, how boundaries are to be designated, the ordering of levels and how affecting interests are to be shown.

### **Schedule 4**

Schedule 4 sets out the requirements for administration sheets, including the requirement to be in the approved form, requirements for signatures, seals and certificates on the administration sheet and how alterations are to be made.



## **Schedule 5**

Schedule 5 sets out the requirements for lodging administration sheets and other documents electronically.

## **Schedule 6**

Schedule 6 sets out the form and content of the written notice that is to be given when a strata renewal committee is established, as required by clause 29 of the Regulation.

## **Schedule 7**

Schedule 7 sets out the Fees payable. It is noted that the Fees included in Schedule 7 are the current LPI fees. All LPI fees are to be reviewed and revised on 1 July 2016.

# Appendix 3

---

## List of Stakeholders

The following stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- The Law Society of NSW
- Australian College of Community Association Lawyers Inc
- Institution of Surveyors NSW Inc
- Association of Consulting Surveyors New South Wales Inc
- The Real Estate Institute of New South Wales
- Strata Communities Australia
- Urban Development Institute of Australia (New South Wales)
- Owners Corporation Network of Australia Ltd
- Department of Planning and Environment
- Office of Local Government
- City of Sydney
- Property Council of Australia
- Australian Institute of Conveyancers NSW Division Ltd
- Local Government NSW
- Australian Property Institute Inc
- Council of the Ageing
- Combined Pensioners & Superannuants' Association
- City Futures Research Centre, UNSW
- Building Professionals Board
- Urban Taskforce Australia