

More Flexible Staged Strata Development

A staged strata / survey-strata development is a scheme that is intended to be developed in stages by one or more plans of re-subdivision. This is different to a scheme which is complete at the point that it is first registered.

Sometimes a developer will choose to develop a strata scheme in stages so that funds from selling the lots in an earlier stage can be used to fund the construction of later stages.

How it works currently

Currently, if a developer intends to undertake a staged development, the by-laws registered with the plan will set out what will be built in future stages. Usually the development will be constructed as it is set out in the by-laws. But in some cases, the developer may need to change the development from what was originally proposed.

An owner of a lot in a staged strata development wants to know:

- what can be changed after I have bought a lot within the scheme?
- what protection do I have against changes that may affect me negatively?

Developers on the other hand, have to manage situations where changes in the market or planning requirements mean they need to amend the proposed development in order to complete it.

Currently, any major variation to a future stage in a strata scheme requires:

- the consent of all the lot owners and
- the consent of all people who have a registered interest (such as a mortgage) in a lot or who are caveators of a lot within the scheme.

Developments can come to a standstill for long periods while the developer obtains all of the consents needed to make the change, making it difficult for everyone.

Proposed changes

The new legislation will ensure the rights of lot owners who have already bought into earlier stages of the development and the rights of registered interest holders are protected while making the process less cumbersome for developers.

Note that the staged development of a strata scheme is different to the development of a community title scheme and the required processes and documents are not the same.

Management statement

Currently the practice is for developers to include details of a proposed development of the scheme in the Management Statement. This means the statement currently contains both the by-laws:

- dealing with the ongoing management, such as parking and behaviour of occupants
- setting out the development, such as the floor plans for the final buildings.

This current mix of by-laws and the fact that the development by-laws aren't usually repealed even after a development is complete, is confusing and makes the Management Statement difficult to understand.

The new legislation will separate this document into two: a Management Statement containing the by-laws dealing with the ongoing management of the strata and a Staged Development Statement (SDS) containing the by-laws that set out the future development of a staged strata development.

Staged Development Statement

All new staged strata developments will have a Staged Development Statement

Apart from containing by-laws governing the staged development of a strata scheme, the Staged Development Statement may include the proposed plans of re-subdivision, including the floor plan, location plan and unit entitlement for the future stages.

Current staged strata developments won't need to have a Staged Development Statement

The requirement for a staged development statement will only apply to new staged strata developments registered after the *Strata Titles Act 1985* reforms come into effect. Developments that are already underway when the changes come into effect will be able to use the existing management statement.

Warnings in every Staged Development Statement

Every Staged Development Statement (SDS) and Management Statement will have a warning that the by-laws for the scheme may be found in more than one document. This warning will make sure that everyone involved in the scheme knows they should check to see if their scheme also has a Management Statement and/or SDS that will provide a full picture about what by-laws apply.

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A new statement will be added to the *Strata Titles Act 1985* highlighting that just because a by-law is in a registered Management Statement or SDS, this doesn't mean the by-law is valid and enforceable. Landgate will not be verifying the legal validity of by-laws at the point of registration.

Consent to variations in a staged development

If a developer needs to vary what was originally proposed for a staged development, the changes must be reflected in alterations to the Staged Development Statement (SDS), and the plan of re-subdivision must be lodged with Landgate.

Changes which are 'major variations' are currently set out in the Regulations, and include such things as altering the number of lots or altering any lot by greater than 10 per cent.

The consents currently required where there is a major variation to a stage of development

Currently, a developer needs to get the written consent of every owner (through a unanimous resolution) and of every registered interest holder and caveator for each affected lot, when variations are major. Obtaining all of these consents can be very difficult because:

- there is no requirement for registered interest holders or caveators to provide their response to the proposed variation in a timely manner
- there is no requirement for registered interest holders or caveators to have reasonable grounds for objecting to the variation.

Reforms: owner consent still required where there is a major variation

Reforms will still require consent from every lot owner in a scheme where a change to a future stage of development is major. That consent will be in the form of a unanimous resolution of the strata company.

Reforms: deemed consent process for registered interest holders and caveators

The current *Strata Titles Act 1985* gives registered interest holders and caveators a right to object with no obligation to be reasonable in objecting to the variation or even provide grounds for the refusal. This system is open to abuse with parties bargaining for benefits in exchange for consent.

The reforms will introduce a deemed consent process for registered interest holders and caveators. If a developer proposes varying a stage of development in a staged scheme and that variation is major, the developer will:

- notify the registered interest holders and caveators of the proposed variation
- registered interest holders and caveators will have thirty working days to respond to the proposed variation
- if the registered interest holders and caveators do not respond within thirty working days, they will be deemed to have consented to the proposed variation
- if a registered interest holder or caveator objects to the proposed variation, they must notify the developer they object within thirty working days and provide written reasons for their objection.

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- The developer will be able to apply to the State Administrative Tribunal (the Tribunal) to review the grounds of objection given by registered interest holders and caveators
- If the Tribunal finds that the grounds for objection are unreasonable, the Tribunal can make an order that the consent of that registered interest holder or caveator is deemed to be given.

Deemed consent does not apply to owners.

The consent of buyers who have bought off-the-plan or haven't yet settled is not required to vary a staged development. Buyers are required to be advised of notifiable variations. The legislation then gives that buyer the right to opt out of the contract (avoid the contract) if that notifiable variation has a material adverse effect on them.

Expanding the definition of minor variations

Currently, when a developer needs to make a change to the staging of a development, that is a minor variation (as defined under the Regulations), the developer does not need to get the approval of the strata company (through a unanimous resolution) or the consents of people with a registered interest in lots or caveators. The legislation currently defines 'minor variation' in a very narrow way. The decision on what is a minor variation is made by the Registrar of Titles.

Reforms will:

- expand the definition of what is a minor variation to provide more flexibility in staged development and re-subdivision (this will be done through amendments to the Regulations)
- give owners, people with a registered interest in a lot, caveators and developers the right to ask the State Administrative Tribunal to review a decision of the Registrar of Titles about whether a proposed variation is minor or not.

Disclaimer

These web pages have been prepared for the purposes of informing stakeholders and the community on the nature and scope of the proposed reforms to the legislation relating to strata title. Every effort has been made to ensure that the information presented in these web pages is accurate at the time of publication. Because these web pages avoid the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation. The contents of these web pages should not be relied on as a guide for current or future legislation relating to strata title in Western Australia or in relation to current or future development proposals, commercial transactions or dealings in strata title.

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