STR-03 Single Tier Merger and Conversion Options

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1 General

The amendments made to the STA as a result of the proclamation of the Strata Titles Amendment Act 1996 on 20th January 1997 are aimed at making it easier to remove or reduce the amount of common property in a strata scheme by the use of merger and conversion options (in this paragraph referred to as the Options). All of the Options available for this purpose are outlined in this guide.

The use of the Options is subject to the following conditions:

- They only apply to single tier strata schemes which are registered at Landgate before 1 January 1998.

A single tier strata scheme is a strata scheme in which no lot or part of a lot (except for a permitted boundary deviation as set out in regulation 37A) is above or below another lot.

- As long as the scheme is registered before 1 January 1998, they can be used at any time before or after 1 January 1998.

- Each of the Options can only be used once (ie. after using the merger of buildings option, a strata company can still use the merger of land and/or conversion to survey-strata options at any time in the future).

The Options are brought into effect by the lodgement of an appropriate Notice of Resolution and accompanying documents at Landgate. The forms as set out in the STGR are available from Landgate in Midland. They can also be downloaded from Landgate’s corporate website in Titles & surveys/Forms & fees/Strata forms.

Registration fees are payable on taking advantage of any of the Options and stamp duty will only be
payable where some money is paid or other consideration is given for redistributing the common property.

The duplicate certificates of title (if any) for the lots in the strata scheme do not need to be produced when any of the Options are used. They will be amended when they are lodged at Landgate for the purpose of a dealing.

Where a duplicate certificate of title is produced by a mortgagee or caveator etc. for the purpose of registering any of the Options, the separate written consent of that mortgagee or caveator will not be necessary.

Under each of the Options, the lot numbers and the plan numbers will not change, and no new lots may be created (except for common property lots in the conversion to a survey-strata scheme).

2 Merger by Resolution of Buildings that are Common Property

This paragraph needs to be read in conjunction with paragraph 6.5.1 above.

A strata company of a single tier strata scheme may, by resolution without dissent (or unanimous resolution in a two-lot scheme), agree that the whole of the buildings shown on the plan will be within the lots. This means that all of the registered proprietors in the strata scheme will individually own all of the building that they occupy.

If there is a dissenting vote, the strata company (or other owner in a two-lot scheme) can apply to the State Administrative Tribunal for an order that the resolution has been passed.

Where there are 2 to 5 lots in a single tier strata scheme, it is subject to the automatic merger provisions that are outlined below.

A Notice of Resolution of Merger of Buildings (in this paragraph referred to as the Notice of Resolution) must be set out in the manner of Form 30 of the ST GR and may be signed by either:

- the Strata Company with the common seal affixed

- all of the registered proprietors in a 2 to 5 lot scheme

or

- one of the proprietors where an order of the State Administrative Tribunal under s.103C or 103M is attached.

The Notice of Resolution must be lodged at Landgate so that the change is properly recorded on the strata plan.

On registration of the Notice of Resolution, any registered encumbrances or caveats lodged against a strata lot shall, by operation of law, be deemed to extend over that part of the common property that now forms part of the lot.

Landgate's website provides further assistance in the preparation of the Notice of Resolution in the form of a how-to kit entitled How to Guides for Single Tier strata scheme merger and conversion options - Conversion Option 1: Ownership of Buildings.

3 Automatic Merger of Building that are Common Property
3.1 General Information

For single tier strata schemes with 2 to 5 lots, the buildings (common property) shown on the strata plan, under s.21M of the STA as amended, automatically converted to individual ownership (i.e. became included into each respective lot) on:

- July 1997 for strata plans registered before 20 January 1997

or

- months after the registration of the strata plan, if it was registered between 20 January 1997 and 31 December 1997

unless any proprietor within the strata scheme lodged an objection with Landgate.

Note: For a definition of what constitutes a single tier strata scheme see section 1 of this Guide.

Where the automatic merger of buildings that are common property applied to a strata scheme, the Registrar of Titles recorded on the strata plan that s.21M of the STA applies to that scheme and amended the strata plan accordingly.

If no objection was lodged and an automatic merger of a building has taken place, it is possible, in exceptional circumstances, to have the buildings revert to common property by an order of the State Administrative Tribunal (see s.103P of the STA as amended).

3.2 Objection by a Proprietor to Automatic Merger of Buildings

A proprietor of a lot was able to lodge with the Registrar of Titles an objection under s.21O to the automatic merger of a building.

An objection to the automatic merger was lodged using a Form 31 of the Strata Titles General Regulations 1996 prior to the date the automatic merger was to take place.

Where an objection was lodged, the Registrar of Titles made a notation on the relevant strata plan and a copy of the objection was mailed to every other proprietor in the scheme.

The lodgement of an objection prevented the automatic merger of a building from taking place.

Note: Where an objection was lodged, the option of having a merger by resolution, of buildings, is still available.

4 Merger by Resolution of Land that is Common Property

This paragraph needs to be read in conjunction with what is contained in section 1 of this guide.

4.1 General Information

A strata company of a single tier strata scheme may by resolution without dissent (or unanimous resolution in a two-lot scheme) agree that the strata plan be amended in one or more of the following ways:
- to reflect any extension or alteration of a building shown on the strata plan
- to include a building not shown on the strata plan

and/or

- to merge land that is common property into a lot.

The purpose of the above mentioned amendments is to give to the registered proprietors in a strata scheme individual ownership of all of the buildings and land that they occupy and to update the buildings shown on the strata plan.

Note: If there is a dissenting vote the strata company (or other owner in a two-lot scheme) can apply to the State Administrative Tribunal for an order that the resolution has been passed.

If the resolution is to include buildings not shown on a strata plan or to reflect any extensions or alterations to a building shown on a strata plan, there must have been at the time that the resolution was passed:

- a building licence under s.374 of the Local Government (Miscellaneous Provisions) Act 1960 or a building permit under the Building Act 2011

and

- the approval for the building by the strata company or all of the proprietors of the lots in the scheme.

If the resolution is to merge land that is common property into a lot, the resolution is to specify:

- any easement that is to be created in the terms of s.21W of the STA as amended (see below under the sub-heading Easements Created under Section 21W)

and

- the horizontal boundaries of the land in the lots.

A Notice of Resolution of Merger of Land (in this paragraph referred to as the Notice of Resolution) must be set out in the manner of Form 32 of the STGR and may be signed by either:

- the Strata Company with the common seal affixed

- all of the registered proprietors in a 2 to 5 lot scheme

or

- one of the proprietors where an order of the State Administrative Tribunal under s.103C or 103M is attached.

4.2 Documents to be lodged with the Notice of Resolution

The Notice of Resolution is to be accompanied by the following documents:

- A copy of any relevant order under s.103C or 103M of the STA certified by the State Administrative Tribunal as being a true copy (if applicable).

- A sketch plan showing in the prescribed manner (see Regulations 4, 5(a) and 14L) how the strata
plan is to be amended.

- A certificate in the manner of Form 35 of the ST GR given by a licensed surveyor in accordance with s.21U of the STA as amended whenever a sketch plan is required.

- A certificate in the manner of Form 36 of the ST GR given by a licensed valuer in accordance with s.14 (2) of the STA as amended.

- An amended schedule of unit entitlement attached to the licensed valuer's certificate (Form 36) if any change in unit entitlement has occurred.

- Where the unit entitlement of a lot is to be decreased, the written consent of every person who has a registered interest or is a caveator in respect of that lot must be obtained.

- Every transfer or other document that is necessary to give effect to the Notice of Resolution must be lodged for registration with the Notice of Resolution.

Note: A Disposition on Merger of Land (in this paragraph referred to as the Disposition Statement) may be filed instead of the transfers and other documents that are necessary to give effect to the Notice of Resolution (see below).

4.3 Disposition Statement

Section 21V (2) of the STA as amended makes provision for a Disposition Statement to be filed with the Notice of Resolution.

The purpose of the Disposition Statement is to:

- merge the common property or portions of the common property with a strata lot or lots without the need to lodge transfers for the portions involved

and

- redefine the extent of existing encumbrances registered or caveats lodged against a lot that has had its area increased without the need to lodge new documentation.

No registration fees are required for filing a Disposition Statement and no stamp duty is payable unless the Consideration panel in the Disposition Statement shows that one or more registered proprietors have paid money or given other consideration to acquire ownership of more of the common property than they previously occupied.

Regulation 21A sets out the abbreviated procedure for a Notice of Resolution through the use of a Disposition Statement.

A Disposition Statement must be set out in the manner of Form 39 of the ST GR and must be:

- signed by two members of the council using the common seal and the registered proprietors of any lots that are directly affected by the Notice of Resolution

or

signed by all the registered proprietors in a 2 to 5 lot scheme

and
- consented to by every person (other than a proprietor) who has a registered interest in or is a caveator in respect of any lots in the scheme in respect of which the unit entitlement is being decreased.

The above mentioned consents can be endorsed in the appropriate section of the Disposition Statement or in a letter attached to it. Consents given by letter must clearly describe the nature of the consent.

Note: The Disposition Statement may not effect:

- a change of the registered proprietor of a lot on the strata plan, from the registered proprietor of that lot on the plan as previously registered

- the complete release, removal or discharge of an encumbrance or caveat or the release, removal or discharge of an entire interest in an encumbrance

- the registration of any registered interest (other than as registered proprietor) or the lodgement of a caveat, in respect of a lot or the common property if a part of that lot or the common property was not previously subject to that registered interest or caveat

or

- a change of any person having a registered interest in any encumbrance registered or the proprietor of an interest the subject of any caveat lodged, in respect of a lot or the common property.

In these circumstances, appropriate documents must be lodged.

4.4 Easements created under Section 21W of the STA

The sketch plan referred to above may provide for easements relating to motor vehicle access, parking or turning.

This easement is created under s.5D of the STA, as amended, as if the sketch plan were a survey-strata plan with the modification that the easement will take effect on the registration of the Notice of Resolution.

The written consent of a person having a registered interest in, or is a caveator in respect of any lot that would be burdened by the easement is desirable and may be lodged.

Section 5F of the STA as amended, applies to the discharge or variation of these easements with the modification that the approval of the Local Government (not the Western Australian Planning Commission) is required.

Note: For more information on the creation, discharge or variation of these easements, see EAS-01 Easements.

4.5 Effect of registration of the Notice of Resolution

The Notice of Resolution must be lodged at Landgate so that the changes are properly recorded on the strata plan.

On registration of the Notice of Resolution:
- If any land that merges into a lot was subject to any right or privilege granted under by-law 3 (f) contained in Part 1 of the Schedule to the Strata Titles Act 1966 or to an exclusive use by-law referred to in s.42 (8) of the STA as amended, that right or privilege or exclusive use by-law ceases to be applicable to the land that has merged.

- A lot that has been enlarged or diminished as a result of the merger of land is subject to any encumbrance that was registered or caveat that was lodged against that lot.

and

- Each lot or part of a lot that becomes common property vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlement of their respective lots, and that proprietor’s share in the common property is subject to any encumbrance registered or caveat lodged against his lot.

Landgate’s web site provides further assistance in the preparation of the Notice of Resolution in the form of a how-to kit entitled How to Guides for Single Tier strata scheme merger and conversion options—Conversion Option 2: Ownership of Land.

5 Merger by Resolution of Buildings and Land that are Common Property

This paragraph needs to be read in conjunction with what is contained in sections 1, 2 and 4 of this guide.

A strata company of a single tier strata scheme may by resolution without dissent (or unanimous resolution in a two-lot scheme) agree to a merger of both buildings and land that are common property.

A Notice of Resolution of Merger of Buildings and Land (in this paragraph referred to as the Notice of Resolution) must be set out in the manner of Notice of resolution of merger of buildings and land form of the ST GR.

The requirements for registration of the Notice of Resolution are exactly the same as the requirements for a Merger by Resolution of Buildings that are Common Property and for a Merger by Resolution of Land that is Common Property.

Landgate’s web site provides further assistance in the preparation of the Notice of Resolution in the form of a how-to kit entitled How to Guides for Single Tier strata scheme merger and conversion options—Conversion Option 1 & 2: Ownership of Buildings and Land.

6 Conversion of Strata Schemes to Survey-Strata Schemes

This paragraph needs to be read in conjunction with what is contained in section 1 of this guide.

6.1 General Information

A strata company of a single tier strata scheme may by unanimous resolution resolve that a strata scheme be converted to a survey-strata scheme.
Note: It is not possible to increase the number of lots (with the exception those lots designated as common property) in a strata scheme by the process of conversion to survey-strata.

The resolution is to specify:

- any easement that is to be created in the terms of s.31G of the STA as amended

and

- the height and/or depth limits of the lots, if any.

A Notice of Resolution of Conversion to a Survey-Strata Scheme (in this paragraph referred to as the Notice of Resolution) must be set out in the manner of Notice of resolution of conversion to a survey-strata scheme form of the Strata Titles General Regulations 1996 (in this paragraph referred to as the STGR) and may be signed by:

- the Strata Company with the common seal affixed

or

- all of the registered proprietors in a 2 to 5 lot scheme.

6.2 Documents to be lodged with the Notice of Resolution

The Notice of Resolution is to be accompanied by the following documents:

- A survey-strata plan in respect of the parcel that has been prepared by a licensed surveyor.

- A certificate in the manner of Certificate of licensed surveyor - conversion to a survey-strata scheme form of the STGR given by a licensed surveyor in accordance with s.31F of the STA as amended.

- A certificate in the manner of Form 3 of the STGR given by a licensed valuer in accordance with s.14 (2) of the STA as amended.

- The written consent to the proposed schedule of unit entitlement must be obtained from every person (other than a proprietor) who has a registered interest or is a caveator in respect of any lot in the scheme.

Where a duplicate certificate of title is produced by a registered mortgagee for the purpose of registering the Notice of Resolution, the separate written consent of that mortgagee will not be necessary.

- Every transfer or other document that is necessary to give effect to the Notice of Resolution must be lodged for registration with the Notice of Resolution.

Note: A Disposition on Conversion to a Survey-Strata Scheme (in this paragraph referred to as the Disposition Statement) may be filed instead of the transfers and other documents that are necessary to give effect to the Notice of Resolution (see below).

6.3 Disposition Statement

Section 31H (2) of the STA as amended, makes provision for a Disposition Statement to be filed
with the Notice of Resolution.

The purpose of the Disposition Statement is to:

- effect boundary changes to the lots and common property without the need to lodge transfers for the portions involved

- partially remove existing encumbrances registered or caveats lodged against the portion of a lot or common property that is to be included in another lot without the need to lodge the usual documentation

and

- redefine the extent of existing encumbrances registered or caveats lodged against a lot that has had its area changed without the need to lodge new documentation.

No registration fees are required for filing a Disposition Statement and no stamp duty is payable unless the Consideration Panel in the Disposition Statement shows that one or more registered proprietors have paid money or given other consideration to acquire ownership of more land than they previously owned or occupied.

Regulation 21A of the ST GA sets out the abbreviated procedure for a Notice of Resolution through the use of a Disposition Statement. A Disposition Statement must be set out in the manner of Disposition on merger of land or conversion to a survey-strata scheme form of the ST GR and must be:

- signed by two members of the council using the common seal and the registered proprietors of any lots that are directly affected by the Notice of Resolution

or

signed by all the registered proprietors in a 2 to 5 lot scheme

and

- consented to by every person (other than a proprietor) who has a registered interest in or is a caveator in respect of any lot in the scheme.

The above mentioned consents can be endorsed in the appropriate section of the Disposition Statement or in a letter attached to it. Consents given by letter must clearly describe the nature of the consent.

Note: The Disposition Statement may not effect:

- a change of the registered proprietor of a lot on the survey-strata plan, from the registered proprietor of that lot on the plan as previously registered

- the complete release, removal or discharge of an encumbrance or caveat or the release, removal or discharge of an entire interest in an encumbrance

- the registration of any registered interest (other than as registered proprietor) or the lodgement of a caveat, in respect of a lot or the common property if a part of that lot or the common property was not previously subject to that registered interest or caveat

or

- a change of any person having a registered interest in any encumbrance registered or the
proprietor of an interest the subject of any caveat lodged, in respect of a lot or the common property.

In these circumstances, appropriate documents must be lodged.

6.4 Easements created under Section 3 of the STA

The survey-strata plan referred to above may provide for easements to be created under s.5D of the STA as amended, which will take effect on the registration of the Notice of Resolution.

The written consent of a person having a registered interest in, or is a caveator in respect of any lot that would be burdened by the easement is desirable and may be lodged.

Section 5Fas of the STA as amended, applies to the discharge or variation of these easements.

Note: For more information on the creation, discharge or variation of these easements see EAS-01 Easements.

6.5 Effect of registration on the Notice of Resolution

The Notice of Resolution must be lodged at Landgate so that the changes are properly recorded on the strata plan.

On registration of the Notice of Resolution, all of the following applies:

- the scheme ceases to be a strata scheme and becomes registered as a survey-strata scheme

- if any area of land was subject to any right or privilege granted under by-law 3 (f) contained in Part 1 of the Schedule to the Strata Titles Act 1966 or to an exclusive use by-law referred to in s.42 (8) of the STA as amended, that right or privilege or exclusive use by-law ceases to be applicable to that area of land

- each survey-strata lot is subject to any encumbrance that was registered or caveat that was lodged against that lot prior to the conversion

- each lot or part of a lot that becomes common property vests in the proprietors to be held by them as tenants in common in shares proportional to the unit entitlement of their respective lots, and that proprietor’s share in the common property is subject to any encumbrance registered or caveat lodged against his lot.

The strata company continues to exist upon the conversion to a survey-strata scheme. All of the contracts that the strata company had entered into before the conversion to survey-strata are still valid.

Landgate’s website provides further assistance in the preparation of the Notice of Resolution in the form of a how-to kit entitled How to Guides for Single Tier strata scheme merger and conversion options - Conversion Option 3: Converting to Survey-Strata.

7 Also see

- SUB-01 Subdivision