STR-04 Enlargement of the Common Property

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1 General

The area of common property/common property lot(s) can be increased either by:

- conversion of one or more strata/survey-strata lots by a transfer to the Strata Company
- the purchase or lease of adjoining land by the Strata Company
- inclusion of a closed public road or other unallocated crown land under s.87 of the Land Administration Act 1997 (LAA)
- inclusion of a closed private road or right of way under s.52 and s.87 of the LAA

2 By Conversion of a Strata/Survey-Strata Lot

The transfer of a strata/survey-strata lot with the intention of increasing the area of the common property must have filed with it at the time of registration:

- a certificate from the Local Government in the manner of Form 9 of the ST GR
- a certificate from the Strata Company in manner of Form 10 of the ST GR

and

- the duplicate certificate of title (if any) for the strata/survey-strata lot.

Any lot(s) being converted to common property must be transferred free of any encumbrances, caveats or other interests.
Upon the registration of the Transfer, the share of a proprietor in the common property (as increased by the Transfer) shall by operation of law, be deemed to be subject to any pre-existing encumbrances registered or caveats lodged against their lot.

3 By Purchase or Lease of Adjoining Land

3.1 Land Purchased

Land purchased by the Strata Company to increase the area of the common property/common property lots must be free of encumbrances (including caveats) and be added by survey to the original parcel. The transfer must have filed with it at the time of registration:

- a certificate from the Strata Company in the manner of Certificate of the strata company form of the ST GR, and

- the duplicate certificate of title (if any) for the land being transferred.

Note: Where the land purchased (the adjoining land) is only part of the land comprised in a title, a Application for a New/Balance Title form for balance title must be lodged with the above mentioned transfer unless the Plan incorporates all the land in the relevant title (see Regulation 7 (2) of the ST GR).

When the land is transferred to the Strata Company, the strata/survey-strata plan is amended to include that land as common property. This involves the lodgement of a replacement sheet to depict the scheme after the land has been included.

3.2 Land Leased

Land leased by the Strata Company to increase the area of the common property/common property lots does not need to be included in the common property by survey. The lease (or a transfer of lease or sub-lease) must be free of encumbrances and must have filed with it at the time of registration:

- a certificate from the Strata Company in the manner of Certificate of the strata company form of the ST GR, and

- the lease or sub-lease whichever is appropriate.

When land is leased to the Strata Company, an endorsement is made in the Schedule of Dealings form for the strata/survey-strata plan.

The Strata Company is responsible for all payments and performance of duties due under the lease.

A strata company may, pursuant to a resolution without dissent (or unanimous resolution, in the case of a two-lot scheme) and with the concurrence of the lessor, surrender the lease.

Note: Upon the registration of the Transfer or lease, the share of a proprietor in the common property (as increased by the Transfer or Lease) shall by operation of law, be deemed to be subject to any pre-existing encumbrances registered or caveats lodged against their lot.
4 By inclusion of a Closed Public Road or other Unallocated Crown Land under Section 87 of the LAA

When an application to include a closed public road or other unallocated crown land into a strata/survey-strata plan is lodged, the strata/survey-strata plan is amended to include it as common property.

The application, made in the name of the strata company must include:

- Section 87- Amalgamation (Ministerial) Order under the LAA (prepared by the Department of Lands)

- a certificate in the manner of Certificate of the strata company form as set out in the ST GR, as amended

and

- a replacement sheet to be added to the plan depicting the scheme after the land has been included.

5 By inclusion of a Closed Private Road or Right of Way under Section 297A of the Local Government (Miscellaneous Provisions) Act 1960

When an application to include a closed private road or right of way into a strata/survey-strata plan is lodged, the strata/survey-strata plan is amended to include it as common property.

The application, made in the name of the strata company must include a certificate in the manner of Certificate of the strata company form as set out in the ST GR as amended. This involves the lodgement of a replacement sheet to depict the scheme after the land has been included.

Note: Section 297A of the Local Government (Miscellaneous Provisions) Act 1960 has been repealed by the introduction of the LAA (see s.67 of the LAA as amended).

Any action taken under s.297A of the Local Government (Miscellaneous Provisions) Act 1960 and completed before the commencement of the LAA is to be treated as if it was done under s.52 of the LAA, as amended.

Any action taken under s.297A but not completed before the commencement of the LAA may be completed as if that section had not been repealed and is on completion to be treated as if it had been done under s.52 of the LAA.

6 Also see

- SUB-01 Subdivision
- STR-01 Strata/Survey-Strata Plans