

# ISNSW Cadastral Workshop Strata Plans

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## Revision

Date	Revision	Description	Revised By
August 2016	2016	Initial Issue	Adrian Barden
February 2017	2017	Revised to include changes to the Strata Legislation commenced 30 November 2016	Adrian Barden
February 2018	2018	NSW LPI concession (NSWLRS), Lodgment Rules, Defects Bond	Adrian Barden
February 2019	2019	Legislative Changes	Adrian Barden

First prepared August 2016 by Adrian Barden for the Institution of Surveyors NSW (ISNSW) BOSSI Cadastral Workshops. Feedback and improvement are always welcome. Send suggested updates to [abarden@LDC.com.au](mailto:abarden@LDC.com.au)

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## Disclaimer

Examples contained within do not constitute advice and are given only in support of the education of candidates. Each developer and development has unique circumstances and need to derive information and advice from their team of development consultants including Strata Managers, Lawyers, Solicitors, Registered Surveyors and Registered Architects with appropriate experience in Strata and Land Development.

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## 1. Introduction

This course is designed as a brief introduction to Strata Title as part of the cadastral workshops run by the Institution of Surveyors (NSW). The course is aimed at candidates preparing for the Board of Spatial Information and Surveying viva voce.

Strata Title is used predominantly to subdivide a building or buildings into separate titles. Prior to the introduction of Strata Title, Company Title was the only way to subdivide buildings. Strata title is part of the Torrens Title System. The simplest Strata is two lot subdivision most commonly used in a duplex development. More elaborate schemes divide buildings into multiple schemes, each with its own management structure.

There are a number of good publications on Strata legislation as well as good web resources for the keen scholar. Further reading can be found in Annexure A, but the most notable publication is the NSWLRS Fast Facts colloquially known as the Strata Bible. This publication is being reviewed presently.

## 2. Course Outline

The [Strata Basics](#) will cover the following:

- Base Plan Requirements
- Administration Sheets
- Location Plan
- Floor Plan

[Strata legislation](#) will provide an outline of the Strata Reforms as implemented by Department of Fair Trading as commenced 30 November 2016.

[Strata Titling](#) will outline the effect of statements on your plans, by-laws and defining common property.

We will conclude with a brief look at [Part Strata](#) and [Staged Strata](#) and the components parts that go into each.

### 3. History and Strata Reform

The strata titles act was first introduced into NSW in 1961, allowing for the vertical titling of land, and we were the first jurisdiction in the world to do this. The original act dealt with common property, established a body corporate for the management of the strata, and set out by-laws to be used.

As you can imagine, getting people to live in one building and do so in harmony was an issue that was continually evolving and so a strata commissioner was set up to deal with disputes. By 1973, a revised legislation was commenced, including By laws governing behaviour on the common property.

Further changes were introduced in 1986 to make allowance for strata subdivision of leasehold land and paralleled many of the functions of the freehold act.

Staged Strata was formalised in 1993 to help developers sell off part of scheme earlier while maintaining control of the undeveloped part of the land.

In 1996 the strata schemes management act was introduced to take over and expand many of the bylaw and governance issues for the owner's corporation.

A strata Schemes Commissioner, Adjudicators, Board and the Registrar oversaw each of the levels of dispute and decision making required to govern owner's corporations. Importantly, the by-laws were now moved to the regulation side of legislation rather than in the act.

The Department of Fair Trading handle issues in strata schemes together with the NSW Civil and Administrative Tribunal. Living in a Strata scheme has become a complex matter for those who end up in dispute.

Fair trading ran a road show from 2012 to 2014 to bring all the interested parties together and to table many of the issues with the legislation.

The Strata Schemes Development Act together with the Strata Schemes Management Act modernise the legislation and bring in important changes including urban renewal and simplification of management.

Most of the development side of the legislation has now been placed in the Development Act. All the strata management, building defects, by-laws, tribunals, orders and day to day running of schemes has been put into the Management Act.

The new Act and regulations commenced 30 November 2016, with the exception of a provision in the Management Act relating to building defects bonds that commenced 1<sup>st</sup> January 2018.

## 4. Strata Basics

This section will step through the basic components to a simple strata plan.

A great reference for the basics of Strata Plan production is the [NSWLRS Strata Fast Facts](#) book. This publication is presently being reviewed, with the existing publication watermarked that it was correct at the time of publication. The registrar general also has a set of guidelines on their website. This document should be read in conjunction with the NSWLRS publications. **Google** "[strata fast facts](#)", "[lodgment rules](#)" and "[registrar general strata](#)" to locate these documents.


Following the lease of the LPI on a 35 year concession, some of the requirements for Strata plans have been transferred from the legislation and into gazetted Lodgment Rules. Candidates should familiarise themselves with schedules 10 to 14 of this document.

### 4.1. Coordinated Base Plan

In order to further subdivide a parcel of land into Strata Title the base plan must be connected to Permanent Marks or State Survey Marks. These plans are typically on Integrated Survey Grid (ISG) or on Map Grid of Australia (MGA).

Many strata schemes become very valuable, and they are required to sit upon a reliable coordinated cadastre. Plans need to have an Azimuth line that is derived from coordinated marks.

Coordinated plans allow for the placement of the Strata Scheme in emergency databases, generating address data for ambulance, fire and other emergency services.

 **TIP:** Consideration should be given to the early preparation of the coordinated base plan so that surety is given as to the boundary dimensions. Imagine the delay in trying to register a plan for a building that is exactly 20m wide, only to find that the block of land has a shortage and is only 19.98m wide.

When placing Reference Marks (RMs) for a survey the *Surveying and Spatial Information Act 2002* (SSIA) requires surveyors to place marks where they will not be disturbed. In this regard it is good practice to place a pair of reference marks at the terminal of each street boundary so that if the mark closest to the site get knocked out by construction work, other marks will remain.

Often in a new building construction there is a requirement for the developer to replace the kerbing in part because it will get damaged by construction traffic but also to fill the redundant driveway laybacks. Similar footpaths will

also be replaced as part of the works. Survey marks should to be placed outside of areas where concrete surfaces are to be replaced.

The requirement for preparing a coordinated base plan applies to all strata plans prepared after 31 May 2002.

## 4.2. Administration Sheet

The administration sheet contains the following information:

- address for service of notices
- by-laws applicable to the scheme
- surveyors certificate
- strata certificate
- unit entitlements and valuer's certificate
- table of addresses

## 4.3. Unit Entitlements and Valuer's Certificate

The unit entitlements are shown on strata plan administration sheet form 3.07. The form is attested by a valuer as defined by the Act. Form 3.08 should be used for larger schemes when there is insufficient room to place all the unit entitlements on form 3.07.

The Unit Entitlements (UEs) represent the percentage each lot owner is liable for the upkeep and maintenance of the strata scheme. The current UEs in a scheme are listed on the common property title.

The requirements for schedules of unit entitlements are contained in Schedule 2 of the Strata Development Act 2015. For staged Strata, the Stage Lots are valued by land value together with the aggregate of the non-development lots. The non-development lots are then broken up by market value. When the development lot is further subdivided, the UEs are only shown for the new lots created in the subdivision. The valuation day for the market value of these lots is the value on the previous certificate. If the strata scheme was registered prior to 30 November 2016, then the valuation day is the day that the original scheme was first registered.

Worked Example:

Stage Strata with 30 lots, each stage containing 10 lots.

Step 1: Valuation by Land Value [Clause 2(2)(b)]

Lot	Unit Entitlement
1	Aggregate 333
2	
...	
9	
10	333
11	
12	
Total	1000

Break up the Sum of the Non Development Lots by Land Value

Break up the unit entitlements for the development lots on the basis of Land Value



## Step 2: Valuation by Market Value [Clause 2(2)(c)]

Lot	Unit Entitlement
1	34
2	33
3	33
4	34
5	33
6	33
7	33
8	33
9	34
10	33
11	333
12	334
Total	1000



Break up the Sum of the Non Development Lots by Market Value

#### 4.4. Encroachments

The surveyor's certificate indicates if the site has an encroachment either on the public road or on an adjoining site. Where there is an encroachment on the adjoining site the encroachment needs to be covered by an appropriate easement. The easement can be created by a Deposited Plan or by a dealing. Where the encroachment is for an existing structure to remain, you must do a plan of survey. This requirement is to document the extent of the encroaching structure and the age of the structure so that at a later date a practitioner may determine whether this is still the same encroachment or whether some further modification has taken place.

Surveyor's Certificate	
of .....	
being a land surveyor registered under the <i>Surveying and Spatial Information Act 2002</i> , certify that the information shown in the accompanying plan is accurate and each applicable requirement of Schedule 1 of the <i>Strata Schemes Development Act 2015</i> has been met.	
*The building encroaches on:	
*(a) a public place	
*(b) land other than a public place and an appropriate easement to permit the encroachment has been created by ^ .....	

Candidates should consider the definition of building as contained in clause 4 of the Development Act.

The surveyors certificate has the options for encroachments of the building on a public place or on land other than a public place.

If the building encroaches onto a public place the consent needs to cover this encroachment. An

example of an encroachment of this nature might be an awning that is attached to the building. Strata Plan Fast Facts contains an example of an encroaching balcony. Approval of the encroachment would be contained in the stamped plans.

Where a building encroaches upon an adjoining owner an easement must be registered prior to the registration of the Strata Plan.

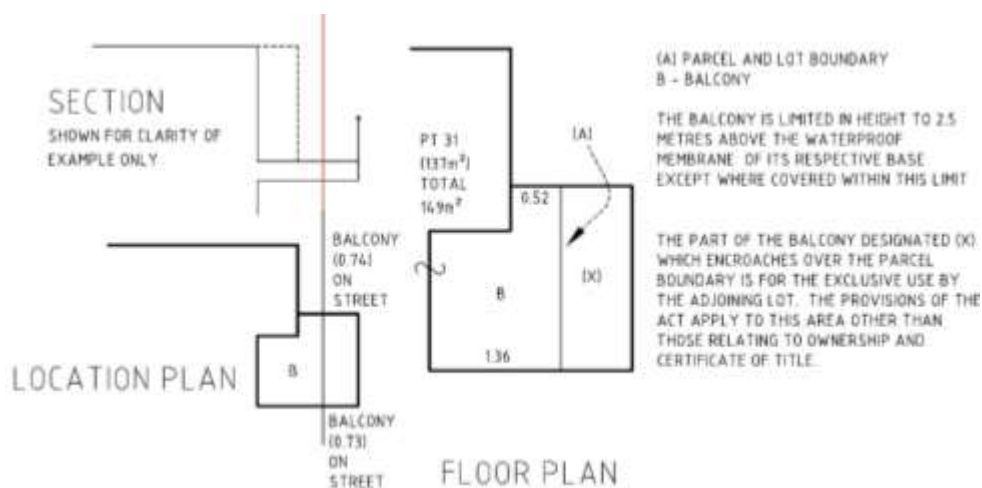


Figure 1 - Encroachment on a public place.

In the example above the boundary is shown in orange in the section view and the balcony is encroaching onto the street by up to 0.74. The included section view is not part of the plan, but is included to help in understanding this example. Distances are used to show the position of the thin line boundary that is coincident with the boundary. A notation within the part of the balcony on the street notifies anyone reading the plan of this encroachment and qualifies that the balcony is not part of the lot, but that the adjoining unit has exclusive use over this area. It is not a common property rights by-law nor is it shown in the by-laws. That part of the building that is not within the parcel is owned and maintained by the owners corporation along with all other common property.

## 4.5. Location Plan

All Strata measurements are made with reference to the structure or building.

From the inception of strata legislation it was enshrined in the idea that all lines and right lines from structures could define parcels. More recently the NSWLRS has allowed the use of bearings and distances (with prior approval on a case by case basis). Refer to the NSWLRS fast facts for further details.

The location of the building is only required if you have external lots in that portion of the land (to compare available land from lengths on floor plan) or where the building is within 2 metres of the boundary.

No survey information goes on the location plan.

The location plan must show the street number, the number of floors, building materials, the dimension of the parcel as shown on the base plan.

It is permissible to indicate that the courtyards or some other external lot is coincident with the boundary. However, the prolongations, part distances must still fully define the external lots on the floor plan. Any connections to the boundary used on the floor plan must be repeated on the location plan to prove that they are the same distance.

## 4.6. By-Laws

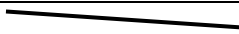

By-Laws govern the use of lots and common property within a strata scheme.

The *Strata Management Regulation 2016* sets out model by-laws for residential schemes. Repealed by-laws may make a good template for other schemes and are contained in the *Strata Management Regulation 2010*. As the legislation is repealed, it can no longer be cited in order to create developer by-laws. It is necessary to produce the by-laws in full and lodge them with the plan where a scheme cannot utilise the residential by-laws.

Residential Model By-Laws contain options for pet ownership and for smoking.

Further details regarding by-laws are given in chapter 5.

## 4.7. Linework

Linework	Line	Main Use
Solid Thick 0.7mm		Common Property Structure forming boundary
Dashed Thick Dashed		Structures that are not common property



Thin 0.25mm		Non Structural boundary lines including paling and metal sheet fencing
Thin Dashed		Prolongations and Right Lines

Table 1 - Linework

Line work for the Strata Plan consists of 0.7 for structures and 0.25 for everything else. Line work is either solid or dashed.

Most walls are not an even width, but keep the wall linework 0.7mm. Generally, place the linework on the centre of the wall.

Thick solid lines are walls that define boundaries and that are common property. Thick dashed lines indicate structures that are not common property. Refer to page 21 of Strata Fast Facts for an example of a scheme where the buildings are not part of the common property.

Solid thin lines are boundaries that are not structures, or where the intention is for the structure to remain as part of the lot. Structures do not include fencing. This will need to be defined by thin lines and by prolongations a right lines.

Dashed thin lines are used to show the projection of structural elements in order to dimension a boundary.

A Strata Plan cannot show any survey information. In this regard, do not show any adjoining buildings or any measurements that fall outside of the subject land.

The location plan is not an identification survey. The dimensions are not wall to boundary. Any dimensions on the location plan are to be perpendicular to the structure. This is particularly important to note when preparing a plan on an irregular shaped lot or where the building is not aligned to the side boundaries. Refer to the figure below as an example. The building structure is used to define the location of the external boundaries.

To define a line you need two points. Looking at the Northern boundary below, the two points are defined by prolongating the face of walls 13.61 and 6.52 respectively. Once the line has been defined then we can define the extents by part distances. The part distances out to the corners are 5.645 and 14.215. We also state the total length of the external boundary lines.

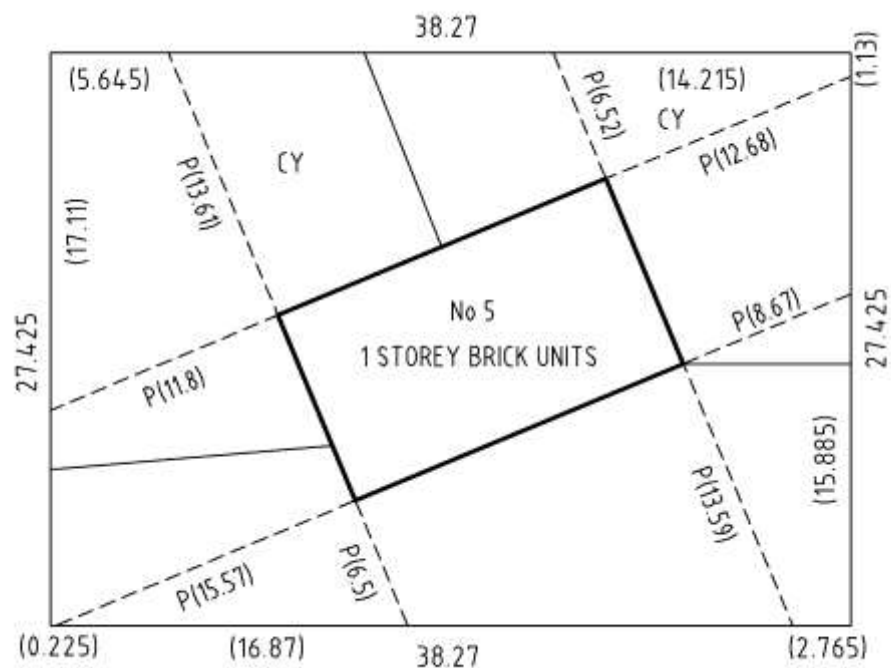


Figure 2 - Prolongation of Face of Walls

A location plan is used to show the relationship of the structure/s to the boundary using right lines and prolongations. Be sure to label clearly the intention of the prolongation on a line.

The centreline of a wall or column may be used as a prolongation. Where the centreline of a wall is to be utilised, the wall must be visible from the outside. You cannot use an internal wall to create a prolongation. Consider using a bracketed distance along a wall and a right angle.

Where there are lots on the outside of a structure such as courtyards at ground floor, include right lines and prolongations that are consistent with these locations to prove what the intention is for the position of the external lots. For example, if it is the intention to make the boundary of the strata lot coincident with the boundary of the parcel, then show distances from the structure to prove this fact in the location plan.

**TIP:** Don't hatch your building/s on the location plan. Leave the hatching for your survey report. Thin linework should only be used to draw non-structural boundaries.

Where the outer boundary of a courtyard is to be coincident with the cadastral boundary, there is no requirement to show distances to structures that are greater than 2metres from the boundary.

## 4.8. Floor Plan

All walls that form the boundary of a lot are to be shown in 0.7 thick linework. We know that in reality the thickness of walls varies. Strata plans do not show the thickness of walls. If a wall is particularly thick, show the linework in the centre of the wall. Strata Fast Facts shows an example of an old bank that had particularly thick walls. The same rule applies, the 0.7mm thick linework implies that the wall is the boundary.

Most strata plans are drawn up in CAD. In order to determine the area of a lot, measure the internal and external areas of the lot and draw up a closed figure to calculate the area. This figure can then be turned off, or not printed in the final version of the plan.

Put a statement on the plan that the "areas are approximate". Where you are preparing a scheme under the leasehold provisions you may put a statement "measurements of floor area shown on the floor plan area approximate and calculated for the purposes of the strata development act 2015 only. They may differ from measurements of floor area for other purposes."

Broadly speaking, there are two types of space on a strata plan. Areas of a lot that have a roof, and areas that do not have a roof. The parts of lots that fall outside of a building may be covered or uncovered. Where they are uncovered the lot needs to be limited in depth and height. This is achieved using stratum statements. Areas inside a building are covered but may have boundaries defined by walls, or boundaries defined by lines.

Where a courtyard or other external lot is to be coincident with the boundary it is acceptable to put a note on the location plan to that effect. The floor plan must always show the dimensions to the boundary regardless of the notation on the location plan. Compare the example below with the previous figure. Note on the Northern boundary the 38.270 is repeated together with the two part distances 5.645 and 14.215.



Figure 3 - Floor Plan dimensioning

#### 4.9. Common Infrastructure (Structural Cubic Space)

Where people are sharing a building the question that they are primarily concerned with is "who pays for what"?

Structural cubic space is now called common infrastructure.

Common Infrastructure is defined by the Act as:

- a) Vertical structural elements other than a wall
- b) Pipes, wires, cables or ducts that are not for the exclusive benefit of one lot
- c) Structures enclosing b)

An example might be a pipe leading from one unit only. Where the pipe requires maintenance, then the owner of that lot pays for the maintenance. Where the pipe carries water from two units, then the cost of repair is paid by the owners corporation in accordance with the breakup of the unit entitlements.

#### 4.10. Defining Thin Line Boundaries

When defining thin line boundaries you need to be able to establish each line by two points. You cannot define a line by tie distances. Tie distances have two mathematical possibilities and a title to land cannot be ambiguous.

### 4.11. Stratum Statements

A roof or cover can take many shapes. For the most part it is the ceiling, or initially when stepping out into a courtyard, it is the eaves, no matter how high up the eaves. Be mindful of the effect of saying except where covered by itself.

The cover of the lot of roof needn't be horizontal.

Refer to figure 5 for an example of this unintended consequence.



## 5. Strata Legislation

The *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* together with the *Strata Management Act 1996* have been replaced by the *Strata Schemes Development Act 2015* and the *Strata Schemes Management Act 2015*.

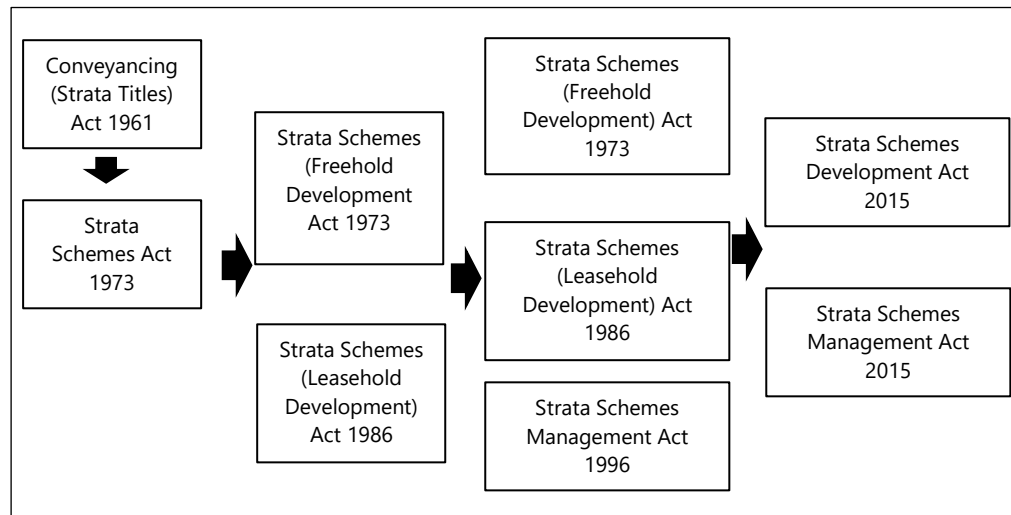


Figure 4 - Strata Legislation

The Strata Schemes Development Act 2015 legislates the processes for the creation and modification of strata schemes.

The Strata Schemes Management Act 2015 handles the management processes. The most significant changes in the legislation are those relating to Strata Renewal.

Below is a list of related Acts:

- Building Professionals Act 2005
- Civil and Administrative Tribunal Act 2013
- Coastal Protection Act 1979
- Community Land Development Act 1989
- Community Land Management Act 1989
- Consumer Claims Act 1998
- Contracts Review Act 1980
- Conveyancing Act 1919
- Crown Lands (Continued Tenures) Act 1989
- Duties Act 1997
- Electronic Conveyancing (adoption of National Law) Act 2012
- Environmental Planning and Assessment Act 1979
- Heritage Act 1977
- Home Building Act 1989
- Industrial Relations Act 1996

- Land and Environment Court Act 1979
- Land Sales Act 1964
- Land Tax Management Act 1956
- Law Enforcement (Powers and Responsibilities) Act 2002
- Local Court Act 2007
- Local Government Act 1993
- Parents AND Citizens Associations Incorporation Act 1976
- Parking Space Levy Act 2009
- Property, Stock and Business Agents Act 2002
- Road Transport Act 2013
- Real Property Act 1900
- Regional Relocation Grants (Skills Incentive) Act 2011
- Residential (Land Lease) Communities Act 2013
- Retail Leases Act 1994
- Retirement Villages Act 1999
- Rural Fires Act 1997
- Succession Act 2006
- Surveying and Spatial Information Act 2002
- Sydney Olympic Park Authority Act 2001
- Transport Administration Act 1988
- Valuation of Land Act 1916

### 5.1. Strata Development Act 2015

As the name suggests the Strata Development Act deals with the creation and the modification of Strata Schemes. The Act and Regulation set out the requirements for different types of Strata Plans.

The issuing of Strata Certificate is dealt with under the Development Acts. The Strata Certificate is similar in function to the Subdivision Certificate as governed under the Environmental Planning and Assessment Act.

Section 153 to 187 detail the process of Strata Renewal. Appendix C

### 5.2. Strata Management Act 2015

The Strata management Act has been amended significantly. The biggest changes to the Act relate to by-laws, pets, smoking, email communication, parking and building defects. The fair trading website has good information summarising the changes.

### 5.3. By Laws

Pursuant to section 136 of the Strata Management Act 2015 by-laws may be made in relation to the “management, administration, control, use or enjoyment of the lots or the common property and lots of a strata scheme”.

They typically deal with noise, vehicles, damage, behaviour of tenants and visitors, rubbish, washing, fire safety, animals, smoking and general amenity.

Only the residential model by-laws remain in the strata management regulation.

The by-laws in the repealed 2010 regulation included:

- Residential
- Retirement
- Industrial
- Hotel/Resort
- Commercial Retail
- Mixed Use

See section 6 for specific information regarding by-laws in mixed use schemes.

Schemes that are not residential may have by-laws based upon the repealed by-laws above. The by-laws must be reproduced in their entirety.

At a minimum strata schemes should have developer by-laws based upon the residential by-laws but containing an extra by-law incorporating the Common Property Memorandum published by the Department of Fair Trading. The complete memorandum is reproduced in appendix B.

Under the new legislation, existing schemes are encouraged to submit new by-laws by 29 November 2017. There are no penalties for not updating the by-laws. However, if an amendment to the by-laws is sort, the strata scheme must submit a consolidated set of by-laws. Consideration may be give due to hardship in consolidating the by-laws for a time. However, eventually schemes will need to combine all the amendments into one document.

There are schemes that have a dozen or more amendments that seem to chronicle every dispute that the occupants of the scheme have ever had.

#### 5.4. Voting

A resolution may be carried out by a majority vote.

A special resolution, required for subdivision of common property, requires a minimum 75% vote.

Unanimous resolution such as that required to apply for termination of a scheme requires 100% of the votes.

#### 5.5. Common Property Rights By Law (Exclusive Use)

A common property rights by-law is a special by-law that can only be changed by unanimous resolution.

Typical uses are the allocation of common property areas for the exclusive use of a lot owner.

Examples include limiting the use of a pool to a lot owner/s during certain times of the day, or allocating a car parking space on a part of common property.

Be warned that if the by-law is illegal, it can be changed without unanimous resolution. Example would be allocating a visitors car parking spot to a lot. Because the exclusive use by-law is on the title to the land, if the lot owner and their mortgagee lose value on a lot because of an illegal by-law, they will come looking for the person who created the illegal by-law.

## 5.6. Initial Period

To protect purchasers who are buying from the developer, there are restrictions on the voting power of the developer and on what can be done in a strata scheme during the initial period.

The initial period is defined by the Strata Management Act 2015 as *"commencing on the day that the owners corporation is constituted, and ending on the day there are owners of lots in the strata scheme (other than the initial owner) the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement."*<sup>1</sup>

Section 26 of the Strata Management Act sets out the restrictions on the owner's corporation during the initial period. Broadly speaking you cannot make changes to the common property or the governance of common property during the initial period.

The owners corporation cannot:

- make changes to the common property or erect structures on the common property including subdivision of common property or subdivisions that create common property or easements.
- Make changes to the by-laws
- incur a debt that exceeds the administrative or capital works fund
- appoint a strata managing agent or building manager beyond the first annual meeting
- borrow money or give securities.

Approved Form 10 is used on the administration sheets to certify that the initial period has expired. This is required for strata plan of subdivision involving lots or involving common property or for a building alteration plan.

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<sup>1</sup> NSW Parliamentary Counsel's Office, *Strata Management Act 2015*

## 6. Strata Titling

As with all survey plans, notations on the plan define the future interpretation of the titling. Good titling comes from clear communication. The following is an eclectic collection of items of note.

### 6.1. Freehold or Leasehold

Following amalgamation of the Strata Schemes (Freehold Development) Act 1973 and Strata Schemes (Leasehold Development) Act 1986 into the Strata Development Act 2015 it is now necessary to select which type of scheme is being proposed on the Strata Administration Form 3.01 or Form 3.02.

### 6.2. Stratum Statements Height and Depth Limit

Care should be taken to formulate the stratum statements while on site. When stratum statements are copied and pasted in plan preparation it may have unintended consequences. Each strata is different. Consider the following examples.

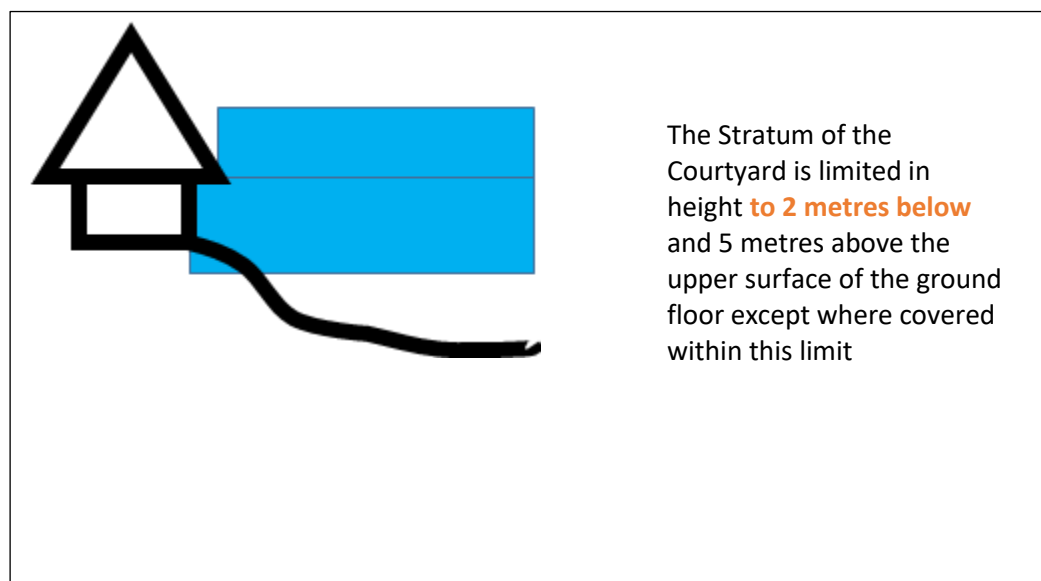


Figure 5-Adequate Depth on Sloping Block

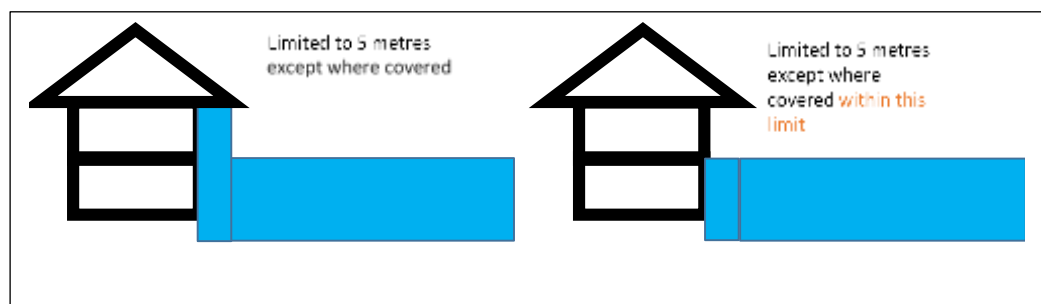


Figure 6 - Unintended consequences of stratum statements

Consideration of height and depth limit should also be given when doing Staged Strata. Be sure to allow for the height of a tower on a development lot. The NSWLRS will approve of a maximum 50m height or depth for a stratum statement without special approval.

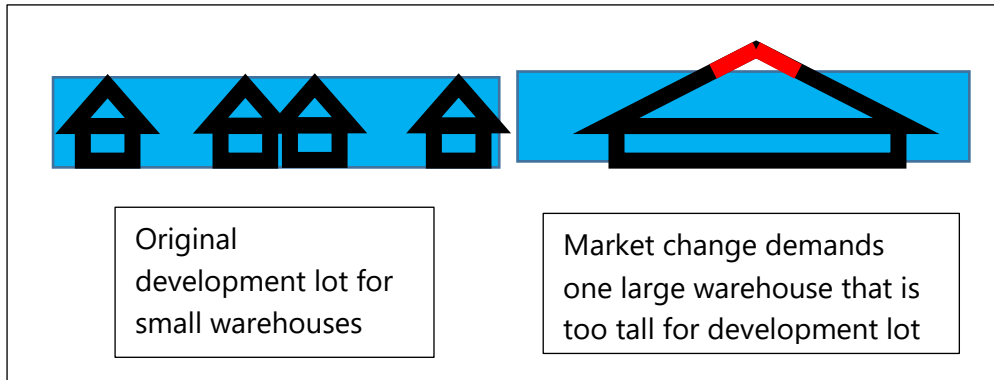


Figure 7- Heights of Development Lots

Consider the above example. A development lot was created with a development contract that proposed small warehouses. When the development lot stage went ahead, the market had changed and the development was one large lot. You cannot subdivide the common property without the permission of the owners corporation. This could cause delays to a project, or changes to the developer's proposals.

### 6.3. Mixed Use Schemes

Care needs to be taken when preparing a mixed use scheme. Typically the requirements and the wants and needs of retail and commercial tenants will be at odds with the desires of residential tenants. Consider the coffee shop at ground level of a mixed use shop. A tenant of an apartment may be quite happy to buy a coffee and raisin toast at 7am. But this same tenant may be less than impressed by the 4am bread delivery.

When advising clients on mixed use schemes, experience is everything. In many instances it may be best to handle in Part Strata.

Where a mixed use scheme is being proposed it may be wise to ensure that the developer by-laws include provision for:

- getting owners corporation approval for a development application or construction certificate
- undertaking the installation of additional services required as part of a development.
- kitchen exhaust having an easement ( services that benefit only one lot are not considered common property)
- grease traps
- other specialist services that only benefit commercial lots

Engagement of a lawyer or solicitor that specialises in Strata is highly recommended.

#### 6.4. Defining Common Property

The majority of the queries to the NSWLRS following creation of a strata scheme relate to the question of who pays for what. Many of these queries are then redirected to the Department of Fair Trading.

The department of Fair Trading has published a Common Property Memorandum. A copy of this schedule is attached as annexure B. This document has been based upon both memorandum AG520000 and memorandum AG60000. We owe a debt of gratitude to those Strata Managers and Surveyors who contributed to the development of these documents.

Some of the queries are as trivial as who pays for the battery in the garage door opener. Unfortunately some owners of strata lots believe that because they pay money into the scheme every quarter, they must be able to get some money back as reimbursement for money they consider they spent on maintenance. The money that is paid into a scheme goes into the management, maintenance and future maintenance of the building. Generally the repair and maintenance is agreed upon by the strata manager before the money is spent.

Simple notes on plans can save wasted man hours down the track. For example, many newer schemes have sliding shade and privacy shutters on the balcony. A statement such as "Privacy Shutters Form Part of the Common Property" or "Pergolas Form Part of the Lot" can be discussed with the developer and defined in such a way as to prevent confusion.

#### 6.5. Building Alteration Plan

During the life of a scheme it may be necessary to renew, add to or repair the fabric of a building. Where the fabric of the building that is altered involves a strata boundary, a building alteration plan must be lodged. The building alteration plan does not require a Strata Certificate. However, all works must be covered by a construction certificate, which depending on the scope of the modifications may be undertaken as complying development or as a development consent.

#### 6.6. Notice of Conversion

A lot can be converted back into common property. The titling of conversion is achieved using approved form 15CD. The form requires signoff from either Council or an Accredited Certifier and requires a special resolution. Approved

form 10 and attestation by the owner's corporation of a special resolution agreeing to the conversion.

Land that is to be subdivided from a scheme must first be converted to common property prior to being disposed of. In order for a lot to be converted to common property all mortgages and charges must be released from the title.

### 6.7. Utility Lots

Utility lots are non-habitable lots within a scheme consisting predominantly of storage rooms, storage cages and car parking spaces. These lots may be owned by those who have habitable lots within the same strata scheme. There is a "restrictive use condition" created by S63 of the Strata Development Act 2015.

If a utility lot is to be consolidated into a non-utility lot a request form (R11) must first be lodged removing the restrictive use condition use pursuant to S64.

### 6.8. Terminating A Scheme

A scheme may be terminated by unanimous vote and then an order may be given by either the Strata Tribunal or an application made to the Registrar General.

### 6.9. Easements

Easements can be created by a Strata Plan in a similar manner as they are created in a Deposited Plan. A statement regarding 88B of the Conveyancing Act is put on the Administration Sheet 3.08. The site of the easement is shown using prolongations and right lines. Bearings and distances are only allowed on a plan where an easement would be too complex to show using right lines. To use bearings and distances on a plan you will need to get an exemption letter.

Where an easement affects the common property, it is necessary to show this on the Location Plan. If an easement is over a lot only, then it is only shown on the floor plan.

In most cases, existing easements will be shown on the location plan only.

### 6.10. Strata Schemes Created Prior To 1973 Legislation

The original Conveyancing (Strata Titles) Act 1961 titled the lots to the centerline of the walls, floors and ceilings. This had the unintended consequence of making repairs to the waterproofing of balconies and other issues with building maintenance unduly complicated.



A savings and transitional arrangement with the introduction of the Strata Schemes Act 1973 was to make the boundaries to the face of walls, ceilings and floors, leaving the building as common property. The exception to this savings measure was where schemes actually specified the boundary as the centerline on the face of the plan. These boundaries remain the same as created.

### 6.11. Copyright and Intellectual Property

Copyright and intellectual property must be considered in preparation of Strata documentation. Just because a document is on the public record does not mean that it can be copied in its entirety. By-Laws, Strata Management Statements, Shared Facility Documentation, Building Management Statements that have been expertly prepared have been done so based upon years of experience and have been tailored to individual circumstance. The intellectual property and the copyright of the work still remains with the author.

Consider forming strategic alliances with legal firms and strata managers who are expert in complex schemes rather than pilfering registered documents to cobble together ill-conceived plagiarised documentation that has not been tailored to a development.

Teams of architects, lawyers, surveyors, strata managers, planners, valuers and certifiers are all needed to put together a well-orchestrated strata scheme. Experience is everything in Staged Strata and Part Strata Schemes.

## 7. Part Strata

Part Strata refers to the Strata Subdivision of a Stratum Lot. These surveys are often very specialised and the plans created can become complicated.

The use of Part Strata has particular value when you have a building with mixed uses.

For the purposes of the board exams you will need to know:

- Building management statement
- Strata management statement

The best source of information is to review the registrar general directions for strata plans.

When you create a stratum lot and you are not immediately registering a part strata, you will need a building management statement (BMS). A BMS sets out the shared facilities in a building and allocates the proportions of the shared facilities maintenance costs.

If a strata is created at a later date, and it is the first strata in a building, a strata management statement (SMS) will be required unless the building management statement is sufficiently detailed enough to cover the matters required in a SMS. If an SMS is required, this will replace the BMS. All other part strata plans created in that stratum plan will then refer to the initial SMS.

Care needs to be taken when considering Part Strata for a Staged construction. There is no developers' contract in place with Part Strata.

An SMS must specify:

A strata management statement must provide for:

- (a) the establishment and composition of a building management committee and its office holders, and
- (b) the functions of the committee and the office holders in managing the building and its site, and
- (c) the way in which the statement may be amended, and
- (d) the settlement of disputes, or the rectification of complaints, about the management of the building or its site, whether by requiring reference of disputes or complaints to the Secretary or Tribunal or, with the person's consent, to any other person for a recommendation or decision or otherwise, and
- (e) the fair allocation of the costs of shared expenses relating to parts of the building, and
- (f) a review process to ensure that the allocation of those costs remains fair with any such review taking place as soon as practicable after any change in the shared facilities or services (including any change in the use of those shared facilities or services), with at least one such review occurring every 5 years even if no such change has occurred, and

(g) the manner in which notices and other documents may be served on the committee.<sup>2</sup>


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<sup>2</sup> NSW Parliamentary Counsel's Office, *Strata Management Act 2015*, Schedule 4, Clause 2(1)

## 8. Staged Strata

With tougher financing arrangements for developers, lenders are requiring pre-sales of large percentages of developments. Preselling units when the market is going up is good for the buyers. The buyer secures a unit at a set price. The developer then takes a year or two to build the development, but during that time he does not get the benefit of any price rise.

Cash flow is king. Getting in money earlier in the development process lowers the developers borrowing costs, making a development more profitable.

 **TIP:** Care must be taken when choosing the boundaries of a development lot. If extra land is required by the development, then permission from the owner's corporation would need to be sought. Such permission might cause delay to a project, or not be granted at all.

### 8.1. Strata Development Contract

The strata development contract needs to be signed by the consent authority when the consent is issued. A staged consent issued in contravention of section 75 is invalid. A consent authority includes a private certifier. However, a consent authority can only issue staged strata approval on a staged construction approval.

Where a development has towers sitting on a common podium it is advisable to discuss with a developer the options of staging when in the planning stages. Staging a strata near the end of construction will require a S96 modification to the consent and this can be a 6 month approval process.

A strata development contract has the format as set out in the regulations. All the forms referred to in the legislation are downloadable from the NSWLRS website.

The strata development contract contains two types of development. Warranted development is development that the developer must undertake. Authorised development is development that the developer may undertake.

Warranted development may be a requirement of a staged development consent. An example of this may be the building of a facility on site that offsets the developers requirements for S94 contributions. An example may be additional parklands for the use of the tenants. Warranted development may also add value to purchasers buying into the first stage. It may be warranted that a swimming pool will be built in the second stage, and so knowing that the development must be carried out, the purchasers may pay a higher value than if the swimming pool was merely authorised development.

Authorised development is that development that the developer may undertake. This lets the developer take less risk and allows changes to the scheme to suit market conditions. An example may be in an industrial staged development where the authorised development was for small warehouses, but a commercial opportunity comes along for a larger warehouse. If the development were warranted development the developer would be forced to stick with the development as approved, but where the development is authorised, the developer has scope to go back to Council and modify the consent to suit the prevailing market conditions.

A development contract has an expiry date. The maximum time limit for a strata development contract is 10 years. A contract expires when the works are completed or on the date of expiry whichever occurs first.

Cranes and scaffolding that are on the common property must be dismantled prior to the registration of the final stage. The developer's rights to occupy the common property for construction purposes cease when the subdivision of the final development lot is registered.

## 8.2. Revised Schedule of Unit entitlements

The unit entitlement must be based upon valuation. This includes the development lots. As stated earlier, the owners corporation can lodge a new schedule of unit entitlements reflecting the final scheme values up to two years after the completion of the strata development contract.

The calculation of unit entitlements is covered in Section 4.3. Where towers are of unequal heights or where the land size of a development lot is much larger than another development lot there may be anomalies in the breakup of the unit entitlements. These provisions allow for the lodgement of a revised schedule within two years of the conclusion of a development scheme to allow for these anomalies.

## 8.3. Cost Disparity

Staging of a strata scheme needs careful consideration to the cost implications on those who enter the scheme first. The developer does not contribute to the expenses of the common property within a scheme until the lots are converted from development lots.

Consider the example of a strata scheme where there are two stages, and the first has 3 lots, while the remainder has 100 lots on an extensive podium. While the construction of all the remaining lots are being undertaken, the first three lots are shouldering the responsibility for the maintenance and upkeep of the common property. If the initial strata plan created all the driveways as common property, and just left the carparking spaces as development lots the maintenance upkeep of the driveways, ramps, carpark ventilation systems would be enormous. If in this same example, a majority of the underground

areas were kept as a development lot, then the cost burden would be less particularly for the electricity bill for the ventilations systems.

## 9. Spatial Information

Spatial Information and its components may be required to be added to the competencies as determined by the Board. One area of competency that may be added is the Registrar General requirements for an address table.

### 9.1. Address Table

A strata plan signed after 1 March 2018 must include an address table.

Lot Number	Sub-Address Number	Address Number	Road Name	Road Type	Locality Name
CP		22A	Linda	Street	Bathurst
1	101	22A	Linda	Street	Bathurst
2	102	22A	Linda	Street	Bathurst
3	201	22A	Linda	Street	Bathurst
4	202	22A	Linda	Street	Bathurst

The address table is to be inserted on approved form 3.08 directly after any additional tables required for the schedule of unit entitlements. Written advice must be sort from Council regarding the addresses to be allocated to the lot numbers. This advice should be sought early in the project. Note that the common property also gets a street address. This is different from the address for notices, as the address of the common property is used for emergency responders and for address mapping.

### 9.2. Use and recording of imagery as an evidentiary tool

Photographs form an important evidentiary role. It is good practice to take a few photos of the project at the time of measurement. The position of the photograph and the direction the photo was taken should be noted on the field notes for future reference.

For the BOSSI exam, it is advisable to mark up a copy of the strata plan with the photo number, position and direction overlaid in red. In CAD, a block can make this process quick to undertake.

## **Annexure A: Further Reading**

Registrar Generals Directions (NSWLRS Website)

<http://rg-guidelines.nswlrs.com.au>

NSWLRS Strata Fast Facts (NSWLRS Website) Look out for a new version of the fast facts coming soon!!

[http://rg-guidelines.nswlrs.com.au/fact\\_sheets](http://rg-guidelines.nswlrs.com.au/fact_sheets)

Legislation NSW Website

Fair Trading Website

Lodgment Rules

[Termination of a Strata Scheme by the Registrar General](#)

[http://rg-guidelines.nswlrs.com.au/fact\\_sheets](http://rg-guidelines.nswlrs.com.au/fact_sheets)

## Annexure B: Common Property Memorandum

Owners corporation responsibilities for maintenance, repair or replacement

1. Balcony and courtyards	<ul style="list-style-type: none"> <li>(a) columns and railings</li> <li>(b) doors, windows and walls (unless the plan was registered before 1 July 1974 – refer to the registered strata plan)</li> <li>(c) balcony ceilings (including painting)</li> <li>(d) security doors, other than those installed by an owner after registration of the strata plan</li> <li>(e) original tiles and associated waterproofing, affixed at the time of registration of the strata plan</li> <li>(f) common wall fencing, shown as a thick line on the strata plan</li> <li>(g) dividing fences on a boundary of the strata parcel that adjoin neighbouring land</li> <li>(h) awnings within common property outside the cubic space of a balcony or courtyard</li> <li>(i) walls of planter boxes shown by a thick line on the strata plan</li> <li>(j) that part of a tree which exists within common property</li> </ul>
2. Ceiling/Roof	<ul style="list-style-type: none"> <li>(a) false ceilings installed at the time of registration of the strata plan (other than painting, which shall be the lot owner's responsibility)</li> <li>(b) plastered ceilings and vermiculite ceilings (other than painting, which shall be the lot owner's responsibility)</li> <li>(c) guttering</li> <li>(d) membranes</li> </ul>
3. Electrical	<ul style="list-style-type: none"> <li>(a) air conditioning systems serving more than one lot</li> <li>(b) automatic garage door opener, other than those installed by an owner after the registration of the strata plan and not including any related remote controller</li> <li>(c) fuses and fuse board in meter room</li> <li>(d) intercom handset and wiring serving more than one lot</li> <li>(e) electrical wiring serving more than one lot</li> <li>(f) light fittings serving more than one lot</li> <li>(g) power point sockets serving more than one lot</li> <li>(h) smoke detectors whether connected to the fire board in the building or not (and other fire safety equipment subject to the regulations made under Environmental Planning and Assessment Act 1979)</li> <li>(i) telephone, television, internet and cable wiring within common property walls</li> <li>(j) television aerial, satellite dish, or cable or internet wiring serving more than one lot, regardless of whether it is contained within any lot or on common property</li> <li>(k) lifts and lift operating systems</li> </ul>



4. Entrance door	<p>(a) original door lock or its subsequent replacement</p> <p>(b) entrance door to a lot including all door furniture and automatic closer</p> <p>(c) security doors, other than those installed by an owner after registration of the strata plan</p>
5. Floor	<p>(a) original floorboards or parquetry flooring affixed to common property floors</p> <p>(b) mezzanines and stairs within lots, if shown as a separate level in the strata plan</p> <p>(c) original floor tiles and associated waterproofing affixed to common property floors at the time of registration of the strata plan</p> <p>(d) sound proofing floor base (eg magnesite), but not including any sound proofing installed by an owner after the registration of the strata plan</p>
6. General	<p>(a) common property walls</p> <p>(b) the slab dividing two storeys of the same lot, or one storey from an open space roof area eg. a townhouse or villa (unless the plan was registered before 1 July 1974 – refer to the registered strata plan)</p> <p>(c) any door in a common property wall (including all original door furniture)</p> <p>(d) skirting boards, architraves and cornices on common property walls (other than painting which shall be the lot owner's responsibility)</p> <p>(e) original tiles and associated waterproofing affixed to the common property walls at the time of registration of the strata plan</p> <p>(f) ducting cover or structure covering a service that serves more than one lot or the common property</p> <p>(g) ducting for the purposes of carrying pipes servicing more than one lot</p> <p>(h) exhaust fans outside the lot</p> <p>(i) hot water service located outside of the boundary of any lot or where that service serves more than one lot</p> <p>(j) letter boxes within common property</p> <p>(k) swimming pool and associated equipment</p> <p>(l) gym equipment</p>

7. Parking / Garage	<p>(a) carports, other than those within the cubic space of a lot and referred to in the strata plan, or which have been installed by an owner after registration of the strata plan</p> <p>(b) electric garage door opener (motor and device) including automatic opening mechanism which serves more than one lot</p> <p>(c) garage doors, hinge mechanism and lock, if shown by a thick line on the strata plan or if outside the cubic space of the lot</p> <p>(d) mesh between parking spaces, if shown by a thick line on the strata plan</p>
8. Plumbing	<p>(a) floor drain or sewer in common property</p> <p>(b) pipes within common property wall, floor or ceiling</p> <p>(c) main stopcock to unit</p> <p>(d) storm water and on-site detention systems below ground</p>
9. Windows	<p>(a) windows in common property walls, including window furniture, sash cord and window seal</p> <p>(b) insect-screens, other than those installed by an owner after the registration of the strata plan</p> <p>(c) original lock or other lock if subsequently replacement by the owners corporation</p>

Lot owner responsibilities for maintenance, repair or replacement

1. Balcony and courtyards	<p>(a) awnings, decks, pergola, privacy screen, louvres, retaining walls, planter walls, steps or other structures within the cubic space of a balcony or courtyard and not shown as common property on the strata plan</p> <p>(b) that part of a tree within the cubic space of a lot</p>
2. Ceiling/Roof	<p>(a) false ceilings inside the lot installed by an owner after the registration of the strata plan</p>
3. Electrical	<p>(a) air conditioning systems, whether inside or outside of a lot, which serve only that lot</p> <p>(b) fuses and fuse boards within the lot and serving only that lot</p> <p>(c) in-sink food waste disposal systems and water filtration systems</p> <p>(d) electrical wiring in non-common property walls within a lot and serving only that lot</p> <p>(e) light fittings, light switches and power point sockets within the lot serving only that lot</p> <p>(f) telephone, television, internet and cable wiring within noncommon property walls and serving only that lot</p> <p>(g) telephone, television, internet and cable service and connection sockets</p> <p>(h) intercom handsets serving one lot and associated wiring located within non-common walls</p>

4. Entrance door	(a) door locks additional to the original lock (or subsequent replacement of the original lock) (b) keys, security cards and access passes
5. Floor	(a) floor tiles and any associated waterproofing affixed by an owner after the registration of the strata plan (b) lacquer and staining on surface of floorboards or parquetry flooring (c) internal carpeting and floor coverings, unfixed floating floors (d) mezzanines and stairs within lots that are not shown or referred to in the strata plan
6. General	(a) internal (non-common property) walls (b) paintwork inside the lot (including ceiling and entrance door) (c) built-in wardrobes, cupboards, shelving (d) dishwasher (e) stove (f) washing machine and clothes dryer (g) hot water service exclusive to a single lot (whether inside or outside of the cubic space of that lot) (h) internal doors (including door furniture) (i) skirting boards and architraves on non-common property walls (j) tiles and associated waterproofing affixed to non-common property walls (k) letterbox within a lot (l) pavers installed within the lot's boundaries (m) ducting cover or structure covering a service that serves a single lot
7. Parking / Garage	(a) garage door remote controller (b) garage doors, hinge mechanism and lock where the lot boundary is shown as a thin line on the strata plan and the door is inside the lot boundary (c) light fittings inside the lot where the light is used exclusively for the lot (d) mesh between parking spaces where shown as a thin line, dotted line or no line on the strata plan (this will be treated as a dividing fence to which the Dividing Fences Act 1991 applies)

8. Plumbing	(a) pipes, downstream of any stopcock, only serving that lot and not within any common property wall (b) pipes and 'S' bend beneath sink, laundry tub or hand basin (c) sink, laundry tub and hand basin (d) toilet bowl and cistern (e) bath (f) shower screen (g) bathroom cabinet and mirror (h) taps and any associated hardware
9. Windows	(a) window cleaning – interior and exterior surfaces (other than those which cannot safely be accessed by the lot owner or occupier) (b) locks additional to the original (or any lock replaced by an owner) (c) window lock keys

Annexure C: Strata Renewal

