

Chapter 9

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN

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The following table is presented as a guide to locating text in this Chapter and a comparison chart as to the differences between NEW and EXISTING Strata Applications.

NEW SCHEME	TEXT REF.	EXISTING SCHEME
Land must be an allotment	↔ 910 ↔	Same as New Scheme
Easements can be extinguished, varied or expressly excluded.	↔ CH. 8 ↔ ↔ 909 ↔	Same as New Scheme
Land Division Certificate under certification of council must give address of site. PO box no. to be added where no postal delivery service. Certificate of Commission to include no. of amalgamation units required in parts of Water Protection Zone	↔ 914 ↔	Same as New Scheme
Building may be erected at any time, but be aware of consequences where built prior to 22/2/68	↔ 906 ↔	Building must be constructed before 22/2/1968
Unit entitlements certified by licensed valuer	↔ 915 ↔	Same as New Scheme
Strata Application is a dealing with land	↔ 910 ↔	Same as New Scheme
Applicants panel executed by registered proprietors of land only.	↔ 917 ↔ ↔ 922 ↔	Same as New Scheme
All persons having a registered interest in the land including easement owners affected	↔ 918 ↔ ↔ 923 ↔	Same as New Scheme plus all persons having a right, registered or unregistered, to the exclusive use and occupation of a unit (predominant owner)
Undischarged interests are carried on to C ^T for units discharged as regards common property	↔ 920 ↔ ↔ 924 ↔	All interests are discharged by the statute on deposit of the strata plan
Substituted instruments are not applicable	↔ 925 ↔	Interest to subsist on unit titles to be replaced by substituted instrument
Statutory Encumbrance to be carried onto titles for units and/ or common property as the encumbrance may require	↔ 920 ↔ ↔ 924 ↔	Same as New Scheme
Registered interest not required to subsist against units to be discharged by separate instrument lodged prior to strata application	↔ 927 ↔	Same as new Scheme
All units issue in name of Registered Proprietor(s)	↔ 919 ↔ ↔ 924 ↔	Each unit title issues in name of respective predominant owner (showing shares held as tenants in common where applicable)
Not applicable	↔ 928 ↔	Substituted instruments
Encroachments on adjoining land	↔ 930 ↔	Same as New Scheme
Form of consent to encroachment	↔ 932 ↔	Same as New Scheme
Multiple ownerships	↔ 933 ↔	Same as New Scheme
Stamp Duties	↔ 934 ↔	Same as New Scheme
Effect of deposit on Leases	↔ 935 ↔	Same as New Scheme

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901 APPLICATIONS GENERALLY

The strata titles legislation provides that an application or a plan submitted to the Registrar-General under the Act must be in a form approved by the Registrar-General and certified in a manner required by the Registrar-General. All of the forms reproduced in this manual are in the approved form and should not be varied except where indicated in this publication.

All applications and other instruments lodged with an application must be accompanied by the prescribed fee.

← SEE S.48 AND
CURRENT FEES
REGULATIONS

← Note: before
proceeding, See
Para 707.5 re
condition of
structure

902 DEFINITION OF THE TERM "ENCUMBRANCE".

Before addressing the applications required by the Strata Titles Act, 1988 it is necessary to look at the definition of the term "Encumbrance" in the Act.

← SEE S.3 (1)

The Strata Titles Act, 1988 defines an encumbrance, for the purposes of the Act as including:-

- a life estate or a lease,
- a mortgage or charge,
- a claim or lien,
- an easement,

or

- a caveat.

The definition contained within the Strata Titles Act is, of course, used only for the purposes of that Act and may not apply to a dealing made with land pursuant to any other Act of Parliament.

To understand the terms contained within the definition, the following explanations are given:

1. Life Estate means the person registered as the proprietor of an estate for life whether during the life of the tenant or during the life of another.

This estate is carved out of the fee simple of the land and the definition does not pick up the estate in remainder. The person registered as the remainder person is the applicant for deposit of a strata plan. Where the consent of a person having a registered encumbrance in land is required under this Act, the person having the estate for life is the person required to give a consent.

A lease means a leasehold estate generally for an expressed period of time.

2. Section 128 of the Real Property Act provides that a registered mortgage or encumbrance is a charge on land. The Strata Titles Act goes on to include other charges in general.

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- 902.2 These include those that may be registered against the land pursuant to other Acts of Parliament such as the Gift Duty Act 1968, Stamp Duties Act 1923, Legal Services Commission Act 1977, Section 28 (2) of the Housing Improvement Act 1940, Housing Co-operatives Act 1990, etc. ← SEE PART XII OF RPA
- There are many other types of miscellaneous advances or charges, most of which are uncommon. However, those quoted above are likely to become increasingly frequent in coming years as authorizing legislation was enacted as recent as 1990.
- It must be noted that the Strata Titles Act speaks only of registered encumbrances. The Act defines a "registered encumbrance" as an encumbrance registered or entered on a certificate of title and makes no reference to any unregistered encumbrance. It therefore follows that, except where otherwise provided in Clause 5 of the Second Schedule of the Act in an existing scheme, the consent of an encumbrancee need not be sought if the encumbrance is not registered or entered on the certificate of title for the site or any other land affected by an application under the Strata Titles Act. An encumbrance lodged in series prior to a strata application will be registered prior to the application. Consequently the encumbrancee will be required to consent to the strata application.
- An unregistered interest protected by a caveat (permissive or absolute) will require the consent of the caveator. ← SEE PARA 911.1

A floating charge (which cannot be registered on the certificate of title) may exist against the land. It is possible that such a charge may be protected by way of caveat.

- 902 3. A claim may be a judgement debt such as a Warrant of Execution or a Warrant of Sale. A lien will include a lien lodged under the Worker's Liens Act, 1893 but not a lien under the Liens on Fruit Act, 1923 which cannot be noted against a certificate of title.
- 902 4. Easements are discussed generally in Chapter 8.
- 902 5. The consent of a caveator is always required.

In all of the above, extreme caution should be exercised and where any doubt exists in the mind of a non legally qualified conveyancer or any person acting as such, the assistance of a solicitor should be sought before proceeding.

903 THE "STATUTORY ENCUMBRANCE"

The Act defines the term "statutory Encumbrance" to identify a class of encumbrance that should, by their very nature, be registered against the common property of a strata scheme. ← SEE 5.3 (1) STA

The Definition Clause of the Act states:

"statutory encumbrance" means—

1. *an agreement relating to the development, preservation or conservation of land lodged under Part 5 of the Development Act 1993;*
 2. *any agreement or proclamation registered or noted on the title immediately before the commencement of the Development Act 1993 that is continued in force by virtue of the provisions of the Statutes Repeal and Amendment Act 1993. (This relates to open space declarations).*
- ← SEE PARA 918 FOR FORM OF CONSENT TO A STRATA APPLICATION AND PARA 920 FOR FURTHER DISCUSSION

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- 903
3. *a heritage agreement entered into under the Heritage Act, 1993; the Native Vegetation Act 1991 and the Aboriginal Heritage Act 1988.*
 4. *an endorsement relating to a retirement village made on a certificate of title under the Retirement Villages Act, 1987;*
 5. *any other encumbrance created by statute and prescribed by the regulations for the purposes of this definition:*

904 APPLICATION FOR THE DEPOSIT OF A STRATA PLAN

The Strata Titles Act, 1988 provides for application to be made for the deposit of a strata plan in the Lands Titles Registration Office. The form of the application has been prescribed by the Registrar-General and is included in its entirety in Appendix A to this Chapter. Individual para's in this text will refer to relevant parts of the form only.

← SEE PART II
DIVISION II OF
STA GENERALLY
AND SCHEDULE 2,
CLAUSE 5

905 STRATA APPLICATION IS A DEALING WITH LAND

A strata application is a "dealing" with land as defined in the Real Property Act. This means that the application must be certified correct by a Solicitor, Licensed Land Broker or the person deriving benefit. A strata application is a priority registration document. The person deriving benefit is the applicant (registered proprietor), but keep in mind that a company cannot so certify a dealing.

906 "NEW" OR "EXISTING"

The Strata Titles Act, 1988 does not attempt to define the terms NEW or EXISTING but they have been retained in the applications from the previous legislation by the Registrar-General as the industries are familiar with them and nothing is gained by adopting new expressions.

The Act is written as if all schemes are "NEW", but preserves the concept of the "EXISTING" scheme as an option provided the scheme meets certain criteria. The Act identifies the existing scheme as a "prescribed building unit scheme", that is, where:-

← SEE SCHED. 2, C.5

- land was laid out as a building unit scheme consisting of **two or more** units designed for separate occupation, and,
- were erected before February 22, 1968.

← SEE SCHED. 2, C.5
(1)(a)

← SEE SCHED. 2 C.5
(1)(b)

These are the company and leasehold schemes described on Chapter 1 of this manual.

← SEE PARA 105

Separate applications for the deposit of a strata plan, using the same multi-purpose form, are prescribed by the Registrar-General for New and Existing schemes as they both serve different functions. E.g., an existing scheme is one where the units are considered to have been lawfully created and identified by a muniment of title, such as a lease, share certificate in a company etc., and as such, each unit owner is entitled to the issue of a certificate of title for their respective unit.

← SEE SCHED. 2, C.5
(2)

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- 906 The purchaser of a unit has in fact paid the equivalent of a purchase price for the unit for that muniment of title.

In contrast, a new scheme is one where certificates of title for all of the units issue in the name of the Applicant

As regards the prescribed building unit scheme, development (planning) approval to erect such a structure has been required for many years. This form of development is not land division and thus the unit is not an allotment within the meaning of Part XIXAB of the Real Property Act 1886. However, planning legislation has continued to identify them as parcels that can be dealt with (conveyed, mortgaged, sublet etc.) without the need for seeking development approval under the Development Act 1993 notwithstanding the fact that separate certificates of title cannot issue for them without approval through a division process.

← SEE S.32
Development Act
1993

Similar schemes can only be created at the present time with appropriate development approval under the Development Act 1993

Although units may be dealt with, the Strata Titles Act only allows those created prior to 22/2/68 to be converted without the need to make contribution to the Planning and Development Fund and to take other advantages prescribed on the Act.

← SEE PARA 708.3 &
Sched. 2, C.5 and
R.7 (5)

In other words, those created prior to that date may be lodged with the Registrar-General as an "EXISTING" scheme and those created after that date, as a "NEW" strata scheme.

One final word of warning. Applications have been lodged with planning authorities as existing schemes where only one of the units was erected prior to 22/2/1968. Such application must be lodged as a new scheme as the definition of prescribed building unit scheme requires two or more units to exist prior to 22/2/1968. This problem occurs mainly when units are added to an existing house and the applicant believes the contribution to the Planning and Development Fund will be waived as regards the pre-existing unit. If application is made as an existing scheme.

PRACTICAL EXAMPLES OF NEW AND EXISTING STRATA APPLICATIONS ARE SHOWN IN APPENDICES C AND D TO THIS CHAPTER.

907 DETERMINING THE AGE OF A SCHEME (NEW OR EXISTING?)

The question of how the age of a scheme is determined arises and in this regard the Regulations under the Development Act provide that the council give the date of erection of the buildings (if available) in a certification that must accompany the Land Division Certificate of DAC. However, a council may not have retained this information and therefore cannot give a date.

← SEE Regulations
under Development
Act, Twelfth
Schedule

The onus then falls on the person certifying the document correct for the purposes of the Real Property Act to use other means to ascertain the date of construction and make application in the appropriate form.

A general enquiry on the LOTS system against a property will, in most cases, give a date of construction of a building on the site. However, a problem may arise where extra construction has occurred after 22/2/1968 as this information will not be disclosed.

Where doubt exists as to the age of any part of the structure, the services of a licensed valuer can be sought to make an estimation of same. This can be done at the time of valuation for unit entitlements.

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908 THE APPLICANT

Application for the deposit of a strata plan can only be made by the registered proprietor of the land to which the plan relates. This applies regardless of whether the scheme is classed as a new or existing scheme.

← SEE S.7 (1)

The Act does not prevent an application to be made for the deposit of a strata plan that embraces two or more certificates of title that are in different ownerships. Special considerations do arise however, and these are discussed in this Chapter.

← SEE PARA 933
MULTIPLE
OWNERSHIPS

909 EXPRESSLY EXCLUDING AN EASEMENT

Section 36 of the Law of Property Act provides that an easement travels with the dominant land conveyed except where that conveyance excludes the easement. For example, an existing drainage easement through adjacent land may be required to be held appurtenant only to the common property. The easement can be expressly excluded as regards the units in the application as set out in *italics* in Figure 46.

← SEE PARA 803.5

Note that this provision should not be used to exclude a dominant right from the whole of the site; an extinguishment as described in Chapter 8 should be used in that case.

It is of particular importance in the case here that where an easement created as a condition of approval of a plan of division (including a resubdivision under previous planning legislation) is to be expressly excluded from part of the site, the precautions given in Para 804 must be followed.

910 LAND MUST BE AN ALLOTMENT OR ADJACENT ALLOTMENTS

An application for the deposit of a strata plan can only be made in respect of the whole of the land comprised in one or more allotments. An allotment is described in the Act as meaning the whole of the land in a certificate of title.

As defined in the Strata Titles Act, two or more allotments are adjacent when they:-

← SEE SS.3 (1) (Def. of "Allotment") & 5 (2) and S.3 (2) Def. of adjacent

- (a) abut on the other land; or
- (b) are separated from the other land only by--
 - (i) a road, street, footpath, railway or thoroughfare; or
 - (ii) a reserve or other similar open space.

It therefore follows that where more than one allotment (as defined in the Real Property Act) occurs in a certificate of title and a strata plan is to be lodged in respect of one (or all but one, etc) of those allotments, a separate request for a certificate of title to issue for the allotment(s) not included in the strata application prior to registration of the application, must be endorsed on the application form. A request for a separate certificate of title to issue for the allotment(s) included on the strata application is an unnecessary expense as the strata application can be registered on the now partially cancelled certificate(s) of title as it will now fit the definition of an allotment of being the whole of the land in a certificate of title.

Where land in a certificate of title, the subject of a strata application, is not an allotment within the meaning of the Real Property Act, 1886, a land division application must precede the strata plan in order to create an allotment.

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910 Care should also be taken to ensure that the land is not subject to an old but active plan of resubdivision that contains a condition of approval involving other land, in either the same title an adjacent title, that must be fulfilled before a dealing with the land can be registered. Where this occurs, the condition must be fulfilled or a plan of division produced to annul that condition and re-establish the land as an allotment.

911 THE STRATA APPLICATION

1. An application for the deposit of a strata plan must give:-

- The type of the scheme; NEW or EXISTING. See Figure 45
 - A description of the land (by reference to the relevant certificate(s) of title or portion thereof if appropriate). See Figure 46 for the appropriate panel in its completed form.
 - The postal address of the proposed corporation (taken from the council certificate of certification that must accompany the land Division Certificate of DAC). See Figure 47 for the correct way to show this address.
 - A Schedule of Unit Entitlements. The schedule completed in its required form is shown in Figure 48. ← SEE CHAPTER 5
 - The date of execution. Must not predate the Land Division Certificate of DAC.
 - Full name(s), address(es) of the applicant(s). See Figure 50 for the appropriate panel completed as required.
 - The consent of every person:-
 - with an encumbrance registered in the land. The term "encumbrance" is defined in the Act and is discussed in Para 902. A caveat in this definition means a caveat, permissive or absolute. ← SEE PARA 902; S.7 (3) & SCHED. 2 C.5 (3)(b) & (c) ← SEE PARA 902.2
 - in the case of an existing scheme, all persons in whom are vested the predominant rights to ownership of a unit. ← SCHED.2 C.5 (3)(a) SEE ALSO PARA 105
- Various examples of the consent panel for applications for both new and existing schemes are shown in Figures 51 and 54 respectively. ← SEE SCHED. 2 C.5 (3)(a)
- A Schedule of Mode of Issue. The Schedule of Mode of Issue for both NEW and EXISTING schemes are shown in their completed form in Figures 52 & 55 respectively.

911 2. Proof of signatures of the applicants are required. Proof of signatures of persons consenting is not required.

911 3. On lodgement the application must be accompanied by:-

- The original of the strata plan containing the certificate of a licensed surveyor to the effect that the conforms with the requirements of the Act and Regulations. ← SEE S.7 (4)(a) & (d) & R.5 (1) & (2) & First Schedule

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- 911.3
- Duplicate copies of all leases and underleases (both lessees and lessors copies) to be extinguished by the deposit of an existing strata plan. Where a lessee's copy is lost an application to dispense with production is necessary. If a lessor's copy is lost, a statement to that effect must be endorsed on the application.
 - All share certificates in respect of a company registered under Corporations Law formed for the purpose of administering a "company title scheme". ← SEE S.7 (6) & (7), & PARA's 803 & 930
 - Duplicate certificate(s) of title for the land and that of any land where;
 - a consent is required to be noted for the encroachment of part of the structure, and
 - any land affected by the extinguishment or variation of an easement.
 - Any document to be registered in fulfilment of a condition of approval by the planning authorities. ← SEE S.7 (4) (f) & (g); S.17b AND PARA's 809-815 AND 926
 - The Land Division Certificate of the Development Assessment Commission. ← SEE S.7 (4)(c)
 - The certificate of a licensed valuer certifying that the schedule of unit entitlements is correct. A recommended form of certificate is shown in Appendix B to this Chapter. ← SEE S.7 (4)(e)
 - Any other documentary material as the Registrar-General may require. This may include a development approval (formerly planning authorisation) for a lease that has become registered in respect of portion of the land in a unit as the result of the deposit of the plan and share certificates if the scheme was formerly a company title scheme. ← SEE S.7 (4)(g) AND PARA 935.2
- 912 **NEW SCHEME - COMPLETING PANEL 1** ← SEE PARA's 921-921 FOR EXISTING SCHEMES
- Correct completion of this panel is imperative as it determines the manner in which titles issue from the Schedule of Mode of Issue, fees payable to the Planning and Development Fund and the nature of instruments that must accompany the application. Insert "NEW" or "EXISTING" as the case may be. See Figure 45. ← SEE ALSO APPENDIX C TO THIS CHAPTER FOR PRACTICAL EXAMPLE

Form A.6 (See Note 3)	APPLICATION FOR THE DEPOSIT OF A STRATA PLAN (Pursuant to the Strata Titles Act 1988)
TYPE OF SCHEME (Delete the inapplicable) (See Note 4)	<u>NEW/EXISTING-SCHEME</u>

Figure 45 **PANEL 1 TYPE OF SCHEME**

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913 COMPLETING PANEL 2 - PROPERTY DESCRIPTION

Panel 1 of the application for the deposit of a strata plan sets out the description of the land being divided. This panel also sets out any land purchased and added to the site immediately prior to the application and not yet registered and any easement to be expressly excluded as regards portion of the site.

To keep a property description as simple as possible, it is preferable to refer to the whole of the land in an instrument lodged on the same series, than to recite a description of the land or easement.

An existing easement and an easement created appurtenant to the site immediately prior to lodgement of the strata application need not be recited unless it is to be expressly excluded from part of the site.

See figure 46 where the above mentioned points are illustrated.

← SEE PARA'S 803.5
AND 805

Certificate(s) of Title Affected (See Section 5(2) of the Act)	<p>THE WHOLE OF THE LAND COMPRISED IN Certificates of Title Register Book Volume 5200 Folio 123 and Volume 5390 Folio 690 and the whole of the land in memo of transfer from to the applicant(s) dated .../.../19.. and lodged contemporaneously hereto and being portion of the land in certificate of title Register Book Volume Folio ...</p> <p><i>[(This clause to be included only when expressly excluding an easement created by an instrument in the same series) Together with the easement (or free and unrestricted right of way) for water supply purposes set forth in Memorandum of creation of easement from the applicant to him/herself (or recite name of other party) dated/19.. and lodged contemporaneously hereto and being portion of the land in Certificate of Title Register Book Volume 1234 Folio 56.]</i></p> <p><i>Expressly excluding from the units (or recite any relevant portion of the scheme) delineated on the accompanying strata plan the easement for water supply purposes described in the said certificates of title (or in the case where only one CT is recited, "...therein described".</i></p>
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Figure 46 PANEL 2 OF STRATA APPLICATION - SHOWING LAND DESCRIPTION WITH EXAMPLES OF PRE-EXISTING EASEMENTS RECITED AND OR EXPRESSLY EXCLUDED.

914 NEW SCHEME - COMPLETING PANEL 3 - THE POSTAL ADDRESS

A council has the responsibility of determining the address of the buildings of the site, also regarded as the address of the strata corporation.

← SEE S.14 (13)

The Act also provides for a strata corporation to keep a letter box on the site, or in the absence of a postal delivery service, the corporation must keep a post office box.

← SEE S.49

The council must give the address of the buildings on the site in its certificate that must accompany the Land Division Certificate of DAC, eg., 5 Smith Street Redbanks 5888. This address must be inserted in Panel 3 as the postal address of the site and will be recorded as such on the records of the Lands titles Registration Office.

However, where there is no postal delivery available to the site, the postal address must be a post office box number. In this case both addresses should be shown in the manner show in Figure 46 below.

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The post office box will, in this case, be the address recorded in the records of the Lands titles Registration Office.

Address of Corporation as shown on Council Certificate Accompanying Land Division Certificate	THE POSTAL ADDRESS OF THE CORPORATION WILL BE
	PO BOX 123 REDBANKS 5888
	(THE ADDRESS OF THE SITE IS 5 SMITH St. REDBANKS 5888)

Figure 47 PANEL 3 - THE POSTAL ADDRESS OF STRATA CORPORATION

915 COMPLETING THE SCHEDULE OF UNIT ENTITLEMENTS

Unit entitlements of the units in the scheme must be set out in this panel.

Unit entitlements must be certified correct by a Licensed Valuer who must supply a certificate to that effect.

← SEE SS.7(4)(E) AND 12(3)(c)(iii) AND CHAPTER 5.

This certificate must be produced with any application for the deposit of a strata plan (and amalgamation of adjacent strata schemes and where the delineation of units or common property is affected, with an application for the amendment of a strata plan.

The unit entitlements of a scheme must always add up to 10,000

← SEE R.4

Figure 48 shows the manner on which the schedule is completed.

SCHEDULE OF UNIT ENTITLEMENTS	
UNIT NUMBER	UNIT ENTITLEMENTS
1	1750
2	1680
3	1660
4	1660
5	1650
6	1600
AGGREGATE UNIT ENTITLEMENTS	10 000

To which the accompanying certificate of a Licensed Valuer relates

Unit entitlements must be in whole numbers

Figure 48 THE SCHEDULE OF UNIT ENTITLEMENTS

916 THE OPERATIVE CLAUSE

The operative clause is fixed and cannot be amended or altered in any way.

It comprises a request by the applicants to deposit the accompanying strata plan in the Lands Titles Registration Office and to issue new certificates of title for the units in the names set out in the Schedule of Mode of Issue and a new certificate of title for the common property in the name of the Strata Corporation.

The date of execution must be inserted here. See figure 49.

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916

TO THE REGISTRAR-GENERAL,

I/WE THE APPLICANTS, HEREBY APPLY TO YOU TO DEPOSIT THE ACCOMPANYING STRATA PLAN IN THE LAND TITLES REGISTRATION OFFICE AND TO ISSUE SEPARATE CERTIFICATES OF TITLE FOR THE UNITS DEFINED THEREON IN THE MANNER SET OUT IN THE SCHEDULE AT THE FOOT HEREOF AND A SEPARATE CERTIFICATE OF TITLE FOR THE COMMON PROPERTY IN THE NAME OF THE CORPORATION FORMED BY THAT DEPOSIT.

DATED THE 17 DAY OF October 1993

Figure 49 THE OPERATIVE CLAUSE

917 COMPLETING THE APPLICANT(S) EXECUTION PANEL

Applicants are always the registered proprietor(s) of the land being strata titled regardless of the type of scheme.

Execution is made as in the case of any other dealing lodged for registration in the Lands Titles Registration Office.

The signatures of private persons must be witnessed and signatures proved in the manner required by the Real Property Act 1886.

If the applicant is a company, the execution appropriate for that company (seal, power of attorney, etc) must be made.

APPLICANT(S)			
	FULL NAME, ADDRESS	EXECUTION	WITNESS
Application can only be made by Registered Proprietor(s) (proof required)	XYZ BUILDING CO. (ACN) of 21 Sturt Street. Redbanks 5888	Common Seal, or XYZ BUILDING Co. by its Attorney Robert Jones of 26 Grenfell Street Adelaide 50000 Agent	N/A, or Legal signature of independent adult witness
	OR		
	Harry Oswald Black of 56 Alfred Place Redbanks 5888 Builder, and Sarah Adelaide Black or 56 Alfred Place Redbanks 5888 Secretary	Legal Signature of H..O. Black Legal Signature of S.A. Black	Legal signature of independent adult witness Legal signature of independent adult witness

Figure 50 THE APPLICANT(S) PANEL

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918 NEW SCHEME - COMPLETING THE CONSENT PANEL

← SEE PARA 923 FOR EXISTING SCHEM

The consent panel must contain the consent of any person having a registered estate and interest in the land other than that of the registered proprietor and the owner of adjacent land upon which part of the strata structure is encroaching. This will include the consent of persons affected by the extinguishment or variation in position of an easement including encumbrancees having a registered interest in the dominant tenement, and which may include that of a council to the merger of an easement at the Registrar-General's initiative. The signatures of private persons need not be proved but must be witnessed.

← SEE PARA 808 re using the R-G's initiative

In the case of statutory encumbrances the following consents are required:-

← SEE PARA 903

- Land Management Agreement, the council or the Minister of Housing, Urban Development and Local Government Relations as the case requires.

- The concept of Open Space Declarations is discontinued by the Development Act, however the Statutes Repeal and Amendment (Development) Act 1993 preserves those already existing. An Open Space Declaration was a proclamation by the Governor on advice from the Minister (Housing, Urban Development and Local Government Relations). In the rare circumstance that a proclamation will allow the division of land, the consent of the Minister is required.

Where land, the subject of a strata application is subject to an open space declaration, revocation of the declaration may, depending on the proposed land use, may be necessary. This should be attended to at the time of seeking development approval. A developer should allow plenty of time for this as the revocation process is lengthy.

- An agreement for the development, preservation or conservation of land under the City of Adelaide Development Control Act 1976, the consent of the council must be endorsed. An authorized officer of the council may sign. This Act is now repealed, however, the force and effect of an agreement under it remains by virtue of Section 16 of the Acts Interpretation Act 1915.

- A Heritage Agreement under;

- The Heritage Act (past and present), The Native Vegetation Act 1991, The Aboriginal Heritage Act;

the Minister of Environment and Natural Resources.. Enquiries can be made to the relevant Branch of the Department of Environment and Natural Resources.

- An endorsement relating to the Retirement Villages Act 1987, the Commissioner of Consumer Affairs.

A developer should seek any consent at an early stage as the process may be time consuming. Keep in mind that a the Minister will need to seek advice from officer of the Department before making a decision to consent. Refusal can also cause a problem for the developer, and early knowledge of this is vital

Figure 51 shows the manner in which the panel should be completed.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

918

I/WE, BEING ALL THE PERSONS WHO HAVE REGISTERED ESTATES OR INTERESTS IN THE LAND, OR IN WHOM ARE VESTED THE PREDOMINANT RIGHTS TO THE EXCLUSIVE USE AND OCCUPATION OF THE UNITS DEFINED ON THE ACCOMPANYING STRATA PLAN, HEREBY CONSENT TO THE DEPOSIT OF THE SAID PLAN (See Note 6)			
FULL NAME AND ADDRESS	PARTICULARS OF ESTATE AND INTEREST	SIGNATURE/SEAL OF CONSENTING PERSONS	WITNESS
ABC BANK of 900 King William St. Adelaide 5000 (ACN)	Mortgagee by virtue of M8901234	common seal (P/A.)	N/A (independent adult witness)
Alan Green of 23 Smith Street. Redbanks 5888 Chemist	Lessee by virtue of L5678901	Legal Seal of A. Green	Independent Adult Witness
Helen Morris of 7 Smith St. Redbanks 5888 Beautician	Registered Proprietor of CT 2345/67 consents to the variation of easement marked X on CsT 5200/123 and 5390/690 to Y in FP39999 (or SP).	LS of H. Morris	Independent Adult Witness
Joanne Smart of 3 Smith St. Redbanks 5888 Shop Proprietress	As caveator of X 8899123	LS of J. Smart	Independent Adult Witness
Minister of Housing, Urban Development and Local Government Relations	As party to Land Management Agreement AG6756432	Delegate of Minister	N/A
City of Redbanks of 44 Main St. Redbanks 5888	Consenting to the merger of easements in the fee simple of public streets by virtue of deposit of this strata plan. as Authorised officer (under seal)	

Figure 51

PANEL 6 - CONSENTS OF PERSONS HAVING REGISTERED INTERESTS

STRATA FACTS

919 NEW SCHEME - COMPLETING THE SCHEDULE OF MODE OF ISSUE

← SEE PARA 924 FOR EXISTING SCHEME

In a strata scheme "The schedule of Mode of Issue" tells the Registrar-General in whose name(s) the certificates of title for the units in a strata scheme are to issue. In a New Scheme, the certificates of title will issue in the name of the registered proprietor(s) in the mode of holding registered on the current certificate(s) of title.

Figure 52 shows the manner in which the Schedule of Mode of Issue (in a truncated version) may be completed in a new scheme.

<u>SCHEDULE OF MODE OF ISSUE</u>	
To be completed regardless of type of scheme	
UNIT NUMBER	NAME, ADDRESSES OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS
Units 1-6 inclusive	XYZ Building Co. of 21 Sturt Street Redbanks 5888

Figure 52 THE SCHEDULE OF MODE OF ISSUE, NEW SCHEME

920 NEW SCHEME - EFFECT OF DEPOSIT ON AN ENCUMBRANCE (OTHER THAN A STATUTORY ENCUMBRANCE)

← SEE PARA 925 FOR EXISTING SCHEME

The Strata Titles Act requires an encumbrance, other than an easement to be carried onto the certificates of title that will issue for the units of a strata scheme on deposit of the plan, and discharges them from the certificate of title that will issue for the common property. The encumbrance is discharged to the extent that it is not registered on that certificate.

← SEE S.8 (6) STA AND PARA 927. SEE ALSO PARA 926 FOR EFFECT ON STATUTORY ENCUMBRANCE

As stated earlier an easement may be extinguished in part or wholly or varied in position on deposit of a strata plan.

921 EXISTING STRATA SCHEMES

← SEE PARA 906 AND C.5 SCHEDULE 2 AND SEE PARA 105 FOR PRE-DOMINANT OWNERSHIP SEE ALSO APPENDIX D FOR FURTHER EXAMPLE

There are some intrinsic differences in the nature and affect of NEW and EXISTING scheme applications. All of the provisions of Para's 901 - 911 and 913 to apply to either scheme except where otherwise stated. The EXISTING scheme application is made by the registered proprietors of the Certificate(s) of title for the land notwithstanding that they may also be the predominant owner (lessee, owner of shares in a company formed for the purpose, etc) of a unit. A predominant owner means the owner of a predominant right to ownership of a unit. This predominant right is by virtue of the fact that the owner has, in effect, purchased the unit notwithstanding that a separate certificate of title cannot issue for the unit.

The areas where an application for an existing scheme differ from an application for a new scheme are in PANEL 1, the CONSENT PANEL and the SCHEDULE OF MODE OF ISSUE.

PANEL 1 is completed by inserting the word "Existing". See Figure 53.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

921

Form A.6 APPLICATION FOR THE DEPOSIT OF A STRATA PLAN	
(See Note 3)	(Pursuant to the Strata Titles Act 1988)
TYPE OF SCHEME (Delete the inapplicable) (See Note 4)	<u>NEW/EXISTING SCHEME</u>

Figure 53

PANEL 1 TYPE OF SCHEME

922 EXISTING SCHEME - COMPLETING APPLICANTS EXECUTION PANEL

Depending on the nature of the scheme, the applicants will be a company or a private individuals, the latter usually as tenants in common. There is no need to express the share held by each individual. See Figure 50 for the form of the panel.

923 EXISTING SCHEME - COMPLETING THE CONSENT PANEL

All persons having a registered estate and interest in the land, except for the registered proprietor(s), and every person having an unregistered predominant right in a unit must consent. These consents will include:-

← SEE Sched. 2, C.5
(3) STA

- Lessees, underlessees (may be predominant owners).
- Owners of share certificates in a company signifying the right to sole occupation of a unit (predominant owners).
- mortgagees of the fee simple, lease, underlease.
- caveators, judgement creditors, lienors, etc.
- In the case of a statutory encumbrance, the authorities mentioned in Para 918.
- The owner of an easement affected by an extinguishment or variation on deposit of a strata plan, including the proprietor of any registered interest in the dominant tenement.
- Consents of adjacent land owner(s) to an encroachment.

Sample forms of consent encountered in an existing scheme are shown in Figure 54.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

923

I/WE, BEING ALL THE PERSONS WHO HAVE REGISTERED ESTATES OR INTERESTS IN THE LAND, OR IN WHOM ARE VESTED THE PREDOMINANT RIGHTS TO THE EXCLUSIVE USE AND OCCUPATION OF THE UNITS DEFINED ON THE ACCOMPANYING STRATA PLAN, HEREBY CONSENT TO THE DEPOSIT OF THE SAID PLAN.

FULL NAME, ADDRESS OF PERSON	PARTICULARS OF ESTATE AND INTEREST	SIGNATURE/SEAL OF CONSENTING PERSONS	WITNESS
John Doe of 1/25 Jones Street Greenbanks 5889 Fisherman	As lessee vide L1234567	legal signature of J. Doe	Independent adult witness
Henry Black of 49 Main Street Greenbanks 5889 Clerk.	As underlessee by virtue of UL2346789	LS of H. Black	Independent adult witness
Thomas Wright Engineer and Mary Wright his wife of 1/22 Ascot Avenue Greenbanks 5889	Caveator under caveat 4756289 for the predominant ownership of Unit 1 vide ownership of shares in X Co. Pty. Ltd. and hereby consents to the discharge of the said caveat.	LS of T. Wright and M.Wright.	Independent adult witness(s)
Richard Rohan of 2/22 Ascot Avenue Greenbanks 5889 Electrician.	The predominant ownership of Unit 2 vide ownership in shares in X Co. Pty. Ltd.	LS of R. Rohan	Independent adult witness
XY Bank of 950 King William Street Adelaide (ACN)	Mortgagee by virtue of mortgage of underlease M6262521	common seal or P/A	N/A (witness)
ABC Bank of 900 King William Street. Adelaide 5000 (ACN)	As Mortgagee of M1897654 and hereby consents to the discharge thereof.	common seal or P/A	N/A (witness)

Execution of Parties other than Applicants e.g. Mortgagee. Encumbrancee. Lessee. Easement Owner Caveator Etc.
(proof of signature is not required)

Figure 54

PANEL 6 - SAMPLE CONSENTS OF PERSONS HAVING REGISTERED INTERESTS - EXISTING SCHEME

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

924 EXISTING SCHEME - SCHEDULE OF MODE OF ISSUE

The purpose of the Schedule of Mode of Issue is to identify the predominant owners in whose name(s) each unit will issue together with the mode of holding. Each unit title will issue in the name of that predominant owner.
See Figure 55 for an example.

← SEE C.5.(4)(c) OF SCHED. 2

SCHEDULE OF MODE OF ISSUE		
To be completed regardless of type of scheme	UNIT NUMBER	NAMES, ADDRESSES AND OCCUPATIONS OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS
	1	Alfreda Brown of 26 Smith Street Greenbanks 5888 Nurse
	2	Roger Ramset of 2/55 Smith Street Greenbanks 5888 Construction Worker
	3	Henry William Black Clerk and Helena Harriet Black Music Teacher both of 3/55 Smith Street Greenbanks 5888 as tenants in common
	4	Margaret Stowe of 4/55 Smith Street Greenbanks 5888 Widow

Figure 55

THE SCHEDULE OF MODE OF ISSUE

925 DISCHARGE OF INTERESTS ON DEPOSIT OF AN EXISTING STRATA SCHEME

The Strata Titles Act provides that all interests (except statutory encumbrances), registered and unregistered, are discharged on the deposit of a strata plan. The reason for this is twofold:-

- 925 1. Certain interests, such as those that give a predominant right to the separate use and occupation of a unit or caveats that may protect an unregistered predominant right, are satisfied by the deposit of the strata plan and issue of separate certificates of title for the units.
- 925 2. Other interests that should remain registered against the predominant right, such as mortgages, etc., are difficult to identify against relevant units.

Note: Where an interest is required to subsist against a unit, an instrument in substitution of that interest must be produced with the strata application. If there is more than one interest to be substituted, the substituted documents must be produced in same order of priority as originally registered.

← SEE PARA'S 927 AND 928

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

926 STATUTORY ENCUMBRANCE - EFFECT ON BY DEPOSIT OF PLAN

Unlike other forms of encumbrance, a Statutory Encumbrance may be carried forward onto all certificates of title that will issue on deposit of the plan, including the certificate of title for the common property as may be appropriate by the nature of the instrument. This applies regardless of the type of the scheme.

← SEE S.8 (7) AND
PARA 903

The relevant authority should give specific instructions where the encumbrance is not required to be carried forward onto certificates of title for part of the scheme.

927 DISCHARGING FEATURE OF ACT SHOULD NOT BE USED IN SOME CASES

It was never intended that the extinguishing operation of Clause 5 of the Second Schedule should be availed of for the purpose of merely extinguishing from the Register Book a registered estate or interest in the nature of a mortgage/encumbrance, caveat or a lease that is not representative of a predominant right of ownership. If a mortgage has been paid off, or the claim of a caveator has been satisfied, prior to the lodgement of the strata plan, it will not be sufficient for the mortgagee or caveator to merely allow the mortgage, caveat or whatever to be extinguished automatically upon the deposit of the plan. In such circumstances, the correct procedure is for the interest to execute a formal discharge of the mortgage, or for the caveator to sign a withdrawal of the caveat, and the discharge or withdrawal should be lodged either before, or contemporaneously with, but first in series to, the lodgement of the strata plan and the accompanying application.

Save where the circumstances last-mentioned exist, for every registered interest or caveat which is extant on the register book at the time of the lodgement of the strata plan, there must be lodged a substituted interest or caveat. Upon the deposit of the strata plan and the issue of strata certificates of title for the units the Registrar-General must register any substituted instrument on the relevant certificate or certificates of title.

928 SUBSTITUTED INTERESTS

Instruments that fall into the class of Para 925 2. above must be reinstated as interests registered on the certificate of title that will issue for their relevant unit.

To protect interests that are to remain, the Act also provides that instruments in substitution for the discharged interest may be lodged with the strata application for registration after deposit on the new certificate(s) of title for the relevant unit(s).

← SEE Sched. 2 C.5
(4)(b)

The concept of a substituted instrument is bound up with the short circuit procedure provided for in the Act for the conversion to strata titles of existing building unit schemes. The person who is the factual owner of a unit under the prevailing title method - whether predominant rights to the exclusive use and occupation of the unit are vested in him/her under a lease or underlease or agreement or ownership of shares - is given a strata certificate of title for his/her unit upon the deposit of the strata plan. Thus, if the predominant owner holds under a registered lease or underlease, their estate as lessee or underlessee is extinguished and he/she is presented with an estate in fee simple in the stratum which the unit (including any unit subsidiary) occupies.

← SEE Sched. 2, C. 5
(4)(c)

Every registered estate or interest - including mortgages, encumbrances and caveats subsisting over the parcel or any portion thereof is also extinguished and discharged. Therefore it was necessary to supply some machinery whereby the title or rights of persons such as mortgagees, encumbrancees and caveators might be resurrected upon the issue of the strata certificates of title. To this end the legislation provides for the execution of substituted instruments, which must be lodged at the same time as the strata application.

STRATA FACTS

- 928 The policy of the Registrar-General is to refuse lodgement of any instrument which requires stamping but is not stamped. This presents difficulties for, in the case of a substituted mortgage, the Commissioner of Stamps will not stamp it until the primary mortgage is discharged.

In the present circumstances the primary mortgage will ultimately be extinguished and discharged by force of the Act, but this will not eventuate until after the strata plan has been deposited. Thus the following compromise has been evolved:-

- (a) If the principal sum stated in the substituted mortgage is greater than the sum secured by the primary mortgage, the primary and substituted mortgages must be submitted to the Commissioner of Stamps, together with an opinion form, before the strata plan is lodged with the Registrar-General. If the Commissioner determines that any stamp duty is payable (for the excess) such amount must be paid to him forthwith and the substituted mortgage will then be stamped for such amount.

The opinion form must then be attached to the substituted mortgage and this mortgage, together with the duplicate copy of the primary mortgage, must be lodged with the strata plan.

- (b) If the principal sum stated in the substituted mortgage is not greater than the amount specified in the primary mortgage, the substituted mortgage need not be submitted to the Commissioner, but with an opinion form attached thereto, must be lodged with the Registrar-General contemporaneously with the strata plan.

NOTE:- Stamping by returns by authorised financial institutions can be used in this case.

In either case, when the strata plan is ready for deposit by the Registrar-General he/she will forward both the primary and the substituted mortgage to the Commissioner, advising that the plan is ready for deposit and that the primary mortgage will be cancelled upon the deposit of the plan. The Commissioner will forthwith stamp the substituted mortgage as "adjudged duly stamped" and return both mortgages to the Registrar-General.

Where a caveat has been entered in the register book to give notice of an equitable interest in the whole or portion of the parcel it may be necessary for a substituted caveat to be prepared and lodged at the same time as the strata plan. Any caveator must consent to the application to the Registrar-General as being a person having a registered estate or interest within the meaning of the Strata Titles Act. As with other subsisting registered estates and interests the caveat will be extinguished upon the entry by the Registrar-General of a memorandum of the application on the certificates of title relating to the parcel. Thus, the caveator must be allowed the right to lodge a fresh caveat in respect of his claim and to have it entered on the relevant strata certificate or certificates of title when issued.

In this connection it was necessary to overreach the provision of paragraph XI of Section 191 of the Real Property Act, 1886, which enacts that "it shall not be lawful for any caveator other than the Registrar-General, or for anyone acting on behalf of such caveator, to lodge a further caveat relating to the same matter without the leave of the Court". This prohibition is surmounted by the provision of Clause 5.(4)(b) of Schedule 2 of the Act.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

929 PROPERTY DESCRIPTION OF SUBSTITUTED INSTRUMENTS.

Any substituted instrument which is required to be registered must identify the land to which it relates by reference to the relevant unit or units shown on the strata plan. At the time of execution of the substituted instrument the strata plan will have been prepared but may not have been lodged with the Registrar-General and a deposit number may not be available. It is suggested therefore, that the description of the property in the substituted instrument be as follows -

UNIT 1 (or UNITS 1 to 4 inclusive as the case may require) being portion of the parcel comprised in Certificate(s) of Title Register Book(s) Volume(s) Folio(s) in respect of which a strata plan is about to be deposited in the Lands Titles Registration Office. (or refer to strata plan number which is available at time of lodgement of plan at Plans Section counter).

In the alternative, a copy of the strata plan may be attached to the instrument and the property described as follows -

UNIT 1 (or UNITS 1 to 4 inclusive) as delineated in the copy of strata plan attached hereto (which said strata plan is about to be deposited in the Lands Titles Registration Office) and being portion of the parcel comprised in Certificate(s) of Title Register Book(s) Volume(s) Folio(s).

930 ENCROACHMENTS BY THE STRATA STRUCTURE ON ADJOINING LAND

Problems arise from time to time where there is an encroachment of buildings of a proposed strata scheme on adjoining land. The Act provides resolutions for 3 types of encroachment and reference will be made to the accompanying diagrams in Figures 56 to 59 inclusive.

930 1 Where any part of a building encroaches onto public land.

← SEE Figures 6,32

This includes streets and roads etc., reserves, and any land controlled or managed by a Council. The balcony in Figure 57 illustrates this. The Council, if it agrees to the encroachment, must give its consent on the certificate that must accompany the Land Division Certificate of DAC.

Once given and the strata plan is deposited, the **consent is binding on Council and its successors in title**. Hence if a road is closed or a reserve(etc.) is sold, the consent is also binding on a purchaser. The Registrar-General will enter, as a matter of policy, a note of the consent on the original certificate of title for public land (if applicable) affected by an encroachment. Council need not produce any duplicate certificate in its possession. The Lands Titles Registration Office will request production of the certificate, however if not produced, the Register Book will be noted.

The repealed Act made provision only for encroachments on or over public streets. The Strata Titles Act,1988 broadens the scope to include reserves vested in a council and land managed or controlled by a council. This is considered to include any land (including streets and roads) that are privately owned but under the care and control of a council by virtue of any statutory power.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

930 2 **Where any part of a building, other than footings, encroach over adjacent privately owned land, by overhanging or cantilevering.**

The Registrar-General may deposit the plan if he/she is satisfied that the encroachment is otherwise authorised by law. The obvious solution would be to grant an easement for overhanging eaves, gutters, walls, etc. The area marked "X" on Figure 57 and "P" on Figure 59 represent overhanging eaves. Another solution would be to purchase the fee simple of the land by means of land division.

930 3 **Where an encroachment occurs over adjoining privately owned land and includes the footings of the building by not more than 0.20 m (8").**

The area marked "Y" on Figure 57 and "Q" and "R" on Figure 59 show encroachments by footings and other parts of the structure supported by those footings. As it is not possible at law to grant an easement to provide for the occupation by a building that sits on the surface or in adjoining land consideration must be given to using Section 7 (6)(b)(ii) which provides that where footings of a building encroach beyond the site, the adjoining owner may give his/her written consent, in the form required by the Registrar-General, to that encroachment.

← SEE PARA 932

The consent is binding on the owner and successors in title. The duplicate certificate(s) of title of the land must be produced for a note to that effect to be endorsed upon it.

*Eg., "The within land is subject to an encroachment under SP
..... pursuant to Section 7 of the Strata Titles Act, 1988,
vide Strata Application No."*

Parties having a registered encumbrance over the adjoining land are not required to consent.

An alternative solution would be to purchase the fee simple by division under the planning system. It has been found in the past that some adjoining owners have been reluctant to sell any land, as such a division may have an adverse affect on the viability of their land.

It should be noted that the solutions provided in this legislation should not be regarded by a developer as an invitation to be careless and encroach. A developer should keep in mind that an adjoining owner may not be co-operative and the solution may be by an action in the Supreme Court pursuant to the Encroachments Act, 1944, the result of which may go against the developer.

← SEE PARA 1305
CANCELLATION OF
A STRATA SCHEME

931 **STATUTORY LIMITATION ON USE OF CONSENT TO ENCROACHMENT**

Figure 56 shows a side elevation of a strata scheme in which there are encroachments on adjoining private land. The footings and the wall of the structure fall within the category of Para 930.3 above and are within the limits prescribed by S.7 (6)(b) (ii) of the Act and Regulation 5.

STRATA FACTS

931

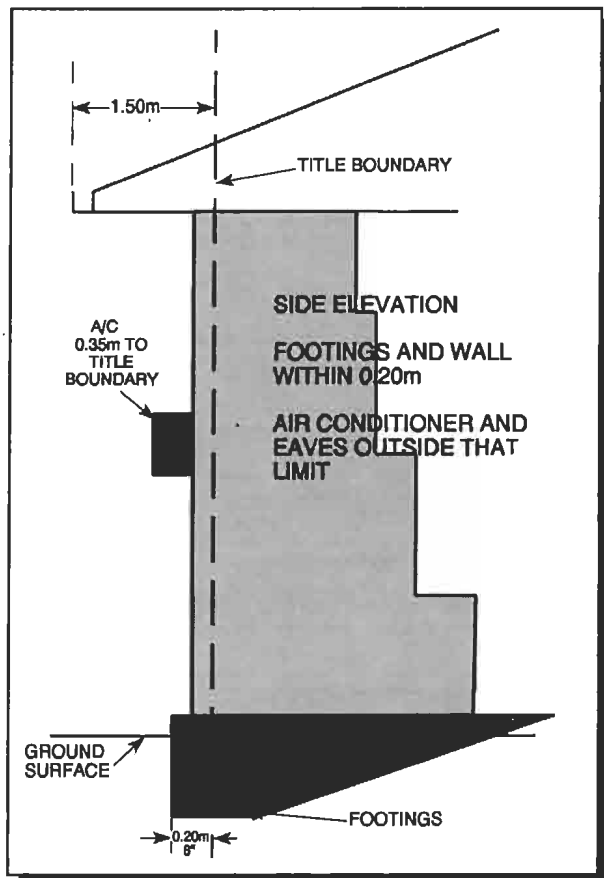


Figure 56

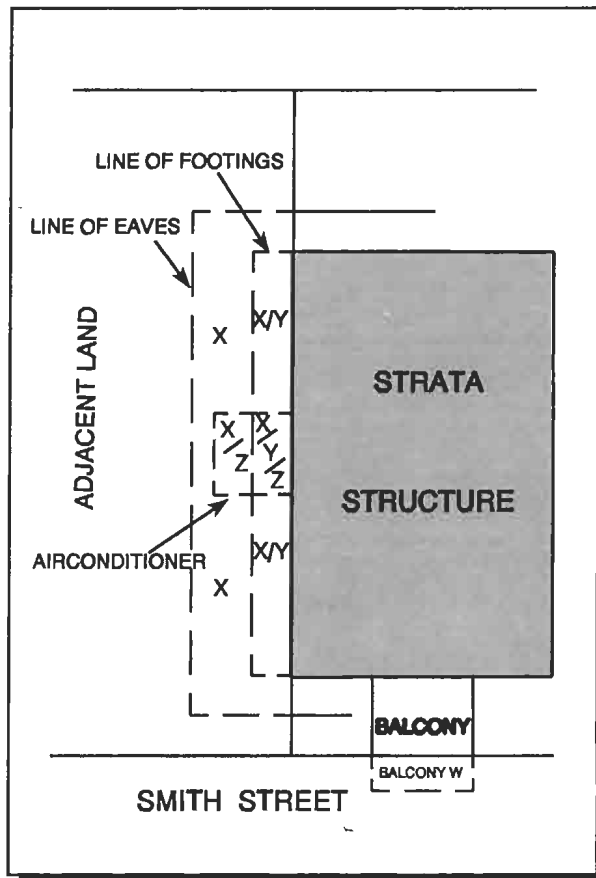


Figure 57

Regulation 5 provides that where footings and any part of the structure that sit upon those footings and any attachment to the structure, including part of the roof, protrude by not more than 0.20 metres (8" imperial) or such other distance as the Registrar-General may determine in a particular case, the Registrar-General may deposit the plan provided the owner of the adjacent land consents in writing. However, where any part of the structure projects by more than 0.20 metres, the encroachment must be otherwise authorized by law, such as those discussed in Para 930.3.

Figure 57 shows how encroachments may be shown on a strata plan. The areas marked "X" and "Z" are eaves and air-conditioning unit that project by more than the prescribed limit beyond the boundary of the land and must be authorised by way of easement, etc. The area marked "Y" represents the footings and wall that lie within the prescribed distance and can be authorized by the consent of the adjacent owner in writing.

Similarly, Figure 58 shows footings and an air-conditioning unit, marked "Q" and "R" in Figure 59, project beyond the land boundary within the prescribed limit and eaves, marked "P" in Figure 59, that lie outside that limit.

STRATA FACTS

931

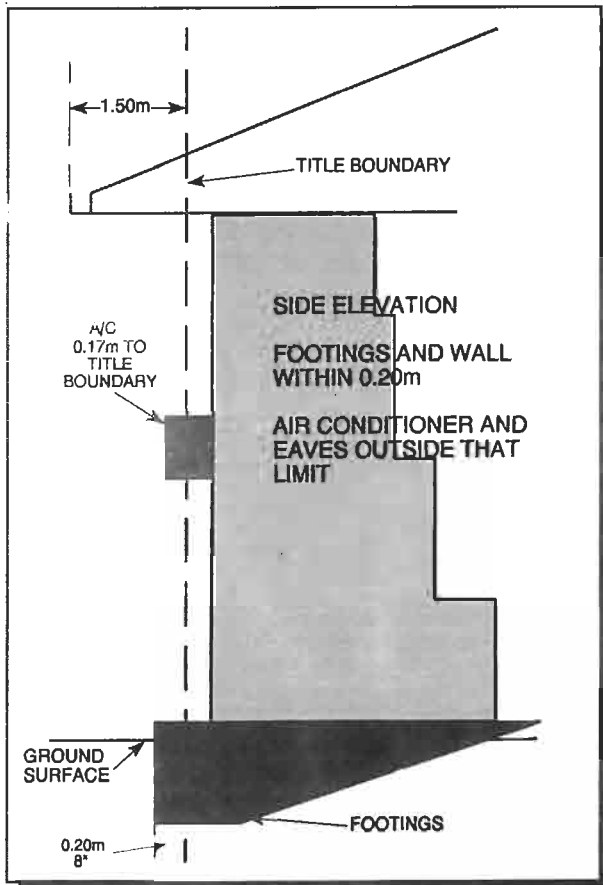


Figure 58

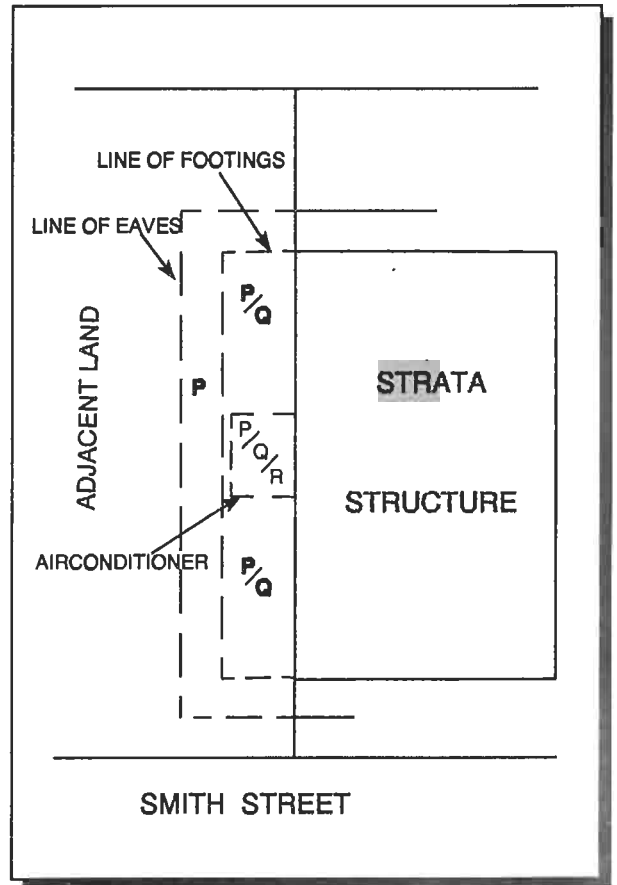


Figure 59

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

932 FORM OF CONSENT BY ADJOINING OWNER

Strata Titles Act, 1988

**CERTIFICATE OF CONSENT TO THE ENCROACHMENT OF A STRATA SCHEME
ON PRIVATE LAND**

I/We of being the Registered Proprietor(s) of the whole of the land comprised in Certificate of Title Register Book Volume Folio, do hereby:

- (1) Consent to the encroachment over the above land of the building(s) as delineated on the strata plan proposed to be lodged for deposit in the Lands Titles Registration Office in respect of the whole of the land comprised in Certificates of title Register Book Volume Folio etc.;
- (2) Acknowledge that this consent is binding on present and subsequent owners and occupiers of the land.

Duplicate certificates of Title are produced for notation of the above consent.

Legal Signature
.....
Registered Proprietor(s)

Note: This Certificate must be attached to the strata application and must be prepared in accordance with Regulation 9 (4) of the Real Property Act (Form of Instruments and Certificates of Title) Regulations, No. 250 of 1980.

Figure 60

FORM OF CONSENT TO ENCROACHMENT ON PRIVATE LAND

STRATA FACTS

933 MULTIPLE OWNERSHIPS

The Strata Titles Act does not preclude the possibility of a strata scheme being developed in respect of adjacent allotments having separate owners. The Act is silent about the need for a single ownership for a strata application.

By way of example, Figure 61 shows two abutting allotments, LOT 1 and LOT 2. It is assumed that Lot 1 is owned by person A and Lot 2 by person B. A and B propose to carve off the rear of their yards and develop a two unit strata scheme facing Brown Street. There are two ways to achieve this depending on whether the two existing houses, shown in Fig. 61, are to become units in the proposed strata scheme or not.

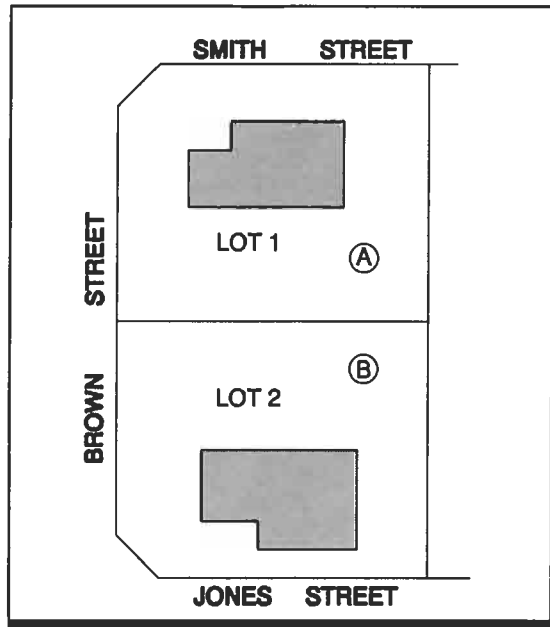


Figure 61 EXISTING LOTS WITH HOUSES

1. **WHERE EXISTING HOUSES ARE NOT TO BE PART OF THE STRATA SCHEME.**
Land division is necessary to create an allotment, or allotments, over which a strata application can be lodged.

There are two ways in which the land can be divided, depending on circumstances. E.g:

WHERE UNITS FALL EITHER SIDE OF FORMER ALLOTMENT BOUNDARY

There is no problem where the common boundary of Lots 1 and 2 lies in common property such that a unit falls in each allotment as shown in Figure 62. Separate allotments are formed by land division with ownership of each being retained by A and B respectively. As a unit will fall within the bounds of an allotment, each unit can later be sold by its respective owner.

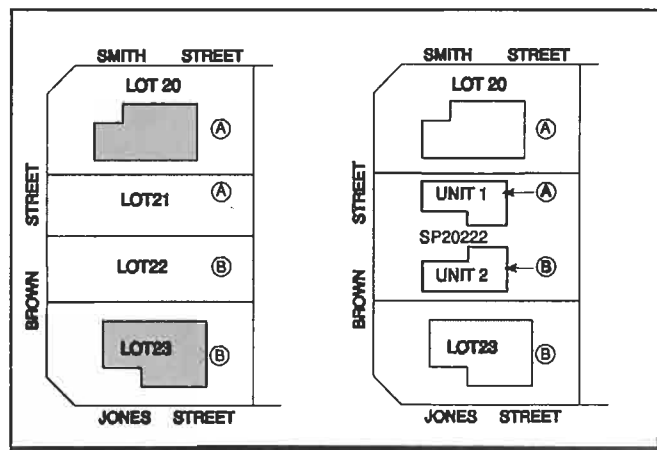


Figure 62 WHERE UNITS FALL ENTIRELY IN LOTS

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

933 The Schedule of Mode of Issue in this case is shown if Figure 63.

To be completed regardless of type of scheme	
SCHEDULE OF MODE OF ISSUE	
UNIT NUMBER	NAME, ADDRESSES OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS
1	Alfreda Brown of 26 Smith Street Greenbanks 5888 Nurse
2	Roger Ramset of 25 Jones Street Greenbanks 5888 Construction Worker

Figure 63 SCHEDULE OF MODE OF ISSUE WHERE UNITS DO NOT CROSS ALLOTMENT BOUNDARY

WHERE A UNIT BOUNDARY IS INTERSECTED BY THE FORMER ALLOTMENT BOUNDARY

Figure 64 illustrates a case where a new allotment for the site of the plan is created and is transferred to A and B as tenants in common. The Schedule of Mode of Issue must reflect this. The units formed by the strata plan can be sold and profits shared.

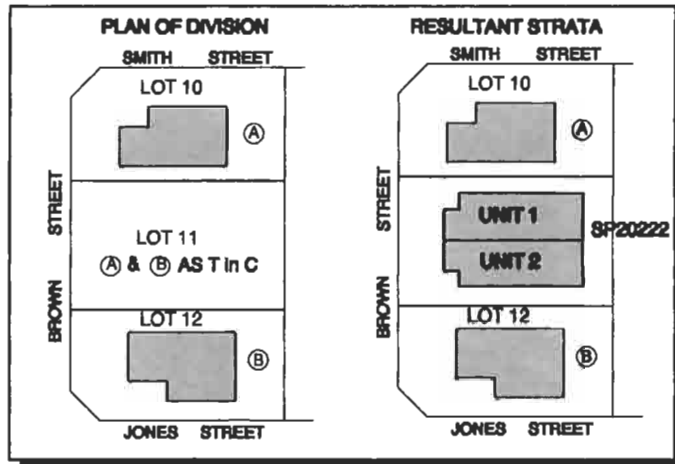


Figure 64 WHERE UNIT OWNERS ARE TENANTS IN COMMON

Where the former allotment boundary intersects one or both of the units as shown in Figure 65, an alternative solution is to determine an undivided share of ownership between A and B in any unit that lies across the former allotment boundary.

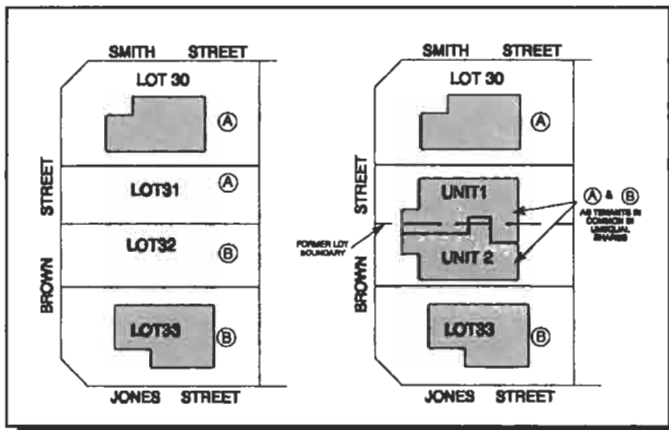


Figure 65 WHERE UNITS CROSS FORMER ALLOTMENT BOUNDARY

STRATA FACTS

933 The schedule of Mode of Issue should reflect a share of ownership in a manner to be mutually agreed upon. The Schedule of Mode of Issue could appear as indicated in Figure 66.

To be completed regardless of type of scheme		<u>SCHEDULE OF MODE OF ISSUE</u>
UNIT NUMBER	NAME, ADDRESSES OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS	
Units 1 and 2	Alfreda Brown of 26 Smith Street Greenbanks 5888 as regards 9 undivided 20th parts and Roger Ramset of 25 Jones Street Greenbanks 5888 as regards the remaining 11 undivided 20th parts.	

Figure 66 SCHEDULE OF MODE OF ISSUE WHERE UNITS CROSS ALLOTMENT BOUNDARY

There is no special problem for the Stamp Duties Office in this concept as the share shown in the Schedule of Mode of Issue will be representative of the value of each share. The developer must be prepared to face the prospect of paying ad valorem stamp duty on the strata application as it were a transfer of undivided interests in the land between the separate owners. I.e. the application is stamped as a conveyance

← SEE PARA 934 Re STAMP DUTIES

2. WHERE EXISTING HOUSE ARE TO BE PART OF THE STRATA SCHEME.

Here, a strata plan is lodged in respect of the whole of the land in both Lot 1 and Lot 2 showing the existing houses as Units 1 and 4 and the new units as Units 2 and 3. The same considerations will need to be given as regards ownership in undivided shares in the Schedule of Mode of Issue where a unit falls across the former allotment boundary. A unit that fall entirely within the bounds of a former allotment must be shown in the respective ownership of that allotment.

It is also not beyond the realms of possibility that a group of owners with common boundaries, such as that shown in broken lines Figure 67, could enter into an agreement to strata title their allotments as shown and become part of the strata scheme. Figure 67 shows the possibility of the owners joining in a strata development in which their own homes (etc) become units. The original title boundaries are shown here as dashed lines but will not appear on the original strata plan.

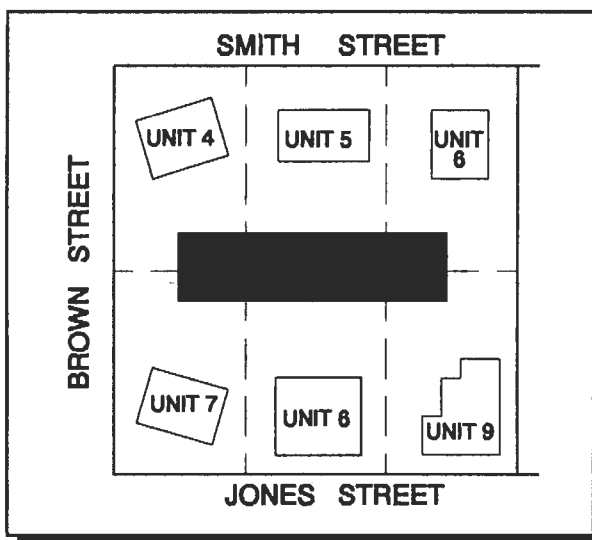


Figure 67 EXAMPLE OF MIXED OWNERSHIP DEVELOPMENT

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

934 STAMP DUTIES

Detailed hereunder is a brief outline as to Stamp Duties Office policy in relation to Applications for Creation of an Easement on deposit of a strata plan, application for deposit of a Strata Plan and application for the amendment of a deposited Strata Plan.

This information has been supplied by the Stamp Duties office.

934 1. Application for Creation of Easement.

← SEE PARA 810

Form 9A

- 1.1 If the grantor and grantee are the same person, the amount of duty payable is \$4.00 as a conveyance of other kind. These can be assessed over the public counter without being required to be submitted for opinion.
- 1.2 If the grantor and grantee differ then the instrument is assessed pursuant to Section 60A of the Stamp Duties Act 1923. I.e. duty is assessed at conveyance rates on the consideration or value whichever is the greater. These are to be submitted for opinion and if no consideration is being paid then a value is required to be declared in the instrument pursuant to section 71 of the Act.

934 2. Application for deposit of a Strata Plan.

2.1 Existing Scheme

It is the practice of the Stamps Office to charge \$4.00 as a conveyance of other kind where unit holders are not one and the same. Where unit holders are one and the same no duty is chargeable. Required to be submitted for opinion.

2.2 New Scheme

It is the practice of the Stamps Office to stamp these applications without any duty being payable. Required to be submitted for opinion.

2.3 Multiple Ownership Developments

As there is in affect a conveyance of land implied by the Schedule of Mode of Issue full, ad valorim stamp duty is payable on each undivided interest created in a unit that was not in existence prior to the deposit of the strata plan.

← SEE PARA 932

934 3. Application for the Amendment of a Deposited Strata Plan.

← SEE CHAPTER 10

Any application that effects the transfer of an interest in land is a conveyance and is assessed pursuant to Section 60A. I.e. duty is assessed at conveyance rates on the consideration or value whichever is the greater. Required to be submitted for opinion along with a copy of plan clearly marked to show what transfers are taking place.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

935 AFFECT OF DEPOSIT ON A REGISTERED LEASE

Special precautions must be taken with a lease which is required to subsist over a unit or portion of the common property after deposit of a strata plan.

Problems arise with these leases as the boundaries shown on the lease plan may not co-incide with those of a unit. E.g., where lease boundaries are to the centre-line of walls, the lease is extinguished as regards the area of the walls (common property) and the surviving balance is regarded by the Lands Titles Registration office as a lease of the whole of a unit.

If a lease is to remain over common property, it must first be extinguished by operation of the Act whether a NEW or EXISTING scheme. In either case a new lease granted by the strata corporation, formed on deposit of the plan, will need to be lodged. A substituted lease may be lodged in an EXISTING scheme. Advice from the Development Assessment Commission should be sought as to whether a development approval will be required.

← BUT SEE PARA 927

The following points are made in relation to leases.

- 935 1. Where the lease is registered over portion of the land which becomes the whole of the land in a unit, a certification by a licensed surveyor to that effect is necessary and must be endorsed on the application if a for a NEW scheme or on the substituted lease document in an EXISTING scheme. The certification can take the form of:

"It is certified that the boundaries of the land in L1234567 are one and the same as Unit 1 in SP10000. (or, "L1234567 is wholly contained within Unit 1") LS, Surveyor".

- 935 2. If a lease registered on the original certificate of title becomes a lease of portion of the land in a residential unit and the balance of the term of the lease in excess of six years (including any right of renewal), a development approval under the Development Act 1993 will be required. Evidence of this may be given in a NEW scheme by annotation in the application to the effect that:

"This lease does not contravene Section 32 of the Development Act 1993"

This means that either a development approval (planning authorisation) is not required or an approval is required and has been given. When in doubt as to whether a development approval is required, enquiries may be made at the office of the Development Assessment Commission. In the case of an EXISTING scheme, the substituted lease should be over the whole of the land in a unit or relevant part of a unit.

936 VESTING OF PUBLIC LAND

On deposit of a strata plan, land delineated as a public street or a reserve will vest for an estate in fee simple in the council of the area. In areas of the state where there is no council, land will vest in the Outback Areas Community Development Trust. All streets, roads, etc., vest as public streets, etc., for the purposes of the Local Government Act 1934.

← SEE S.11 AND S.3,
DEFINITION OF
COUNCIL

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

- APPENDICES - APPENDIX A

APPENDIX A

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN

Form A.6

(See Note 3)

(Pursuant to the Strata Titles Act 1988)

TYPE OF SCHEME (Delete the inapplicable) (See Note 4)	NEW/EXISTING SCHEME	
Certificate(s) of Title Affected (See Section 5(2) of the Act)	THE WHOLE OF THE LAND COMPRISED IN	
Address of Corporation as shown on Council Certificate Accompanying Land Division Certificate of DAC		
To which the accompanying certificate of a Licensed Valuer relates Unit entitlements must be in whole numbers	SCHEDULE OF UNIT ENTITLEMENTS	
	UNIT NUMBER	UNIT ENTITLEMENTS
	AGGREGATE UNIT ENTITLEMENTS	10 000
TO THE REGISTRAR-GENERAL, I/WE THE APPLICANTS, HEREBY APPLY TO YOU TO DEPOSIT THE ACCOMPANYING STRATA PLAN IN THE LANDS TITLES REGISTRATION OFFICE AND TO ISSUE SEPARATE CERTIFICATES OF TITLE FOR THE UNITS DEFINED THEREON IN THE MANNER SET OUT IN THE SCHEDULE AT THE FOOT HEREOF AND A SEPARATE CERTIFICATE OF TITLE FOR THE COMMON PROPERTY IN THE NAME OF THE CORPORATION FORMED BY THAT DEPOSIT DATED THE _____ 19____ DAY OF _____		

STRATA FACTS

APPENDICES - APPENDIX A

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPLICANT(S) (See Note 5)		
FULL NAME AND ADDRESS	EXECUTION	WITNESS

I/WE, BEING ALL THE PERSONS WHO HAVE REGISTERED ESTATES OR INTERESTS IN THE LAND, OR IN WHOM ARE VESTED THE PREDOMINANT RIGHTS TO THE EXCLUSIVE USE AND OCCUPATION OF THE UNITS DEFINED ON THE ACCOMPANYING STRATA PLAN, HEREBY CONSENT TO THE DEPOSIT OF THE SAID PLAN

(See Note 6)

FULL NAME AND ADDRESS	PARTICULARS OF ESTATE AND INTEREST	SIGNATURE/SEAL OF CONSENTING PERSONS	WITNESS

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPENDICES - APPENDIX A

<u>SCHEDULE OF MODE OF ISSUE</u>	
To be completed regardless of type of scheme	
UNIT NUMBER	NAME, ADDRESSES OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS
REGISTERED/...../19	
.....REGISTRAR-GENERAL	

APPENDIX B

**CERTIFICATE OF LICENSED VALUER AS REGARDS UNIT ENTITLEMENTS
(SS. 7 (3) or 12 (3) STRATA TITLES ACT 1988)**

1. I certify that the unit entitlements given in respect of the application for the deposit of a Strata Plan in the Lands Titles Registration Office over Certificates of Title are correct for the purposes of Section 6 of the Strata Titles Act 1988.

2. I certify that:
 - (a) there is no variation in the value of units or common property as a result of the amendments to Strata Plan No.

 - or

 - (b) the amounts by which the value of units are varied by the amendment to SP No. are reflected in the change in unit entitlements accompanying the application and are correct for the purposes of Section 6 of the Strata Titles Act 1988.

.....
Licensed Valuer within the meaning of
the land Agents, Brokers and Valuers Act 1973

Notes: This certificate must be attached to the appropriate application and must be prepared in accordance with Regulation 9 (4) of the Real Property Act (Form of instruments and Certificates of Title) Regulations No. 250 of 1980. Delete any paragraph or Sentence that is inapplicable.

Figure 68

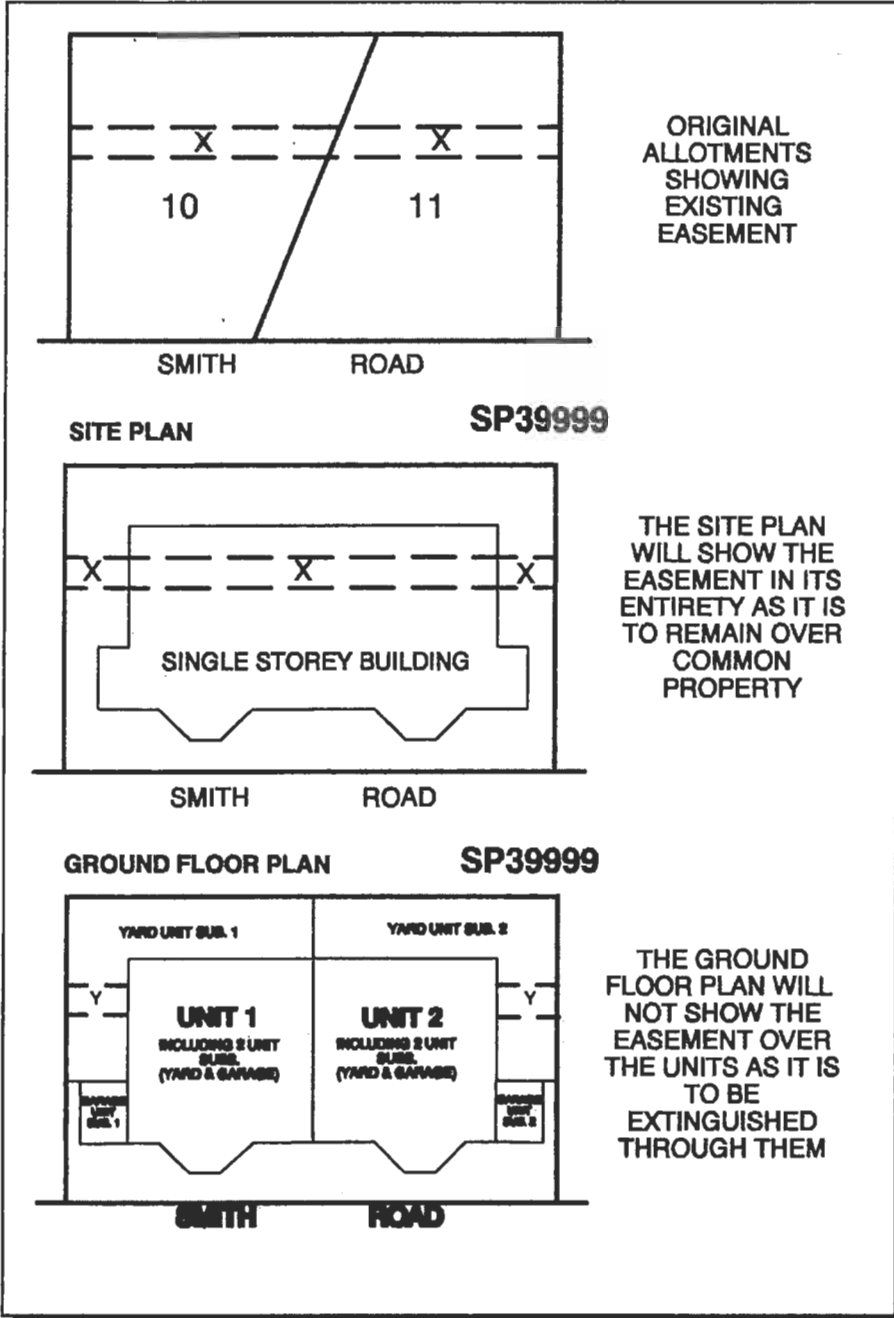
CERTIFICATE OF LICENSED VALUER

STRATA FACTS

STRATA PLAN EXAMPLE No.1 NEW SCHEME

APPENDIX C

STRATA PLAN No.39999



The UPPER DIAGRAM shows two certificates of title which are to be strata titled. Title data is as follows:-

Lot 10

CT 1234/56 subject to M3712345 to the State Bank of SA and X7500001 lodged by Henry Black.

Lot 11

CT 1234/57 subject to M3712345 to the State Bank of SA and X7500001 by Henry Black over portion of the land in both CsT to protect an unregistered lease of unit 2. The caveat will allow the deposit of the strata plan.

REGISTERED PROPRIETOR ABC Pty. Ltd. of 300 Albert St. Kensington 5068 formerly of 101 Bridge Road Murraytown 5678

The SITE & GROUND FLOOR PLANS represent a Strata Plan to be lodged over the two titles and an application for the deposit of the plan and issue of new certificates of title for units and common property is required.

REMARKS

Both certificates of title are subject to an easement for drainage purposes appurtenant to adjacent land comprised in CT2345/89, the owner of which is Annie Brown of 55 Smith Road Glenelg 5045.

The land division certificate shows that council has allotted 53 Smith Road Glenelg 5045 as the postal address of the buildings.

STRATA FACTS

A Licensed Valuer has certified the value of the units as being \$150000 each.
Council have certified the date of completion of the structure as 1/10/91

The easement has been encroached upon by portion of the structure and the owner of the easement has consented to the partial extinguishment where the encroachment has occurred.

ASSESSING THE APPLICATION

From the information collected, the type of scheme and the information required for completion of the form needs to be assessed.

Taking the Panels in order of sequence on the form;

First, Determine the nature of the scheme:-

As the date of completion is later than 22/2/68, the scheme can only be lodged as a NEW SCHEME. Use the information shown on the council certificate that accompanies the land division certificate of DAC. If this information is unavailable to council, use LOTS and if not available there a Licensed Valuer should be able to make a professional assessment that can be accepted. Hence "New" is inserted in Panel 1.

Secondly, Describe the certificates of title dealt with.

Remember here that if a dominant easement is extinguished or varied in position through adjacent land, the reference of that land must not be included in this panel.

The whole of the land comprised in certificates of title Register Book Volume 1234 Folios 56 and 57.

Thirdly, From the certificate of the council that accompanies the Land Division Certificate of DAC, ascertain the address of the strata corporation. This may be a single street number or a range of numbers such as 53-57 Smith St. etc. In an area without postal delivery service, a Post Office box number must be used.

53 Smith Street Glenelg 5045

Fourthly, From the Valuer's certificate, determine the unit entitlements.

The Valuer is required to certify that the unit entitlements are correct; it may therefore be easiest to have the valuer to actually calculate the unit entitlements.

$$\frac{150000}{300000} \times 10000 = 5000$$

or **5,000** each

Fifthly, The application must be dated, but must not predate the Land Division Certificate of the Development Assessment Commission

STRATA FACTS

Sixthly, As regards the Applicants Panel, insert the full name and address of the applicants in the first column. The applicant, if a person, must sign in the second column and witnessed by an independent adult person in the third column. The signature of the applicant must be proved.

If the applicant is a company, use the appropriate execution; E.g. if the common seal is used the witness or proof of signature is not applicable. If signed under Power of attorney, a witness must sign and proof of signature of the executing party is required.

Seventhly, All persons having a registered interest in the land and caveators must consent to a strata plan. Insert full name and address of person in the first column, particulars of estate and interest in the second column, the signature or seal of consenting party in the third column and signature of an independent adult witness (unless signed under seal) in the fourth column.

Note that in the case of a caveat, it is not important whether the caveat is permissive or absolute as the consent of the caveator will enable the Registrar-General to deposit the plan and issue relevant certificates of title subject to the caveat.

If a caveat, or a registered interest such as a mortgage or lease, etc., is over an area comprising common property, the effect of the deposit of the plan will be to extinguish that caveat or interest. In this case great care must be exercised by the caveator/mortgagee/lessee to ensure that his/her interest is protected. The Lands Titles Office will not deposit a plan under this circumstance as the extinguishing feature of the Act cannot not be used to discharge an interest or a caveat and proper legal processes must be used. A statutory encumbrance (defined in the Strata Titles Act) will prevail over common property.

Eighthly, Complete the Schedule of Mode of Issue. This tells the Lands Titles Registration Office the name(s) of unit owners and certificates of title will issue in their name(s). With a NEW scheme, all parties shown as applicants, must be included as the certificates of title for all units will issue in their name(s) unless it is a multiple ownership application as discussed in Para 933. In that case titles for the units will issue in the name(s) of the respective owner(s) of each unit relative to the allotment in which it falls. This is not the case with an EXISTING scheme where unit proprietors may evidence their entitlement with moiety titles, leases or underleases, shares in a company, caveats or some other means, Their interests are cancelled and substitute interests may be registered when new titles issue to ensure that they are not disadvantaged. The normal requirement of showing mode of holding of two or more owners of a unit must be included (tenants in common , etc.).

Ninthly, Complete the form of proof. Only signatures of the applicants or their Attorney need to be proved.

- NOTE:-
1. Remember that an application for the deposit of a strata plan is registered under the Real Property Act, 1886 and is an instrument within the meaning of that Act. It is, in effect, a conveyance as regards the common property and must therefore be certified correct for the purposes of the Real Property Act and must also be produced to the Stamp Duties Office for stamping prior to lodgement at the Lands Titles Registration Office.
 2. The duplicate of certificate of title 2345/89 (the dominant land) must be produced to allow re-issue showing the change in extent of the right.

STRATA FACTS

APPENDIX C

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

Form A.6

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN

(See Note 3)

(Pursuant to the Strata Titles Act 1988)

TYPE OF SCHEME (Delete the inapplicable) (See Note 4)	<u>NEW/EXISTING SCHEME</u>										
Certificate(s) of Title Affected (See Section 5(2) of the Act)	THE WHOLE OF THE LAND COMPRISED IN Certificates of Title Register Book Volume 1234 Folios 56 and 57										
Address of Corporation as shown on Council Certificate accompanying the Land Division Certificate	THE POSTAL ADDRESS OF THE CORPORATION WILL BE 53 Smith Road Glenelg 5045										
SCHEDULE OF UNIT ENTITLEMENTS											
To which the accompanying certificate of a Licensed Valuer relates Unit entitlements must be in whole numbers	<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 50%;">UNIT NUMBER</th> <th style="width: 50%;">UNIT ENTITLEMENTS</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>5000</td> </tr> <tr> <td>2</td> <td>5000</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black;"> AGGREGATE UNIT ENTITLEMENTS </td> </tr> <tr> <td colspan="2"> 10 000 </td> </tr> </tbody> </table>	UNIT NUMBER	UNIT ENTITLEMENTS	1	5000	2	5000	AGGREGATE UNIT ENTITLEMENTS		10 000	
UNIT NUMBER	UNIT ENTITLEMENTS										
1	5000										
2	5000										
AGGREGATE UNIT ENTITLEMENTS											
10 000											
TO THE REGISTRAR-GENERAL, I/WE THE APPLICANTS, HEREBY APPLY TO YOU TO DEPOSIT THE ACCOMPANYING STRATA PLAN IN THE LANDS TITLES REGISTRATION OFFICE AND TO ISSUE SEPARATE CERTIFICATES OF TITLE FOR THE UNITS DEFINED THEREON IN THE MANNER SET OUT IN THE SCHEDULE AT THE FOOT HEREOF AND A SEPARATE CERTIFICATE OF TITLE FOR THE COMMON PROPERTY IN THE NAME OF THE CORPORATION FORMED BY THAT DEPOSIT											
DATED THE	21 DAY OF May 1993										

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPLICANT(S) (See Note 5)		
FULL NAME AND ADDRESS	EXECUTION	WITNESS
ABC Pty. Ltd. (ACN) of 300 Albert Street Kensington 5068 formerly of 101 Bridge Road Murraytown 5678	The Common Seal of ABC Pty. Ltd. was hereto affixed in the presence of CS Director Secretary	

I/WE, BEING ALL THE PERSONS WHO HAVE REGISTERED ESTATES OR INTERESTS IN THE LAND, OR IN WHOM ARE VESTED THE PREDOMINANT RIGHTS TO THE EXCLUSIVE USE AND OCCUPATION OF THE UNITS DEFINED ON THE ACCOMPANYING STRATA PLAN, HEREBY CONSENT TO THE DEPOSIT OF THE SAID PLAN

(See Note 6)

FULL NAME AND ADDRESS	PARTICULARS OF ESTATE AND INTEREST	SIGNATURE/SEAL OF CONSENTING PERSONS	WITNESS
Annie Brown of 55 Smith Road Glenelg 5045	Registered Proprietor of a dominant easement vide CT2345/89 which is to be partly extinguished by deposit of this strata plan	Legal signature of Annie Brown	Signature, address of independent adult witness
State Bank of South Australia of King William Street Adelaide	As mortgagee by virtue of registered mortgage M3712345	Execution of SBSA under common seal (or P/A)	N/A (witness)
Henry Black of 192 Main Road Stepney 5077	As caveator by virtue of registered caveat X7500001	Legal signature of H. Black	Signature, address of independent adult witness

STRATA FACTS

APPENDIX C

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

To be completed regardless of type of scheme		<u>SCHEDULE OF MODE OF ISSUE</u>
UNIT NUMBER	NAMES, ADDRESSES OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS	
1 and 2	ABC Pty. Ltd. of 300 Albert Street Kensington 5068	
REGISTERED		REGISTRAR-GENERAL

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPENDIX D

STRATA PLAN EXAMPLE No. 2 EXISTING SCHEME

APPENDIX D

STRATA PLAN No.40001

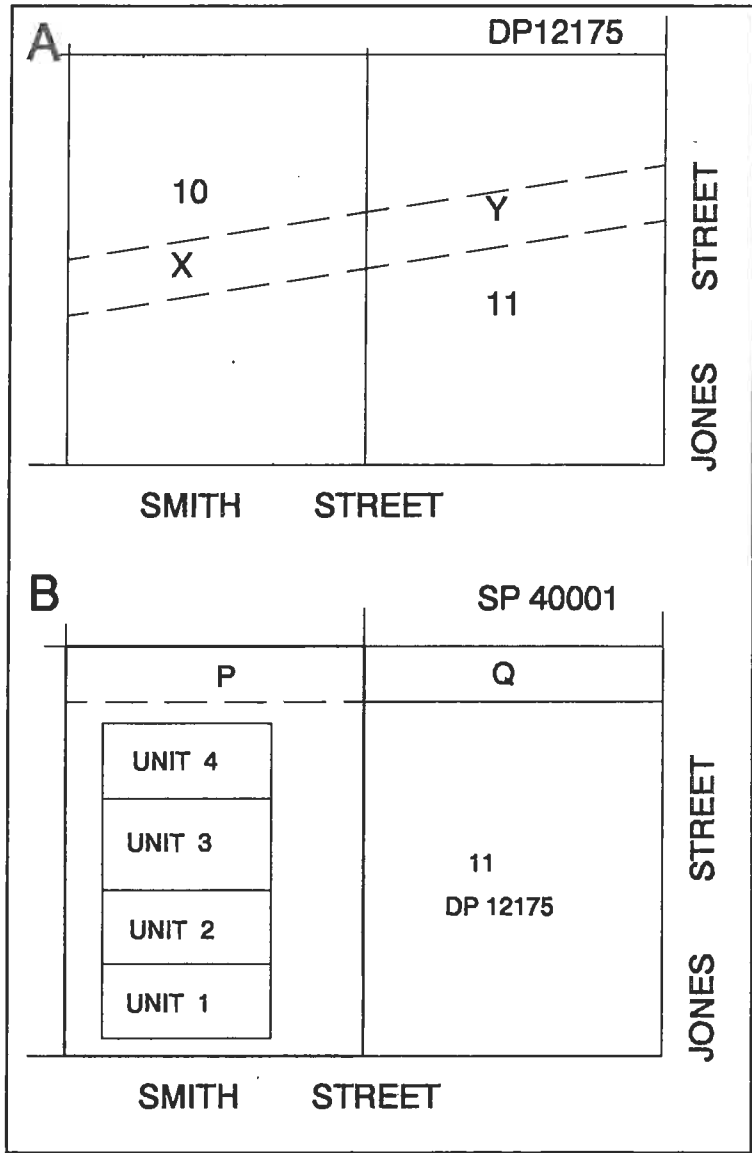


DIAGRAM A represents two certificates of title in separate ownerships both subject to reciprocal easements for drainage purposes. Lot 10 contains a block of units that are to be strata titled.

DIAGRAM B represents the GROUND FLOOR PLAN of a strata plan to be deposited in the Lands Titles Registration Office. Title data is as follows:-

LOT 10

CsT 3456/78, 79, 80 and 81 being a separate CT for each undivided part in the whole.

REG. PROPS. (RESPECTIVELY)

G. Chaucer, H. Erskine, T.E. and E. G. Lawrence as tenants in common and E. Cavell; each in one undivided fourth part

SUBJECT TO;

L1234567, ML4567890 and X5123456 as regards portion of land (Unit 1).

L1234568 and ML5678910 as regards portion of land (Unit 2).

L1234569 and ML2345678 as regards portion of land (Unit 3).

L1234570, ML4321098 and UL5678901 (as occupant only) as regards portion of land (Unit 4).

All leases represent a predominant right of ownership, the underlease does not.

The owner of Lot 11 is J. Gull of 53 Smith St. Glenelg 5045 (CT 5698/23)

Lots 10 and 11 are subject to and together with an easement for drainage purposes over the portions marked X and Y appurtenant to Lots 11 and 10 respectively.

A condition of approval requires the easements to be relocated to the positions P and Q on the strata plan.

Council has allotted the postal address of 51 Smith Street Glenelg 5045 and given the date of construction as 12/9/55.

A Licensed Valuer has certified that the unit entitlements as correct at Unit 1, 2700; Unit 2, 2550; Unit 3, 2550 and Unit 4, 2200.

STRATA FACTS

APPENDIX D

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

ASSESSING THE APPLICATION

From the information collected, the type of scheme and the information required for completion of the form needs to be assessed.

Taking the Panels in order of sequence on the form;

First, Determine the nature of the scheme:-

As the date of completion is earlier than 22/2/68, the scheme can be lodged as an EXISTING SCHEME. If lodged as a new scheme, the fee payable to the Planning and Development Fund will apply. Use the information shown on the council certificate that accompanying the Land Division Certificate of DAC. If this information is unavailable to council, use LOTS and if not available there a Licensed Valuer should be able to make a professional assessment that can be accepted.

Hence "EXISTING" is inserted in Panel 1.

Secondly, Describe the certificates of title dealt with.

Remember here that if a dominant easement is extinguished or varied in position through adjacent land, the reference of that land must not be included in this panel.

The whole of the land comprised in certificates of title Register Book Volume 3456 Folios 78, 79, 80 and 81.

Thirdly, From the certificate of the council that accompanies the Land Division Certificate, ascertain the address of the strata corporation. This may be a single street number or a range of numbers such as 53-57 Smith St. etc. In an area without postal delivery service, a Post Office box number must be included.

51 Smith Street Glenelg 5045

Fourthly, From the Valuer's certificate, determine the unit entitlements.

The Valuer is required to certify that the unit entitlements are correct; it may therefore be easier to have the valuer to actually calculate the unit entitlements.

In this case the Valuer has supplied unit entitlements.

Viz. Unit 1, 2700; Unit 2, 2550; Unit 3, 2550 and Unit 4, 2200.

Fifthly, As regards the Applicants Panel, insert the full name and address of the applicants in the first column. The applicant, if a person, must sign in the second column and witnessed by an independent adult person in the third column. The signature of the applicant must be proved.

If the applicant is a company, use the appropriate execution; E.g. if the common seal is used, the witness or proof of signature is not applicable. If signed under Power of attorney, a witness must sign and proof of signature of the executing party is required.

Sixthly, The application must be dated, but not prior to the date of the Land Division Certificate of the Development Assessment Commission.

Seventhly, All persons having a predominant right to occupation of each unit must consent to the deposit of a strata plan. Predominant ownership is the right to the exclusive use and occupation of a unit by virtue of a lease, underlease, or tenancy or other agreement or ownership of shares in a company.

STRATA FACTS

All persons having a registered interest in the land and caveators must also consent to a strata plan. Insert full name and address of person in the first column, particulars of estate and interest in the second column, the signature or seal of consenting party in the third column and signature of an independent adult witness (unless signed under seal) in the fourth column.

Note that in the case of a caveat, it is not important whether the caveat is permissive or absolute as the consent of the caveator will allow extinguishment to occur.

If a caveat, or a registered interest such as a mortgage or lease, etc., is over an area comprising common property, the effect of the deposit of the plan will be to extinguish that caveat or interest. In this case great care must be exercised by the caveator/mortgagee/lessee to ensure that his/her interest is protected. The Lands Titles Office will not deposit a plan under this circumstance as the extinguishing feature of the Act cannot not be used to discharge an interest or a caveat and proper legal processes must be used. A statutory encumbrance (defined in the Strata Titles Act) will prevail over common property.

The owner of the adjacent land, Lot 11 in DP 12175, is affected by the deposit as rights, both servient and dominant to the land, are varied in position. This does not mean extinguishment and re-grant, but a re-location of the easement from one position to another.

The consenting parties are:-

- Each lessee
- Each mortgagee
- the underlessee
- the caveator
- the owner of the adjacent land as owner of a dominant and servient tenement.

Eighthly, Complete the Schedule of Mode of Issue. This tells the Lands Titles Registration Office the name(s) of individual unit holders. In the case of an existing scheme, the owners will be those who have the predominant ownership of each respective unit as evidenced in this case by shares in the fee simple and leases of portions which correspond to units. Note that the mode of holding where there is more than one proprietor must be shown (tenants in common, etc.)

Ninthly, Complete the form of proof. Only signatures of the applicants need to be proved.

Tenthly, Determine the SUBSTITUTED INSTRUMENTS

Any necessary substituted instruments must be lodged contemporaneously with the strata plan.

FINAL ANALYSIS

As the Lessees are to become the registered proprietors of their respective unit, the leases will not be substituted. The underlease of Unit 4 will prevail, but must be substituted as a lease of that unit. Each of the mortgages of lease will be extinguished and must be substituted as a mortgage of each respective unit.

A caveat in substitution of X5123456 must be lodged (without leave of the Supreme Court).

STRATA FACTS

APPENDIX D

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

It is particularly important to note that where an interest other than that which represents a predominant right should be formerly discharged if not intended to prevail after deposit of the plan. Eg., the extinguishing feature of the Act should not be used to discharge a mortgage or surrender the underlease.

The substituted instruments that must be lodged are:-

(See Para 928)

- * **Each mortgage of lease, as a mortgage of the relevant Unit.**
- * **A substitute caveat over Unit 1**
- * **A lease over Unit 4 in substitution of UL5678901.**

(all lodged in the same order of priority as originally registered)

NOTE:-

1. Remember that an application for the deposit of a strata plan is registered under the Real Property Act, 1886 and is an instrument within the meaning of that Act. It is, in effect, a conveyance as regards the common property and must therefore be certified correct for the purposes of the Real Property Act and must also be produced to the Stamp Duties Office for stamping prior to lodgement at the Lands Titles Registration Office.
2. All duplicate certificates of title must be produced. CT 5698/23 will be re-issued to show the variation in position of the easement.

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPENDIX D

Form A.6
(See Note 3)

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN

(Pursuant to the Strata Titles Act 1988)

TYPE OF SCHEME (Delete the inapplicable). (See Note 4)	NEW/EXISTING SCHEME	
Certificate(s) of Title Affected (See Section 5(2) of the Act)	THE WHOLE OF THE LAND COMPRISED IN Certificates of Title Register Book Volume 3456 folios 78, 79, 80, 81	
Address of Corporation as shown on Council Certificate that accompanies the Land Division Certificate of DAC	THE POSTAL ADDRESS OF THE CORPORATION WILL BE 51 Smith Street Glenelg 5045	
To which the accompanying certificate of a Licensed Valuer relates Unit entitlements must be in whole numbers	SCHEDULE OF UNIT ENTITLEMENTS	
	UNIT NUMBER	UNIT ENTITLEMENTS
	1	2700
	2	2550
	3	2550
4	2200	
AGGREGATE UNIT ENTITLEMENTS	10 000	

TO THE REGISTRAR-GENERAL,

I/WE THE APPLICANTS, HEREBY APPLY TO YOU TO DEPOSIT THE ACCOMPANYING STRATA PLAN IN THE LANDS TITLES REGISTRATION OFFICE AND TO ISSUE SEPARATE CERTIFICATES OF TITLE FOR THE UNITS DEFINED THEREON IN THE MANNER SET OUT IN THE SCHEDULE AT THE FOOT HEREOF AND A SEPARATE CERTIFICATE OF TITLE FOR THE COMMON PROPERTY IN THE NAME OF THE CORPORATION FORMED BY THAT DEPOSIT

DATED THE 15 DAY OF November 1993

STRATA FACTS

APPENDIX D

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPLICANT(S) (See Note 5)			
FULL NAME AND ADDRESS	EXECUTION		WITNESS
Geoffrey Chaucer of 1/51 Smith Street Glenelg 5045	LS	G. Chaucer	Signature and address of independent adult witness
Henry Erskine of 2/51 Smith Street Glenelg 5045	LS	H. Erskine	Signature and address of independent adult witness
Thomas Edward Lawrence and Emily Gertrude Lawrence both of 3/51 Smith Street Glenelg 5045	LS	T.E. Lawrence	Signature and address of independent adult witness
	LS	E.G. Lawrence	Signature and address of independent adult witness
Edith Cavell of 75 Martin Street Glenelg 5045	LS	E. Cavell	Signature and address of independent adult witness

I/WE, BEING ALL THE PERSONS WHO HAVE REGISTERED ESTATES OR INTERESTS IN THE LAND, OR IN WHOM ARE VESTED THE PREDOMINANT RIGHTS TO THE EXCLUSIVE USE AND OCCUPATION OF THE UNITS DEFINED ON THE ACCOMPANYING STRATA PLAN, HEREBY CONSENT TO THE DEPOSIT OF THE SAID PLAN

(See Note 6)

FULL NAME AND ADDRESS	PARTICULARS OF ESTATE AND INTEREST	SIGNATURE/SEAL OF CONSENTING PERSONS	WITNESS
Geoffrey Chaucer of 1/51 Smith Street Glenelg	Predominant owner of Unit 1 by virtue of L1234567	LS	Signature and address of independent adult witness.
Henry Erskine of 2/51 Smith Street	Predominant owner of Unit 2 by virtue of L1234568	LS	Signature and address of independent adult witness
Thomas Edward Lawrence and Emily Gertrude Lawrence both of 3/51 Smith Street Glenelg 5045	Predominant owners of Unit 3 by virtue of L1234569	LS	Signature(s) and address(s) of independent adult witness's
		LS	
Edith Cavell of 75 Martin Street Glenelg 5045	Predominant owner of Unit 4 by virtue of L1234570	LS	Signature and address of independent adult witness
State Bank Of South Australia of King William Street Adelaide 5000	Mortgagee of ML4567890	P/A	Signature and address of independent adult witness
Ajax Building Society of 78 Bush Street Adelaide 5000	Mortgagee vide ML5678910	Common Seal	N/A

FOR FURTHER CONSENTS, SEE ANNEXURE A

STRATA FACTS

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

APPENDIX D

FORM B1
Attach to inside
left hand corner

Page 3

ANNEXURE A

To be completed by lodging party ANNEXURE to STRATA APPLICATION dated 15/11/1993 over Certificate of Title Vol 3456 Fol 78, 79, 80, 81		NUMBER Office use only	
FULL NAME AND ADDRESS	PARTICULARS OF ESTATE AND INTEREST	SIGNATURE/SEAL OF CONSENTING PERSONS	WITNESS
Benjamin Franklin of 51 Smith Street Glenelg 5045	Underlessee vide UL5678901	LS	Signature and address of independent adult witness
Richard Turpin of 89 Bess Street Forestville 5035	Caveator vide X5123456	LS	Signature and address of independent adult witness
Jonathan Gull of 53 Smith Street Glenelg 5045	Owner of dominant easement vide CT 5698/23 varied by deposit of this strata plan	LS	Signature and address of independent adult witness
Mildred Pearce of 29 Gully Road. Hackham 5163	Mortgagee vide ML2345678	LS	Signature and address of independent adult witness
Bank of Australia of 399 Pitt St. Sydney 2000 NSW	Mortgagee vide ML4321098	Common Seal (or P/A)	N/A (or witness)

STRATA FACTS

APPENDIX D

APPLICATION FOR THE DEPOSIT OF A STRATA PLAN - CHAPTER 9

To be completed regardless of type of scheme		SCHEDULE OF MODE OF ISSUE	
UNIT NUMBER	NAME, ADDRESSES OF THE PERSONS ENTITLED TO BE REGISTERED PROPRIETORS		
1	Geoffrey Chaucer of 1/51 Smith Street Glenelg 5045		
2	Henry Erskine of 2/51 Smith Street Glenelg 5045		
3	Thomas Edward Lawrence and Edith Gertrude Lawrence as Tenants in Common (or each in one undivided 2nd part) both of 3/51 Smith Street Glenelg 5045		
4	Edith Cavell of 75 Martin Street Glenelg 5045		
REGISTERED		REGISTRAR-GENERAL	