

Getting things done

Renovations in a strata titles scheme

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Renovations in a strata titles scheme

► Renovations and structural alterations

Undertaking renovations within or to a lot in a strata titles scheme can be a complicated process. Approvals are typically required from the strata company and, depending on the nature of the renovation, approvals may also be needed from other authorities. A renovation in one lot can have an impact on another lot or the common property in a strata titles scheme. These approvals are aimed at ensuring that lot renovations do not negatively impact the scheme more broadly.

The *Strata Titles Act 1985* (STA) doesn't use the term renovations. The requirements to undertake a renovation to or in a lot in a strata titles scheme are set out throughout the STA using different terminology. These requirements fall within the provisions dealing with structural alterations to lots, by-laws, voting, and changes to common property.

The following information aims to pull these requirements together in a single place to give lot owners an overview of the approval process.

► Renovations to lots

Typically, lot owners cannot make renovations to their lot without first seeking permission from or informing the strata company. The approval of the strata company is in addition to any development and building approvals, which might also be required under other legislation (for example, the *Planning and Development Act 2005* and *Building Act 2011*).

Lot owners may also be limited to what renovations they can make to their lot based on the by-laws for their scheme. Default conduct by-laws prohibit lot owners from:

- altering the structure of their lot (as allowed for under the STA or by-laws) without giving the strata company 14 days written notice describing the proposed alteration
- decorating or affixing items to the inner surface of their lot without the written consent of the strata company
- maintaining in the lot anything that is visible from outside the lot that is not in keeping with the rest of the building without written consent of the strata company.

The approval process to renovate a lot varies depending on the type of scheme involved and whether the renovation impacts common property. Before undertaking renovations, lot owners must understand what kind of scheme their lot is in and where the lot boundaries are. This will allow them to determine which approvals are needed.

► Renovations to a lot in a strata scheme

In addition to the requirements and limitations set out above, renovations that structurally alter a lot in a strata scheme need the prior approval of the strata company. This approval must be obtained before work commences and can be gained through:

- approval of the strata company in the form of a resolution without dissent, or
- written approval by the owner of each lot in the scheme.

If approval is gained through each lot owner providing a written approval, all approvals must be unconditional or subject to the same conditions. A copy of each approval must also be served on the strata company.

An application to a strata company or other lot owners to make a structural alteration to a lot must include the following information:

- plans and specifications for the structural alteration
- the area of the structure, including the area of all existing and proposed structures to be considered for the purposes of calculating the plot ratio restrictions and open space requirements
- the open space or plot ratio requirements in relation to the parcel of land in the strata titles scheme
- if carrying out the alterations will exceed the open space and plot ratio requirements, the percentage and area by which these will be exceeded
- if carrying out the alterations will not exceed open space and plot ratio requirements, a statement to that effect
- the location and dimensions of the structure when it is completed in relation to any existing structure on the lot or to the boundary of the lot
- any contravention of any by-law, which is likely to occur as a result of carrying out the alterations
- the materials to be used in the alterations
- the colours of the structure, which will be visible from outside the lot

- the method of construction of the alterations and the work plan or schedule for carrying out the alterations
- any likely interruption or interference with any statutory easements, short form easements and restrictive covenants and other easements or restrictive covenants granted under the STA affecting the parcel, whether of a permanent or temporary nature whether the structural alteration to the lot changes the boundaries of the lot and if the applicant has sought advice from a licensed surveyor about the effect of the structural alteration.

If an application is received by the strata company, voting on it must open within 35 days after receipt of the application.

An owner of a lot approves the structural alteration of a lot if:

- they provide written consent to the alteration, or
- they have not made a written objection to the alteration within 42 days of being given the application, or
- they have made an objection which does not specify the grounds of the objection, or the grounds specified are not allowed for under the STA.

A strata company approves the structural alteration of a lot if:

- it provides the applicant written consent to the alteration expressed by resolution without dissent, or
- it has not made a written objection to the alteration within 77 days of being given the application, or
- it has made an objection which does not specify the grounds of the objection, or the grounds specified are not allowed for under the STA.

Whilst the process to gain approval for a renovation that makes a structural alteration to a lot is complicated, there are only limited grounds on which another lot owner can refuse or vote against an application.

The grounds on which an application can be refused or voted against are that the carrying out of the renovation:

- will breach the open space or plot ratio requirements for the lot
- will contravene a specified by-law of the strata company
- may interfere with a short form easement, restrictive covenant, or any other easement or covenant, affecting the parcel as shown on the scheme plan or registered against the parcel
- will result in a structure that is visible from outside the lot, which is not in keeping with the rest of the development
- may affect the structural soundness of a building
- may interfere with any statutory easement automatically granted under the STA.

A lot owner must disclose the grounds for refusing or voting against the application. If the grounds are not disclosed, the refusal or vote is ineffective.

► Renovations to a lot in a survey-strata scheme

Renovations within a survey-strata scheme are less complicated than renovating in a strata scheme. This is because, subject to what the by-laws say, the approval of the strata company or written approval of the other owner (in the case of a two lot scheme) is only required if on completion of the structural alteration the plot ratio or open space requirement for the lot is breached.

If the strata company's approval is required, it must be provided by way of resolution without dissent

An application for the approval of the structural alteration of a lot must include the following information:

- The plot ratio restrictions and open space requirements in relation to the parcel of land the survey-strata scheme is on.
- The pro rata entitlements of the lot as they relate to open space and plot ratio.

- If the application was to be approved, the area of the structure, including the area of all existing and proposed structures to be taken into account for the purposes of calculating the plot ratio restrictions and open space requirements.
- Whether or not the carrying out of the proposal will breach the pro rata entitlements of the lot and, if it does, the percentage and area by which the pro rata entitlements of the lot is exceeded.
- The dimensions of the proposed structure upon its completion.
- Any likely interruption to or interference with any statutory easement, short form easement or restrictive covenant or any other easement or restrictive covenant affecting the parcel that is shown on the scheme plan or registered against the parcel, whether of a permanent or temporary nature.

Open space requirements and plot ratio restrictions are laid down by the local authority in relation to the parcel of land the survey-strata scheme is on. These requirements set out the total area of all structures which may be constructed on the parcel. The balance must be kept as open space.

If an application is received by the strata company, voting on it must open within 35 days after receipt of the application.

An owner of a lot approves the structural alteration of a lot if:

- they provide written consent to the alteration, or
- they have not made a written objection to the alteration within 42 days of being given the application.

A strata company approves the structural alteration of a lot if:

- it provides the applicant written consent to the alteration expressed by resolution without dissent, or
- it has not made a written objection to the alteration within 77 days of being given the application.

► Renovations to lots that impact common property

Individual lots within a strata titles scheme can have areas within them that incorporate common property. These areas can be structural components for walls and floors, pipes, electrical infrastructure and the associated conduits.

The strata company has a general duty to control and manage this common property for the benefit of all lot owners and to keep this common property properly maintained and in good and serviceable repair. As such, lot owners wanting to undertake renovations that impact these parts of the common property may require approval from the strata company.

SAT exemptions for structural alterations

A lot owner may apply to the State Administrative Tribunal (SAT) for an exemption from the requirements of the part of the STA relating to structural alteration of a lot.

This exemption would allow a lot owner to undertake a renovation that structurally alters their lot:

- without the approval of the strata company or written consents of owners, and
- despite a valid refusal to the renovation.

SAT can only make an order exempting the renovation from the approvals required under this part of the STA if:

- the structural alterations to the lot are reasonable, having regard to the merits of the alteration and the interests of all the owners of the lots in the use and enjoyment of their lots and the common property, and
- to the extent that the structural alteration has already been carried out, it will not cause any significant inconvenience or detriment to the owners of other lots.

Repairs

► Responsibility for repairs to common property

The strata company has a duty to control and manage the common property of the scheme for the benefit of all lot owners.

The strata company is responsible for keeping the common property of the scheme in good and serviceable condition. This includes undertaking repairs and renewing and replacing common property when necessary. Strata companies are also able to make improvements to and alter common property.

The only exception to this duty is where a scheme has exclusive use by-laws in place. An exclusive use by-law confers on the occupier of a lot exclusive use of and special privileges over certain common property in the scheme. Unless these by-laws specify otherwise, it is the responsibility of the lot occupier to maintain, repair, renew, or replace the common property that they have exclusive use of.

A lot owner can clarify if they have responsibility for the repair and maintenance of common property by reviewing the by-laws for their scheme.

► Paying for repairs to common property

Strata companies are required to budget for the maintenance and upkeep of common property. If expenditure on common property is required in addition to that allowed for in the budget, a strata company may spend up to \$500 per lot in the scheme without the approval of its members. If expenditure greater than this allowance is required, it can be approved through a special resolution of the strata company.

Building defects

► What if there is a problem with my building?

In Western Australia, builders are required to rectify defective works within six years of practical completion of those works under the *Building Services (Complaint Resolution and Administration) Act 2011*. This six-year period is referred to as the statutory defect liability period. Complaints about building defects must be made to the Building Commissioner and more information can be found on the Department of Mines, Industry Regulation and Safety website.

Once a strata company is established for a strata titles scheme, the strata company is entitled to all the rights and remedies of the scheme developer in respect of building defects in a:

- strata scheme - each scheme building
- strata scheme or survey-strata scheme - infrastructure comprising common property of the scheme.

This means that after a strata titles scheme has finished being developed and the lots sold off to new owners, the strata company can

pursue a builder for defective work as if they were the developer.

The STA also includes provisions that restrict a scheme developer who is a member of the strata company from voting on defect in a scheme building or infrastructure. If, within 10 years after completion of a scheme, a proposed resolution is put to a strata company about a building defect, the following members of the strata company must be excluded from voting on the resolution:

- the scheme developer of the subdivision in which the building was constructed or modified, and
- an associate of such a person.

If someone is excluded under these provisions, the unit entitlement of the lot of the member must be disregarded in determining whether the proposed resolution is passed by the strata company.

