



## Land & Property Information

A division of the Department of Finance & Services

### **REGULATORY IMPACT STATEMENT**

*The closing date for comments or submissions is  
Friday 3 August 2012*

*(Please see page 13 for invitation to comment)*

STRATA SCHEMES (FREEHOLD DEVELOPMENT)  
REGULATION 2012 AND STRATA SCHEMES  
(LEASEHOLD DEVELOPMENT) REGULATION 2012

**NEW SOUTH WALES  
LAND AND PROPERTY INFORMATION  
July 2012**





# CONTENTS

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## REGULATORY IMPACT STATEMENT

1.	Title and Proponent of Proposed Regulation	1
2.	Relevant Acts	1
3.	Regulation Making Power	1
4.	Legislative Background	1
5.	Objectives of the Regulatory Proposal	3
6.	Options to Achieve Objectives	4
7.	Detailed Impact Assessment of Proposed Regulations	6
8.	Impact Assessment of Alternative Options and Overall Assessment	11
9.	Consultation	13
10.	Invitation to Comment	13

## APPENDIX

Appendix A-	List of Bodies to whom this RIS has been referred for comment	14
Appendix B-	Better Regulation Statement	15





# REGULATORY IMPACT STATEMENT

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For the:

**STRATA SCHEMES (FREEHOLD DEVELOPMENT) REGULATION 2012 AND  
STRATA SCHEMES (LEASEHOLD DEVELOPMENT) REGULATION 2012**

## 1. TITLE AND PROPONENT OF THE PROPOSED REGULATION

The *Strata Schemes (Freehold Development) Regulation 2012* and the *Strata Schemes (Leasehold Development) Regulation 2012* will be administered by Land and Property Information, a Division of the Department of Finance and Services, and is proposed by the Hon Greg Pearce MLC, Minister for Finance and Services.

This Regulatory Impact Statement (RIS) will cover both Regulations simultaneously given their similarities, thus any references to the 'Regulations' will refer collectively to these Regulations unless otherwise stated.

## 2. RELEVANT ACTS

*Strata Schemes (Freehold Development) Act 1973*  
*Strata Schemes (Leasehold Development) Act 1986*

## 3. REGULATION MAKING POWER

Sections 37C and 158 of the *Strata Schemes (Freehold Development) Act 1973* provide the general regulation making power for the development of freehold strata schemes. Other various sections specifically allow or require regulations to be made.

Sections 66C and 196 of the *Strata Schemes (Leasehold Development) Act 1986* provide the general regulation making power for the development of leasehold strata schemes. Also various sections specifically allow or require regulations to be made.

## 4. LEGISLATIVE BACKGROUND

### 4.1 The *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* ('the Acts')

The abovementioned Acts prescribe the law of strata development in New South Wales. The *Strata Schemes (Freehold Development) Act 1973* applies to the development of strata schemes



on freehold land. Similarly, the *Strata Schemes (Leasehold Development) Act 1986* contains the provisions for the development of strata schemes on leasehold land. Because of the relationship between the Acts, the provisions of both Acts mirror each other for consistency. The Acts include the general rules affecting strata development such as the approval of strata plans and strata plans of subdivision, creation of lots and common property, staged development and the variation and termination of strata schemes. Management of strata schemes and the resolution of disputes within the scheme is dealt with in the *Strata Schemes Management Act 1996* and its regulation.

The Acts each have respective Regulations. The Regulations supplement the Acts and contain the technical particulars, such as the form and content required in strata plans.

### *Background to the Regulations*

The Regulations are consistently monitored by Land and Property Information (LPI) to ensure their continual effectiveness. Since the last remake of the Regulations in 2007, close consultation with key stakeholders in LPI and the surveying and strata industry has assisted in the preparation of the proposed Regulations.

The proposed Regulations will replace the existing *Strata Schemes (Freehold Development) Regulation 2007* and *Strata Schemes (Leasehold Development) Regulation 2007*, which are scheduled to sunset on 31 August 2012 under the staged repeal provisions of the *Subordinate Legislation Act 1989*.

The proposed Regulations contain some minor changes to the existing Regulations. The proposed changes will reduce duplication with respect to location plans; clarify the information to be shown on the location diagram where a building encroaches and clarify the definition of a 'site of a building' for the purposes of a stratum parcel.

During this review consideration was given to phasing out the use of a vinculum in plans. This would have required separate areas to be shown for parts of a lot inside the building and parts outside the building. However, after consultation with stakeholders, this proposal was later abandoned on the basis that the costs exceeded the benefits. This RIS will discuss the proposal and the consultation process further.

There has been considerable effort to educate and inform solicitors, surveyors and members of the public of the existing Regulations. There is also extensive documentation based upon the existing Regulations. This includes the Registrar General Directions for Strata Plans; LPI Information Bulletins; 'Bauman & Wells Land Titles Office Practice'- Ticehurst. These documents refer to specific clauses in the existing Regulations.



## **4.2 Strata Industry Working Group (SIWG)**

The SIWG is an LPI initiative that brings together a diverse group of external strata stakeholders and participants with the aim of providing an open forum to discuss current strata issues and options for reforms. Issues affecting strata schemes are continuously reviewed and consultation is consistent and ongoing. Participants of SIWG include:

- LPI
- Law Society of NSW
- Real Estate Institute of NSW
- Office of Fair Trading, NSW
- Institute of Surveyors, NSW
- Strata Community Australia NSW
- Association of Consulting Surveyors
- Urban Development Institute of Australia
- Owner's Corporations Network
- Building Professionals Board
- Sydney City Council
- Australian Society of Building Consultants
- Australian Property Institute
- Australian College of Community Association Lawyers
- Private Surveyors

## **5. OBJECTIVES OF THE REGULATORY PROPOSAL**

### **5.1 The objectives of the proposed Regulations are:**

- to ensure that a plan or dealing lodged for registration is in an appropriate form.
- to standardise plan requirements for electronic and manually lodged plans.
- provide for fees



## 5.2 To achieve these objectives the Regulations prescribe:

- the form in which location plans, schedules of unit entitlement and floor plans are to be prepared (Part 2 and Schedule 1),
- the form in which strata plans, strata plans of subdivision, strata plans of consolidation and building alteration plans are to be prepared (Part 3),
- matters relating to staged development (Part 4),
- signature forms (Part 5 and Schedules 3 and 4),
- miscellaneous matters, including lodgment of documents by hand and electronically, and fees payable to the Registrar General in connection with the lodgment, examination, copying and issue of documents (Part 6 and Schedules 2, 5 and 6),
- other matters of a formal or ancillary nature (Part 1).

## 6. OPTIONS TO ACHIEVE OBJECTIVES

The options to achieve these objectives include:

### 6.1 Allow the Regulation to Lapse (No regulation/Base case)

This option, known as the base case involves allowing either or both the *Strata Schemes (Freehold Development) Regulation 2007* and the *Strata Schemes (Leasehold Development) Regulation 2007* to lapse and permitting the market to develop its own method and particulars of the form and content of some parts of strata scheme plans. In most respects, this option would not be viable, given the technical detail required to draft a plan in addition to the requisite expertise. If the minimum standards were not adhered to, or a system of standardised plans were not able to be insisted upon, the Registrar General would not be able to maintain compliance with the standards currently required for registration. This would compromise the growth of strata development and the strata industry as a whole. This would likely lead to further litigation and uncertainty with respect to strata plans.

To 'Do Nothing' would result in the existing *Strata Schemes (Freehold Development) Regulation 2007* and *Strata Schemes (Leasehold Development) Regulation 2007* being repealed on 1 September 2012, with no replacement Regulation being made. While the Act would still exist, a number of provisions would be unworkable and the objectives of the Act could not be achieved. It would require some further action by the Government to give effect to the intention of the Act through new legislation.

In addition, to 'do nothing' would mean that LPI would not be able to enforce compliance with a unified system of strata plans, which would have an impact on consumers and would compromise the effectiveness of the Torrens Land Register.





## **6.2 Best Practice Procedures (Self Regulation)**

This option suggests that the Regulations lapse for the adoption and implementation of best practice guidelines. There are currently no such guidelines in existence for strata plans as the Regulations currently espouses the legislative requirements for them. In effect, this is the same as Option 1. Allowing the industry to adopt its own standards for strata plans would undermine the strata laws entirely. There would be no guarantee of a reliable strata plan if best practice procedures were adopted. Also, if a strata plan was lodged and did not conform to the current requirements specified under the Regulations, the Registrar General could not allow for its registration, as the standards and objectives of the Acts must be maintained to ensure the required correctness of the strata plan.

If this option were adopted, there is no reason to believe that self-regulation would provide any benefit to the strata industry or the community. Again, the result would be non-standard strata plan practices resulting in delays in the registration of strata plans and more scope for uncertainty and error.

Accordingly, this option would not achieve the objectives of the Regulations or the Acts under which they are made.

## **6.3 Include matters in the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1983*, respectively**

It would be possible to include the matters prescribed by the Regulation in the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1983*, respectively, rather than the Regulation. However, conveyancing practice in New South Wales is a matter that is being continually reviewed and, where change is necessary, it is faster and easier to amend the Regulation than to amend the Act.

There is an ongoing need for flexibility in the matters covered by the Regulation to facilitate responses to changing needs in the industry. Keeping the regulatory matters separate from the Acts and retaining the Regulations is therefore required.

It would be possible to include the matters dealt with by the Regulations in separate schedules within the Acts. This would however, add complexity. Regulations form a customary part of legislation and are intended to contain details of a technical and ancillary nature. It is considered that the Regulations achieve this purpose.



## **6.4 Remake Strata Schemes (Freehold Development) Act 1973 and the Strata Schemes (Leasehold Development) Act 1983**

There is general acceptance of the need for a system of standardised requirements for strata plans. The current requirements for the form and content of various types of strata plans are well established with the industry and its objectives can best be met by remaking the Regulation.

This is the preferred option.

### **The Proposed Regulations**

#### *Summary of Proposed Amendments:*

There are a few minor changes proposed in this remake of the Regulations, which are summarised below:

- Clauses 5 (1) (c)- to dispense with the requirement to show certain distances on a location plan where the lot boundary is also the parcel boundary;
- Clauses 5 (1) (f)- to amend the clause to require the nature and details of any encroachments to be indicated on a strata plan;
- Clauses 5 (2) (a)- to clarify that the perimeter of the site of the building refers to the lot or lots on which the whole building is situated;
- Clauses 7 (7)- to remove unnecessary reference to particular types of fences so that no dividing fence (within the meaning of the Dividing Fences Act 1991), on or near the boundary need be shown on the floor plan.

## **7. DETAILED ASSESSMENT OF PROPOSED REGULATIONS**

### **7.1 Clause 5 (1)(c)- Dispense with the requirement to show certain distances on a location plan where the lot boundary is also the parcel boundary**

Clause 5 of the Regulations prescribe the content and requirements of location plans. Specifically, clause 5 (1) requires that a location plan must be in the approved form known as a 'Strata Plan Form 2' and show the position of the building or the structural feature used to define the boundary of the lots.

Subclause 5 (1)(c) requires the location plan to show a distance from the building to the parcel boundary if any part of the building, or any part of a lot that is outside of a building, is within 2 metres of the parcel boundary.

Where a strata scheme includes a courtyard as part of the strata lot, the courtyards often extend to the parcel boundary. The distance from the building to the parcel boundary will be shown on the



floor plan, which provides the details for each strata lot. This means that there is an unnecessary duplication with the same information also required on the location plan. The proposal is for this requirement to be exempt where a strata lot boundary is on the parcel boundary. This would avoid the additional requirement on the location plan, as it is already required in the floor plan. The proposal follows the objective of simplifying the location plan.

## **7.2 Clauses 5 (1) (f)- Details of the' Nature and Extent' of the Encroachment to be shown**

Where there is an encroachment of some part of a strata building over the boundary of the land on which the building is situated, the Registrar General requires the particulars of the encroachment to be shown. The encroachment may simply be a part of an awning or an architectural embellishment that encroaches into the airspace above a public road, it may be a balcony or it may be more substantial. The Act refers to an encroachment and clarifies the circumstances where the encroachment will be treated as part of a lot and where it will be treated as common property: section 6(3) *Strata Schemes (Freehold Development) Act 1973*; section 5(4) *Strata Schemes (Leasehold Development) Act 1986*.

The current Regulations require that if any encroachment exists, the location plan must show such survey information as the Registrar General may require. It is proposed that the Regulation be amended to also require the nature and extent to be shown. This impact is considered negligible as in practice this information is generally already supplied.

## **7.3 Clauses 5 (2) (a) - the 'site of the building' refers to the lot or lots on which the building is situated;**

Clause 5(2) deals with the location plan for a part strata plan, being a strata plan that relates to only part of a building. A building can contain a number of separate strata schemes or a combination of strata schemes and unsubdivided stratum lots that don't form part of any strata plan.

The parcel of land that is subdivided by a part strata plan is referred to as a stratum parcel. The stratum parcel can comprise separate areas within the building and those areas need not be contiguous. It can also comprise land outside the building. There must be some part of the building outside of the stratum parcel.

Clause 5(2)(a) requires the location plan for a strata plan that subdivides a stratum parcel to include information of the perimeter of the site of the building for which the stratum parcel forms part.

The words 'site of the building' used in this subclause has caused ambiguity. The phrase is not defined, though it is referred to in the Act, including section 5, within the definition of 'location plan', and clause 3 of Schedule 1A.

It has been suggested that perimeter for the 'site of the building' refers only to the part of the building being the subject of the part strata plan. The phrase is not, however, meant to be restricted



in this way. The 'site of the building' is intended to be the whole of the parcel of land, or lot of land, within which the building is erected. For clarity, it is proposed to amend clause 5 (2) (a) by adding the words '(being the lot or lots on which the building is situated)' after the words 'site of the building'.

This amendment also seeks to confirm current practice and the impact is considered negligible.

#### **7.4 Clauses 7 (7)- to update and remove unnecessary references to different types of fences**

Clause 7(7) requires that a floor plan must show all occupations within an external part of a lot that are within 1 metre of the boundary, other than dividing fences that are made of "...timber, pre-painted steel, wire or similar materials but not masonry". There is no requirement for any dividing fence to be shown on or near the boundary, regardless of what it is made of. The reference to the various types of dividing fences should be deleted as it serves no purpose.

The above three proposed amendments are considered minor and have little impact to both government and the industries.

#### **7.5 Population affected**

There are more than 2 million people living or working in Strata units in NSW among around 71,000 strata schemes. Of these registered strata schemes, there are 721,245 lots (as at April 2012). A minority of those schemes represent commercial or industrial development (eg shopping centres, factory units). The described amendments above will have the most affect on surveyors in practice when preparing strata plans and developers engaged in ongoing strata development.

### **OTHER PROPOSALS INCLUDED IN THE REVIEW**

*(The following proposal was considered as part of the review but did not form part of the proposed amendments)*

*Clauses 8 (2), 9 (3) and 10 (3) - This proposal concerned the requirement for each part of a strata lot (such as a balcony, car space or storage area), to be described as part of that relevant numbered lot.*

Part 3 of the Regulations deals with strata plans, involving subdivision, consolidation and building alteration plans. Clauses 8 (2), 9 (3) and 10 (3) require that every lot in a strata plan must be numbered consecutively. In addition, if a numbered lot consists of more than one part (such as a car space or storage area), each distinct part must be identically numbered as a part of the numbered lot.

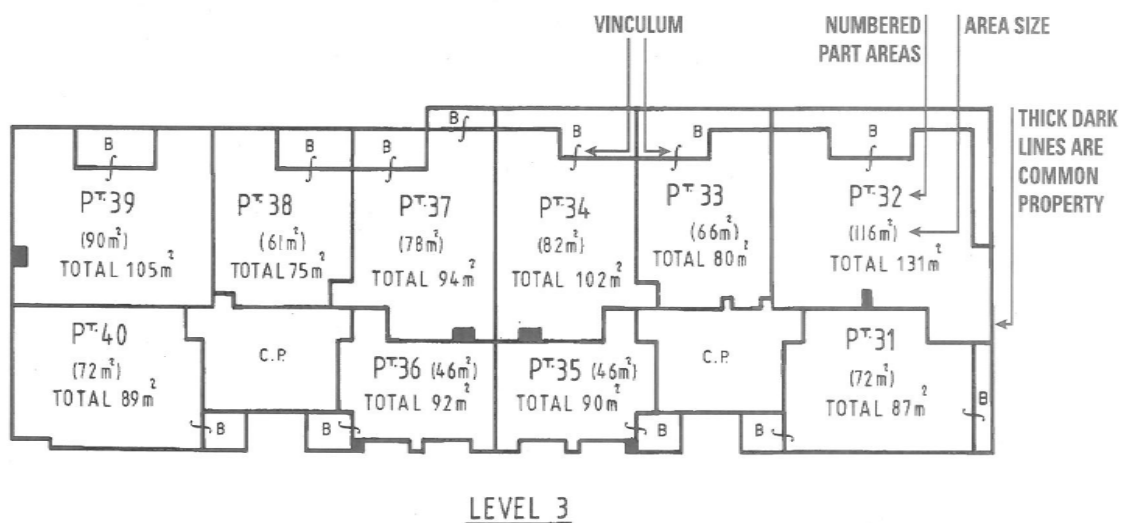
A vinculum (~) is a symbol used in surveying to link two (or more) separate parts of a lot. Parts of a lot linked by a vinculum are treated as one. In the context of a strata plan, two parts of a lot that are separated only by a common property wall are routinely linked by a vinculum. Usually, the parts of a strata lot that are linked by a vinculum will be the main internal living areas and a balcony or



courtyard that is separated by the outside wall of the building (which is common property). These two parts are then treated as one, with one area dimension provided. The balcony or courtyard is not given a separate area dimension.

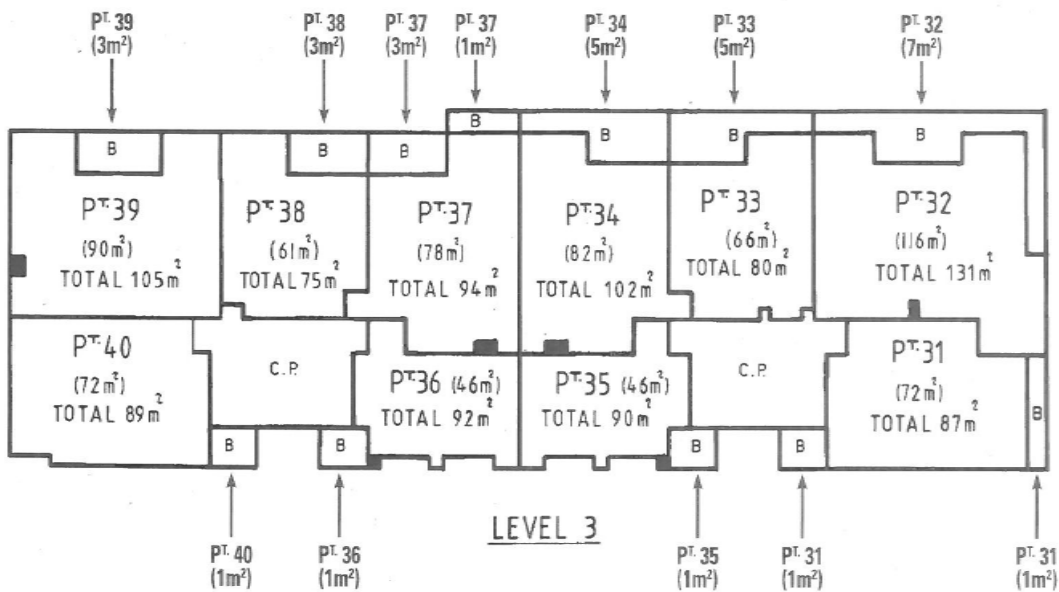
It was suggested that the Regulation should be amended to prevent the use of vinculum. This would have required all separate parts of a lot to be shown as a separate part lot, regardless of whether they were separated only by a common property wall or were otherwise more remote. The area dimensions of each part would need to have been shown on the plan. The current use of vinculum has made it difficult to discern the size of living areas in comparison to non-living areas for land valuation purposes. It was suggested that by excluding the use of vinculum, the area dimensions of parts of a lot used for living and non-living purposes, which are separated by a common property wall, would be clearly ascertainable by perusal of the floor plan. The proposal would have changed the method of depicting lots on the strata plan.

To illustrate, the vinculum indicates that the area joined by the use of the vinculum is part of the lot. For example, a balcony (indicated as the letter 'B'), is connected to the living space of the lot and is therefore part of the lot. The following diagram indicates this current practice.





The following figure is replicated below and represents how the proposed floor plans would appear if the suggestion were adopted, with the use of numbered part areas and area dimensions\*:



\*Figures represented are for example purposes only.

The considered proposal has benefit for valuation purposes. In cases where living and non-living areas are quickly and easily discernable, the valuation process is quicker and more efficient, particularly when immediate access to strata premises is not feasible. The proposal sought to provide additional information on the strata plan. However, the proposal would have imposed additional costs to the plan preparation process. The depiction of strata lots would have become much more complex, making them more difficult to read and leaving open more possibility for error. Upon open discussion with industry representatives of SIWG (paragraph 4.2), and external parties, the proposal did not proceed to proposed amendment.



## 8. IMPACT ASSESSMENT OF ALTERNATIVE OPTIONS

### Overall Assessment:

#### 8.1 Proposed Regulation

LPI and the Land Title Registry it administers underpins billions of dollars of economic activity in NSW each year. The proposed changes have been made to improve the efficiency and effectiveness of the strata plan registration process with a view to providing consistency for developers, industry and most importantly the consumers and the community of New South Wales in their dealings with LPI.

In addition the proposed Regulation provides the following benefits:

- consistency of standards in strata schemes
- improved accuracy and identification of common property and parts of lots in strata schemes
- minimal impact on current strata plan registry.

#### 8.2 Allow the Regulations to Lapse/Do Nothing

To “Do Nothing” would result in the existing *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986* being repealed on 1 September 2012, with no replacement Regulation being made. While the Act would still exist, a number of provisions would be unworkable and the objectives of the Act could not be achieved. It would require some further action by Government to give effect to the intention of the Act through new legislation. However, enshrining proposed requirements of the Regulation in the Act would reduce the ability to amend requirements where problems arise for industry and consumers.

If LPI were required to maintain two (2) plan lodgment systems with different requirements, this ongoing impost would have to be borne by developers, lawyers, surveyors and consumers in the strata industry resulting in problematic and inefficient strata plan and lodgment procedures.

#### Costs to Government

The cost to government will be at the least, moderate. LPI has an established record and procedure for the registration of strata plans which is well understood by the industry and strata community. To abolish the system at this stage by allowing the Regulations to lapse will mean that the content and form of a strata plan will be not uniform. In addition, LPI would have to re-establish an alternative method of strata registration procedures and have it fully operable in a minimum timespan. In the short term, this will be at a large cost for the government.

#### Costs to Public

The delay in registration of strata plans caused by allowing the regulations to lapse may involve additional costs to the public. In particular, developers as LPI would be unable to enforce the particulars needed to enable a strata plan to be registered.



### **Benefits to Government**

Any required changes can be made at the discretion of LPI NSW without having to go through any process of being drafted by the Parliamentary Counsel, approved by the Governor-in-Council or published in the Government Gazette.

The cost of making a regulation or amending an Act could be saved. In respect of a regulation this means that it will not be necessary for instructions to be given to Parliamentary Counsel, drafting by Parliamentary Counsel, preparation and circulation of a RIS, approval by the Governor-in-Council, and publishing in the Government Gazette.

In respect of an Act it will be necessary to obtain Cabinet approval, instruct Parliamentary Counsel, drafting by Parliamentary Counsel, Cabinet approval to the Act, approval by both Houses of Parliament, assent by the Governor-in-Council, and publication in the gazette.

### **Benefits to Public**

There are no perceived benefits to the public.

## **8.3 Best Practice Procedures (Self Regulation)**

### **Benefits to Government**

If the industry were to adopt its own best practice procedures, there is no perceived benefit to government.

### **Benefits to Public**

There will be an alternative method of creating, but not registering strata schemes.

### **Cost to Government**

The cost to government will be at the least, moderate. It is envisioned that there will be greater risks for error and a potential increase for litigation due to delay, unclear guidelines and technical misunderstandings. Wasted government resources will mostly be due to unnecessary requisition and duplication of information.

### **Cost to Public**

The cost to the greater public will be negligible in the short term, but the cost to industry is foreseeable. This may be due to a change in processes or other incidental costs, such as obtaining advice. There will also be delays and inconsistent information to which standards will apply for the same strata plans.





## **8.4 Include the Regulatory matters in the Act**

### **Benefits to Government**

Aside from having one statutory rule for each of the Acts, there is no perceived benefit to government.

### **Benefits to Public**

There is no perceived benefit to the public, aside from the costs, if any, in obtaining the Regulations.

### **Costs to Government**

The cost of having to amend the Acts, as well as the costs involved in preparing for any delays in amending the Acts, which will have to be approved by Parliament.

### **Costs to Public**

There is no foreseeable cost to the greater public.

## **9. CONSULTATION**

It is proposed to circulate copies of the draft Regulation and this Regulatory Impact Statement to the organisations and individuals listed in Appendix A as well as to place a notice on the LPI web site, the Government Gazette and the Sydney Morning Herald inviting comment.

## **10. INVITATION TO COMMENT**

Comments or submissions with regard to the draft Regulation or any matters set out in this Regulatory Impact Statement may be sent to:

Review Officer – Strata Schemes  
Legal Services Division  
Land and Property Information  
GPO BOX 15  
SYDNEY NSW 2001

Or  
DX 17 SYDNEY

Or email to:  
[legalservices@lpi.nsw.gov.au](mailto:legalservices@lpi.nsw.gov.au)

**The closing date for comments or submissions is Friday 3 August 2012.**



## **APPENDIX A**

### **List of Bodies to whom this RIS has been referred for comment**

- 1 The Law Society of NSW
- 2 Institution of Surveyors NSW Inc
- 3 Association of Consulting Surveyors New South Wales Inc
- 4 Real Estate Institute of NSW
- 5 Institute of Strata Title Management
- 6 Urban Development Institute of Australia
- 7 Office of Fair Trading
- 8 Department of Planning
- 9 Department of Local Government
- 10 City of Sydney
- 11 Property Council of Australia
- 12 Conveyancing Society of NSW Inc.
- 13 Australian Institute of Conveyancers NSW Ltd.
- 14 Property Owners Association of NSW Inc.
- 15 Local Government Association



## APPENDIX B

### BETTER REGULATION STATEMENT

***Principle 1: The need for government action should be established***

This Regulatory Impact Statement (RIS) has been drafted in accordance with the staged repeal provisions of the *Subordinate Legislation Act 1989*, specifically schedule 1. It accords with the requirement for a review of the Regulations' on a 5 year basis. Each aspect of a thorough legislative review was undertaken, including functionality, workability and currency. More information on the need for government action is discussed in the RIS in paragraph 4.

***Principle 2: The objective of government action should be clear***

This principle is discussed in depth in paragraph 5 of the RIS.

***Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options***

This principle is discussed in depth in paragraph 6.

***Principle 4: Government action should be effective and proportional***

It is considered that the proposed amendments to the subject Regulations will impose no unnecessary costs for both government and the industry, as the matters are considered minor in nature. The RIS discusses this principle in detail, particularly paragraph 8.

***Principle 5: Consultation with business and the community should inform regulatory development***

This principle is discussed in paragraph 4.2 and 9.

***Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered***

This principle is discussed in paragraph 8.

***Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.***

The *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* forms and integral part of strata plan registration and are consistently reviewed for effectiveness regularly. The RIS describes the formal review process undertaken in the current review, and the measures undertaken for ongoing review.