

# Should I Subdivide or Use A By-Law?

## Ownership and use rights

We have recently seen an increasing number of requests from lot owners in strata schemes to obtain a right of ownership or use for common property areas comprised in:

- Attics
- Courtyards
- Balconies

Also lot owners have been requesting subdivision of an existing lot into two lots and consolidation of two lots into one lot.

## Options to implement

There are a number of options available to implement these arrangements. These include:

- Plans of subdivision of common property, transfer of subdivided common property to a lot owner and consolidation of subdivided common property with an existing lot
- The owners corporation granting exclusive use by-laws in favour of lot owners for areas of common property with plans to identify the exclusive use area
- Plans of subdivision to subdivide an existing lot
- Plans of consolidation to consolidate two existing lots
- Conversion of a lot into common property

## Pros and cons

For subdividing and obtaining a right of ownership rather than obtaining an exclusive use by-law there are various pros and cons.

Pros for subdividing include:

- An increase in value based on obtaining freehold title to the subdivided area rather than just an exclusive use right
- The subdivided area becoming secure freehold title and being able to be dealt with by the lot owner by way of mortgage, lease or sale
- An increase in unit entitlement in the strata scheme and accordingly greater voting rights

However, cons for subdividing include:

- Costs, including any price for obtaining freehold title from the owners corporation, stamp duty and taxes
- The time required, dependent on the complexity of the subdivision and any agreement required between the lot owner and the owners corporation
- The local Council needing to be involved for approval purposes and potential delays in the process including due to local Council requirements

**Prepared by Bannermans Lawyers**  
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