

Two Lot Schemes

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Two lot strata schemes are fairly common, but they present special challenges to owners. In particular:

- It is much more likely that the lot owners will occupy separate detached dwellings, limiting the common property and having implications for issues such as insurance, maintenance, levies and funds.
- There being two and only two votes on every decision, voting deadlocks are more likely, with implications for voting procedures and dispute resolution.
- The usual management structure and resulting administration costs may be seen as unnecessary and excessive for such schemes.

The Strata Schemes Management Act 2015 ("SSMA") distinguishes large schemes (schemes with more than 100 lots) and other schemes, applying different rules to each. Two lot schemes fall into the "other schemes" category, but are subject to some special rules, reflecting the challenges referred to above.

The key rules specific to 2 lot schemes are as follows:

- Strata Committee - Section 30(3) of the SSMA, removing the need for an election, provides that the strata committee for a two lot scheme comprises one member for each lot, being:
 - For a lot having a sole owner, that owner.
 - For a lot having multiple owners, the owner nominated by them or if there is no such nomination, the owner first named on the strata roll.
 - Where a sole owner or nominated multiple owner is a company, the company's nominee.
- Meetings – Clause 17(2)(c) of Schedule 1 of the SSMA in essence provides that the quorum for a two lot scheme is two, i.e. both owners must be present. The purpose of this is to prevent one owner taking advantage of the other owner's non-attendance at a meeting.

- Audit - Section 95 of the SSMA provides that an owners corporation is only required to have its accounts and financial statements audited if it is a large owners corporation or has an annual budget in excess of \$250,000. Strictly speaking, that rule applies to all strata schemes which are not large schemes and is not unique to 2 lot schemes. However, two lot schemes will usually have an annual budget not exceeding \$250,000, which may or may not be the case with other schemes.

- Funds:
 - Section 74(5) of the SSMA provides that an owners corporation may, by unanimous resolution, decide not to have a capital works fund if the buildings comprising each lot are physically detached from each other and if there are no buildings or parts of buildings outside those lots, i.e. where all buildings are lot property, rather than common property.

 - Such a resolution would also remove the need to prepare a 10 year capital works fund plan, which would otherwise have been required under Section 80 of the SSMA. However, as Section 80 requires that plans be prepared for successive ten-year periods commencing on the date of the first annual general meeting, that resolution may need to be made before that period commences, i.e. at the first annual general meeting.

 - Section 76 of the SSMA provides that where an owners corporation, comprising more than two lots, transfers monies from either the administration fund or the capital works fund to the other fund or uses one of the funds to meet expenditure which should have been met by the other fund, the owners corporation must, within three months levy a contribution to restore the funds transferred or used to the relevant fund. This suggests that two lot schemes can do this without need to levy a contribution to restore the funds.

- Insurance – Section 160(4) of the SSMA provides that, where all buildings are lot property, an owners corporation may, by unanimous resolution, decide that the insurance obligations which the owners corporation would otherwise have had will not apply. In that case, lot owners can and should separately insure their own lots. Other insurance requirements under Section 164 will continue to apply, e.g. workers compensation and public liability insurance.

- Formality/administration - Other than as set out above, the same management and administration requirements apply to two lot schemes. Although owners in many two lot schemes would prefer a less formal management structure, the extent and complexity of some of these requirements with this may make engagement of a strata managing agent a practical necessity. A possible compromise would be to engage a strata managing agent on the basis of a limited scope of delegated authority, e.g. delegating compliance and record-keeping functions, but self managing property maintenance functions.

DEALING WITH BREACH OF BY-LAWS IN A 2 LOT SCHEME

- Notice to comply with a by-law – In larger schemes, for a strata manager to issue a notice to a lot owner to comply with (or that they have breached) a by-law, a resolution to approve the issue of the notice is required to have been passed by the owners corporation. For two lot schemes, section 146(4) of the SSMA provides that a notice can be issued if the owners corporation without a resolution. Additionally if the scheme has the strata manager the strata manager can issue the notice to comply if it has been delegated that authority under its agency agreement.
- Changes to voting rights – For resolutions being voted on in two lot schemes where one of the owners is the original owner of the entire scheme, the original owner's voting power will be reduced. Section 5(2A) of the SSMA provides that if the unit entitlement of the original owner comprises more than *half* of the total unit entitlement of the scheme, their unit entitlement is reduced by two-thirds for the purposes of voting in a resolution.

For example, where an original owner's lot has a unit entitlement of 30, and this unit entitlement comprises more than half of the unit entitlement of the scheme, the original owner's unit entitlement is reduced to 10 for the purpose of voting in resolutions.

Lot No.	Unit Entitlement	Value of Vote (pursuant to section 5(2A) of the SSMA)
1 (original owner)	30	10
2	20	20

As demonstrated above, this can have significant implications as to whether either a special resolution or an ordinary resolution is resolved.

Conclusion

Two lot strata schemes should consider two key issues:

- To what extent do we wish to take advantage of the special rules applicable to two lot schemes, e.g. not have a capital works fund.
- To what extent do we wish to adjust our compliance and administration structure to reflect our special circumstances, e.g. whether to appoint a strata managing agent and if so, the scope of the agent's delegated authority.

We have considerable experience with these issues and could help you pre-empt difficulties in this area.

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