



Common Property Alteration by an Owner Best Practice Guideline

Reference: SCAWA600

This Practice Guideline has been developed for Strata Community Managers by SCA (WA) and Lavan.



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Common Property Alteration by an Owner

Chapter One: Responsibility for the common property

Management and control of the common property

- 1 Common Property is:
 - 1.1 those parts of a strata scheme / survey-strata scheme (**Scheme**) that are not a lot: section 10 of the *Strata Titles Act 1985 (Act)*; and
 - 1.2 owned jointly by all owners within the Scheme as tenants in common proportional to the unit entitlements of their respective lot: section 13(7)(c) of the Act.
- 2 The common property must be controlled and managed by the strata company for the benefit of all owners: section 91(1)(b) of the Act (**Control Duty**).
- 3 The strata company has a statutory duty under section 91(1)(c) of the Act to keep in good and serviceable repair, properly maintain and, if necessary, renew and replace the common property (**Maintenance Duty**).
- 4 An owner needs the approval of the strata company before they can alter the common property.

Chapter Two: A strata company's power to alter or improve the common property

Common Property Alteration Power

- 1 A strata company has the express power to alter or improve the common property (**Common Property Alteration**) of their Scheme under section 91(2) of the Act (**Common Property Alteration Power**).
- 2 A strata company's ability to exercise its Common Property Alteration Power is limited by the expenditure controls contained in section 102 of the Act: see the note below section 91(2) of the Act.

Expenditure controls under section 102 of the Act

Ordinary resolution if the Common Property Alteration will cost less than \$500 per lot

- 3 If the proposed Common Property Alteration will cost the strata company less than \$500 per lot, the strata company can authorise the Common Property Alteration by passing an ordinary resolution of the strata company to approve or alter the budget required for the Common Property Alteration: section 102(3) and (4) of the Act.

Special Resolution if the Common Property Alteration will cost more than \$500 per lot

- 4 If the proposed Common Property Alteration will cost the strata company more than \$500 per lot, the strata company can approve the Common Property Alteration by:
 - 4.1 passing a special resolution of the strata company to approve the budget required for the Common Property Alteration: section 102(5) of the Act; and
 - 4.2 including within the written notice of the proposed special resolution the following details of the proposed Common Property Alteration in accordance with regulation 80(2) of the *Strata Titles (General) Regulations 2019 (Regulations)*:
 - 4.2.1 a description of the proposed improvement or alteration of the common property, including particulars of what is proposed in terms of design and materials;
 - 4.2.2 the proposed timeframe for completion of the proposed alteration or improvement of the common property;
 - 4.2.3 particulars of the estimated cost of the work necessary to complete the proposed alteration or improvement of the common property;
 - 4.2.4 a drawing showing where the proposed improvement or alteration will occur on the common property; and

- 4.2.5 particulars of a quotation or tender obtained by the strata company for the work necessary to complete the proposed improvement or alteration of the common property.

Chapter Three: Overview of the methods a strata company can use to authorise an owner to alter the common property

Owner installing an item on the common property

- 1 A strata company can authorise an owner to install an item on the common property:
 - 1.1 through an exclusive use by-law with a special privilege;
 - 1.2 through a lease of the common property;
 - 1.3 through an easement created under section 64 of the Act; or
 - 1.4 through a licence.
- 2 Further details of the authorisation to install an item on the common property can be found in the *Common Property Installation Approval Best Practice Guideline*.
- 3 However, where an owner wants to alter or improve the common property in a way where they are not simply installing an item onto the common property, the approvals required are different.

Owner altering the common property

- 4 An owner can obtain strata company authorisation to alter or improve the common property as follows:
 - 4.1 through an exclusive use by-law with a special privilege (**Special Privilege By-law**);
 - 4.2 with the written approval of all other owners and the approval of the strata company by resolution without dissent (**Written Approval and RWD**); or
 - 4.3 where the strata company adopts the owner's suggestion to do the Common Property Alteration and appropriate resolutions of the strata company are passed authorising the strata company to do the Common Property Alteration (**Adopted CP Alteration**).

Special Privilege By-law

- 5 A strata company can authorise an owner to alter the common property if the strata company makes and registers a Special Privilege By-law (referred to under the Act as an exclusive use by-law) which:
 - 5.1 grants that owner the special privilege of altering part of the common property (**Special Common Property**) in accordance with section 43 of the Act¹; and
 - 5.2 may also grant the owner exclusive use of the Special Common Property (the by-law granting the special privilege does not need to have the exclusive use grant, however the owner may need the exclusive use grant if they intend to exclusively use the Special Common Property).

- 6 To make a Special Privilege By-law, the following is required:
 - 6.1 a resolution without dissent of the strata company: section 44(2)(a) of the Act;
 - 6.2 the written consent of the owner being given the benefit of the Special Privilege By-law: section 43(5) of the Act; and
 - 6.3 the Special Privilege by-law must be registered against the strata plan: section 48 of the Act.

Written Approval and RWD

- 7 In the Supreme Court decision of *Wong v Reid* [2016] WASC 59 (**Wong v Reid**), the Supreme Court considered an appeal by the owner of a lot in a strata scheme, Mr Wong, who had been ordered by the State Administrative Tribunal to remove a wall (**Wall**) he had constructed on the common property in a strata scheme.
- 8 The Wall was an alteration of the common property and Justice Beech found in *Wong v Reid* at [22]:

“Mr Wong was not entitled to construct a fence or wall [on the common property] without the written approval of all other owners and without the approval of the strata company”
- 9 Applying the decision in *Wong v Reid*, if an owner does not have the benefit of a Special Privilege By-law, an owner needs the following approval before an owner can alter the common property:
 - 9.1 the written approval of all owners to alter the common property; and

¹ If the exclusive use by-law does not grant the owner the special privilege to install an item on the common property, the owner does not have any right to install the item: *Wong v Reid* [2016] WASC

- 9.2 a resolution without dissent of the strata company authorising the owner to alter the common property.

Old Act: orders by SAT where the strata company did not consent to the alteration of the common property

- 10 Under the previous version of the Act which was in operation prior to 1 May 2020 (**Old Act**), there were some instances where the State Administrative Tribunal (**SAT**):
- 10.1 found that a strata company's refusal to consent to an owner's proposal to effect alterations to the common property was unreasonable²; and
- 10.2 accordingly, the strata company was ordered by SAT to consent to the proposed alteration of the common property³.

Current Act: Owner could apply to SAT for an order that the strata company consent to the alteration of the common property

- 11 Under the current Act, an owner who cannot get the resolution without dissent of the strata company to authorise the owner's proposed alteration of the common property could choose to apply to SAT under section 197 of the Act for an order under section 200(2)(n) of the Act that the strata company is taken to have passed the resolution without dissent.
- 12 The owner would likely have to prove to SAT that the failure to pass the resolution without dissent is in breach of the strata company's duty under section 119 of the Act to make decisions that are not unreasonable, oppressive, discriminatory or unfairly prejudicial⁴.

Other approvals required

- 13 In addition to the approval of the strata company to alter the common property, an owner may also need the approval of the local government and any other relevant authorities before altering the common property.

Chapter Four: Adopted CP Alteration

Overview

- 1 If an owner (**Initiator**) wants to alter or improve the common property (**Proposed CP Alteration**) but cannot get a resolution without dissent of the strata company, the Initiator could consider the following:
- 1.1 a strata company has the Common Property Alteration Power; and
- 1.2 in Schemes, an owner can propose the strata company do something (**Task**) and if the strata company passes the appropriate resolution, the strata company can then do the Task, either itself, or through its agents or contractors.

Putting proposed motions for the strata company to do the Proposed CP Alteration

- 2 On that basis, the Initiator could give a member of the Council written notice of proposed motions (**Motions**) to be put to the next general meeting of the strata company in accordance with section 129(4) of the Act.

² This power was given to SAT under section 85 of the Old Act.

³ See for example, the order given in *Wholley v The Owners of Vivian's Corner Strata Plan 45979* [2020] WASAT 69.

⁴ As at the date of preparing this guide, there is no published case law on the operation of sections 200(2)(n) and 119 of the Act in the manner described above.

- 3 The Motions could, in summary:
- 3.1 provide that the strata company do the Proposed CP Alteration in accordance with its Common Property Alteration Power under section 91(2) of the Act;
 - 3.2 include an appropriate resolution of the strata company to:
 - 3.2.1 authorise the strata company to do the Proposed CP Alteration in accordance with section 91(2) of the Act; and
 - 3.2.2 approve the strata company's budget for the Proposed CP Alteration in accordance with section 102 of the Act; and
 - 3.3 include an ordinary resolution under section 135(1) of the Act directing the Council to authorise the Initiator to complete the Proposed CP Alteration⁵ as a contractor of the strata company under a contract which provides:
 - 3.3.1 the Initiator will arrange for the Proposed CP Alteration to be completed (with or without sub-contractors doing the work) in accordance with the Proposed CP Alteration plans (**Plans**);
 - 3.3.2 the cost of the Proposed CP Alteration (**CP Alteration Cost**) will be paid by the Initiator and the strata company (setting out details of how much each party pays); and
 - 3.3.3 the Initiator will be personally responsible for repairing any damage to a lot or the common property as a result of the works required to complete the Proposed CP Alteration,
(CP Alteration Contract).
- 4 Alternatively, the Initiator could gain the support of the Council and have the Council put motions to the strata company as resolutions:
- 4.1 authorising the strata company to do the Proposed CP Alteration in accordance with section 91(2) of the Act;
 - 4.2 approving the strata company's budget for the Proposed CP Alteration in accordance with section 102 of the Act; and
 - 4.3 authorising the Initiator to complete the Proposed CP Alteration as a contractor of the strata company under a CP Alteration Contract.

Required resolutions

- 5 The required resolutions will depend upon how much of the CP Alteration Cost the Initiator agrees to pay under the CP Alteration Contract and therefore how much money the strata company needs to budget to pay for the Proposed CP Alteration.

⁵ Note that work involved in altering or improving the common property is defined under regulation 90 of the Regulations as *repair or maintenance work*. Regulation 91 of the Regulations provides that section 143 of the Act does not apply to a person engaged by a strata

company to do repair or maintenance work. This means that such a person does not need a strata management contract with the strata company.

Initiator agrees to pay almost all the CP Alteration Cost

- 6 If the Initiator agrees to pay almost all of the CP Alteration Cost, the Initiator should arrange for the strata company to contribute a nominal sum of money (**Nominal Input**) to the CP Alteration Cost (even if just \$1).
- 7 This Nominal Input of the strata company is needed because the authorisation for the strata company to alter the common property is actually the approval of the budget required to do the common property alteration: see the note below section 91(2) of the Act.
- 8 If the Initiator wants to maximise their chance of getting the required ordinary resolutions, the Initiator should propose that the strata company contribute \$1 to the Proposed CP Alteration works.
- 9 This will mean that the strata company's budget to do the Proposed CP Alteration will be \$1 and the strata company can accordingly approve the Proposed CP Alteration with an ordinary resolution.
- 10 The required resolutions in this case will be:
 - 10.1 an ordinary resolution to authorise the strata company to alter / improve the common property as provided in the Plans in accordance with section 91(2) of the Act and to approve:
 - 10.1.1 the budget⁶ of \$1 required by the strata company to complete the Proposed CP Alteration in accordance with section 102(3) of the Act; or

- 10.1.2 the variation (increase) of the budget by \$1 required by the strata company to complete the Proposed CP Alteration in accordance with section 102(4) of the Act.

- 10.2 an ordinary resolution to authorise the Initiator to complete the Proposed CP Alteration as a contractor of the strata company under a CP Alteration Contract.

Initiator paying none or only some of the CP Alteration Cost

- 11 If the Initiator agrees to pay none or only some of the CP Alteration Cost and the budget required by the strata company to do the Proposed CP Alteration will be more than \$500 per lot, the required resolutions will be:
 - 11.1 a special resolution of the strata company to authorise the strata company to alter / improve the common property as provided in the Plans in accordance with section 91(2) of the Act and to approve the budget required for the Proposed CP Alteration in accordance with section 102(5) of the Act. Note that the written notice of the proposed special resolution needs to contain the following details of the Proposed CP Alteration in accordance with regulation 80(2) of the Regulations:
 - 11.1.1 a description of the proposed improvement or alteration of the common property, including particulars of what is proposed in terms of design and materials;

⁶ If the budget required by the strata company to do the alteration or improvement of the common property is less than \$500 per lot, an ordinary resolution is required. If the budget required by the strata company to do the alteration or improvement of the common property

is more than \$500 per lot, special resolution is required: section 102(5) of the Act.

- 11.1.2 the proposed timeframe for completion of the proposed alteration or improvement of the common property;
 - 11.1.3 particulars of the estimated cost of the work necessary to complete the proposed alteration or improvement of the common property;
 - 11.1.4 a drawing showing where the proposed improvement or alteration will occur on the common property; and
 - 11.1.5 particulars of a quotation or tender obtained by the strata company for the work necessary to complete the proposed improvement or alteration of the common property; and
- 11.2 an ordinary resolution to authorise the Initiator to complete the CP Alteration as a contractor of the strata company under a CP Alteration Contract.

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