



Strata Titles Amendment Act 2018 Fact Sheet

Sections 64 -72

Utility and Sustainability Infrastructure on Common Property

A feature of the new strata legislation is a change in the approval process for sustainability features such as solar panels. Currently a resolution without dissent is required to install these onto common property however under a new section (64) the process is much simpler by only requiring an ordinary resolution. This section only relates to any installation that the Strata Company wishes undertake, the process for lot owners remains the same – obtain exclusive use of the common property or if the roof is part of the lot then approval is required under Section 87.

The way that this will operate is by way of an infrastructure contract with a person who owns and operates utility infrastructure or sustainability infrastructure on common property. There are a number of conditions that must be included in the contract and this is specified in section 64 as below.

(1) This section applies if –

- (a) a strata company has entered into a contract (an infrastructure contract) with a person under which the person owns and operates utility infrastructure or sustainability infrastructure on common property in the strata titles scheme; and
- (b) this section is applied to the infrastructure contract by ordinary resolution

(2) An infrastructure contract must –

- (a) specify the common property over which there is an easement under this section; and
- (b) specify the infrastructure to which the easement applies.

(3) The person (the infrastructure owner) who, from time to time, owns the infrastructure the subject of an infrastructure contract has an easement over the common property specified in the infrastructure contract that entitles the infrastructure owner –

- (a) to install and remove the infrastructure specified in the contract; and
- (b) to operate that infrastructure; and
- (c) to examine, maintain, repair, modify and replace that infrastructure.

(4) The easement is subject to any conditions set out in the infrastructure contract (as in force from time to time).

(5) The infrastructure contract may be varied by agreement between the strata company and the person who is the infrastructure owner from time to time.

- (6) The easement ceases to exist if the infrastructure contract is terminated or otherwise ceases to have effect.
- (7) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment and use of the common property.
- (8) The regulations may —
 - (a) specify special procedures for notice or voting on the resolution required for the application of this section; and
 - (b) set out terms and conditions that are to be taken to be implied in an infrastructure contract; and
 - (c) otherwise regulate the rights and obligations of the strata company and the infrastructure owner.

Regulations

Part 10 of the regulations sets out the procedure and other rights and obligations regarding Infrastructure contracts as follows;

64. Special procedures for notice under s. 64

- (1) A notice of a proposed resolution to apply section 64 to an infrastructure contract must include the following information —
 - (a) a statement of the effect of section 64(3) to (7);
 - (b) a copy of the infrastructure contract.
- (2) The copy of the infrastructure contract that is provided must include or be accompanied by the following —
 - (a) a description of the nature of the infrastructure to which the infrastructure contract relates;
 - (b) the name and contact details of the infrastructure owner;
 - (c) a description of the easement area, being the proposed location of the infrastructure on the common property (including a drawing of that location);
 - (d) particulars of who will benefit from the common property (utility and sustainability infrastructure) easement;
 - (e) particulars of who is entitled to the benefits of the infrastructure to which the infrastructure contract relates.

65. Consent of strata company to development

If a strata company, by ordinary resolution under section 64(1)(b), applies section 64 to an infrastructure contract, the strata company is taken to have given its written consent to the making of an application by the infrastructure owner for planning approval, or any other approval, required by written law to install the infrastructure specified in the contract in the easement area specified in the contract.

66. Obligations of infrastructure owner

- (1) It is taken to be a condition of an infrastructure contract under section 64(8)(b) that the infrastructure owner must —
 - (a) obtain any planning approval, or any other approval, required by written law before installing the infrastructure to which the infrastructure contract relates; and
 - (b) provide evidence that all necessary approvals for the installation and operation of the infrastructure have been obtained when requested to do so by the strata company; and
 - (c) maintain and repair the infrastructure.
- (2) Unless the infrastructure contract provides otherwise, the infrastructure owner is required to keep in good and serviceable repair, and properly maintain, the common property that forms the easement area under the infrastructure contract.
- (3) Subregulation (2) does not impose an obligation on the infrastructure owner to renew or replace the common property.

Note for this regulation:

Under section 91(1)(c), the strata company must renew or replace common property if necessary.

67. Rights of infrastructure owner

- (1) It is taken to be a condition of an infrastructure contract under section 64(8)(b) that the infrastructure owner is entitled to the benefits from the infrastructure to which the infrastructure contract relates, unless the infrastructure contract provides otherwise.
- (2) In addition to the rights referred to in section 64(3), the infrastructure owner under an infrastructure contract is entitled —
 - (a) to install utility conduits on the common property that are required to operate the infrastructure; and
 - (b) to use the infrastructure for the purpose provided for in the infrastructure contract.
- (3) The rights of an infrastructure owner under section 64(3) and this regulation are subject to the terms of the infrastructure contract.

68. Disposal of lot by infrastructure owner

- (1) If an infrastructure owner under an infrastructure contract is the owner of a lot in the strata titles scheme, the infrastructure contract must provide for what happens if the infrastructure owner disposes of the lot.
- (2) In particular, the infrastructure contract must specify whether the new owner of the lot acquires or is entitled to acquire the infrastructure and the rights and obligations of the infrastructure owner under the infrastructure contract.

69. Strata Company to be notified of certain actions

- (1) An infrastructure contract must make provision for the following —
 - (a) what happens if the infrastructure owner transfers ownership of or disposes of the infrastructure;
 - (b) whether the infrastructure owner is entitled to transfer or assign the rights and obligations of the infrastructure owner under the infrastructure contract to another person.
- (2) It is taken to be a condition of an infrastructure contract under section 64(8)(b) that the infrastructure owner must notify the strata company before the infrastructure owner —
 - (a) transfers ownership of or disposes of the infrastructure; or
 - (b) transfers or assigns the rights and obligations of the infrastructure owner under the infrastructure contract to another person.

70. Insurance

- (1) In this regulation —

required insurance means insurance a strata company is required to obtain under section 97.
- (2) It is taken to be a condition of an infrastructure contract under section 64(8)(b) that the strata company may, if the strata company is unable to obtain required insurance, or to obtain required insurance on reasonable terms, as a result of the presence of the infrastructure on the common property, give written notice to the infrastructure owner requiring the infrastructure owner to do 1 or more of the following —
 - (a) take specified action within a specified period;
 - (b) refrain from taking specified action;
 - (c) pay a specified amount to the strata company within a specified period, being an amount equal to the part of the premium payable by the strata company for the required insurance that is attributable solely to the risk associated with the presence of the infrastructure on the common property.
- (3) An infrastructure owner given a notice under subregulation (2) must comply with the notice or negotiate with the strata company to take some step other than that specified in the notice to enable the required insurance to be obtained by the strata company on reasonable terms.
- (4) The strata company must negotiate with the infrastructure owner with a view to achieving a fair and reasonable outcome.

71. Damage to common property

- (1) It is taken to be a condition of an infrastructure contract under section 64(8)(b) that the strata company may, by written notice, terminate the contract if the installation or operation of the infrastructure causes damage to the common property and the infrastructure owner fails to repair that damage in accordance with section 66.
- (2) No cause of action against the strata company arises from the exercise of a power referred to in subregulation (1).

72. Removal of infrastructure after termination of contract

If an infrastructure contract is terminated, the infrastructure owner must remove the infrastructure from the common property as soon as practicable, unless the infrastructure contract provides otherwise.