



# NOTICE TO SURVEYORS T6/2005

## CONVERSIONS TO SURVEY-STRATA

The Spatial Sciences Institute (SSI) has requested clarification and direction on the practices to be adopted by surveyors when converting a strata scheme to a survey-strata scheme under Part III Division 3 (sections 31A-31K) of the Strata Titles Act 1985 (STA). This notice outlines DLI's policy on "conversion plans". It should be read in conjunction with the Land Surveyor's Licensing Board Notice to Surveyors 2/02.

### BACKGROUND

In 1996 the STA was amended by the insertion of sections 31A-31K which permit single tier strata schemes to be converted to survey-strata schemes. These sections were included in the STA as part of a package to provide strata owners with options in relation to conversion of common property within single tier strata schemes.

To reduce costs, surveyors were given additional responsibilities in the conversion process as consent from the Western Australian Planning Commission and local government are not required.

Currently, there appears to be a growing practice for surveyors to use section 31A -31K to effect a re subdivision of a strata scheme.

### DLI POLICY

Based on the legal advice of the Commissioner of Titles, the DLI policy is that Part III Division 3 of the *Strata Titles Act 1985* is limited to the incorporation of common property into lots. **It must not be used to effect a re-subdivision of a strata scheme.**

The Form 38 certificate of a licensed surveyor states at item (e) "*a reference on the survey-strata plan to a lot by a designated number is a reference to the lot designated by that number on the strata plan*". This means that it is not possible to include any part of a lot on a strata plan into another lot on a survey-strata plan under the conversion to survey-strata process.

A conversion plan lodged that does not comply with this policy will not be registered.

The SSI has also sought direction on the procedures to be taken by surveyors in the following situations:

1. ***If a local government has approved the demolition of the buildings such that no party walls exist and accurate determination of the position of the***

**original dividing walls is not possible.** In this situation the following two options are available to the surveyor:

- (a) Terminate the strata scheme and then lodge a survey-strata scheme (WAPC approval necessary); or
  - (b) Re-subdivide the strata scheme and then convert the scheme to survey-strata (LGA and/or WAPC approvals as necessary).
2. **If a local government has approved to the buildings being altered and the dividing walls have changed position.** In this situation the surveyor should adopt option (b) above (i.e. re-subdivide and then convert to survey-strata).
3. **If the original strata plan contains errors.** To avoid delays in this situation, surveyors should immediately contact the Strata Plan Audit team at DLI and seek advice on the most appropriate action to take and the likely timeframes involved. A request for the Commissioner of Titles to prepare a “Direction to Amend” the Register may be required in some situations.

## **INTERPRETATION OF REGULATIONS 14M AND 14O (FORMS 35 & 38)**

The SSI has also requested clarification of the implications of regulations 14M and 14O for a surveyor when signing Form 35 for mergers and Form 38 for conversions to survey-strata. The Strata Titles Manual (edition 2) at items 15.60 and 16.40 outlines in some detail a surveyor’s responsibilities under these regulations. The following is an extract from item 16.40 which deals with conversions to survey-strata;

“The surveyor has specific responsibilities to ensure the newly created lots comply with certain requirements of any relevant Town Planning Scheme (STGR Regulation 14O). Briefly those requirements are:

- number of car parking bays per lot;
- rights to light and air;
- rights of support;
- private open space for each dwelling;
- pedestrian access to streets and common property;
- rights for service access; and
- rights for access to storage areas, meters, etc.

When making the certification, consideration is to be given to the following:

- provisions of the relevant town planning scheme;
- development approval (if any);
- effect on implied easements; and
- effect on new or previous restrictive covenants.

Surveyors may have to research these requirements before proceeding with the conversion as some schemes may not fit the criteria.”

Surveyors should also make reference to the Land Surveyors Licensing Board Newsletter dated July 2003, which states in part;

“The conversion of Strata Plans to Survey Strata Plans as a means of redevelopment seems to be an increasing trend.

One particular issue for surveyors is the creation of lots that are below the minimum area designated by the relevant R Code for that locality.

In response to a recent query the Board said "Whilst the actual certificate (Form 38) does not relate to the conformance or otherwise of the resultant lots to the current R Codes the Board believes it is prudent for a surveyor to alert his clients to the fact that a resultant lot may not conform to the minimum area. This is particularly applicable when demolition and redevelopment are contemplated."

The implications of this advice is that, whilst surveyors may be able to legitimately sign a Form 38, they need to be careful not to create a situation where a conversion to survey-strata is undertaken and the resultant lot(s) do not comply with the R-Codes. A local government may refuse to issue a building license for a non-complying lot in these circumstances.

In some cases it may be prudent to seek legal advice as to a surveyor's liability in respect of planning requirements.

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