

Environmental Planning and Assessment — Act and Regulation Note

Private certification of strata plans

This note provides advice for developers, surveyors, council officers, accredited certifiers and owners corporations on strata certificates.

Recent amendments

The *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*, which was assented to on 3 December 1999, commences on 1 June 2000. The Amendment Act introduces a number of changes to the *Strata Schemes (Freehold Development) Act 1973* (in particular to Part 2 Division 4) and the *Strata Schemes (Leasehold Development) Act 1986* (in particular to Part 2 Division 7) (the Strata Acts).

Strata subdivision, as set out in the Strata Acts, needs a *certificate of approval* before the Registrar-General can register the plans. This certificate is now called a *strata certificate*.

Before the amendments, an applicant could apply only to a council for a strata certificate. From 1 June 2000, accredited certifiers will also be able to issue certain strata certificates.

Who can issue strata certificates?

Councils can issue strata certificates for each of the plans under the Strata Acts, for existing and new buildings and for a change of use.

Accredited certifiers can issue strata certificates for:

- a strata plan;
- a strata plan of subdivision; or
- a notice of conversion of a lot to common property but only if there is a 'relevant development consent' in force.

Relevant development consent is defined in section 37B of the Strata Schemes (Freehold Development) Act and section 66B of the Strata Schemes (Leasehold Development) Act. In essence, a relevant development consent is in force for a proposed strata subdivision if the subdivision has either:

- a development consent or a complying development certificate for the subdivision, or

- if development consent or a complying development certificate is not required, a development consent or a certificate for the building and it was clear that the building was to be strata subdivided and the consent or certificate has not lapsed.

Development consent and strata subdivision

The strata certificate is separate to a development consent for strata subdivision. The strata certificate is compulsory and is necessary to register the subdivision. Councils, however, have a discretion to require development consent for strata subdivision. If consent is required, it will be shown in a council's local environmental plan.

Issues for accredited certifiers

Accredited certifiers for strata certificates are subject to the same requirements as all other accredited certifiers under the *Environmental Planning and Assessment Act 1979* (EP&A Act). (See *Guiding Development: better outcomes*, Practice Note: *Who is an accredited certifier?*).

Matters to be considered by a certifier before a strata certificate can be issued

Before issuing a certificate, an accredited certifier must be satisfied that:

- certain matters listed in the Strata Acts have been complied with. See, for example, section 37A of the Strata Schemes (Freehold Development) Act and section 66A of the Strata Schemes (Leasehold Development) Act;
- a relevant development consent is in force;
- any relevant conditions of development consent have been complied with; and
- where required, the owners corporation has certified that it agrees to the proposed strata subdivision or conversion.

Encroachments

An accredited certifier cannot issue a strata certificate for a building that encroaches onto a public place unless the certifier is satisfied that:

- the encroaching building complies with a relevant development consent in force, or
- any relevant development consent in force for the subdivision indicates the encroachment and the plan clearly indicates the encroachment, including its nature and extent.

The strata certificates must also refer to the encroachment and indicate that the council has granted a relevant development consent that is in force for either the building or the strata subdivision.

Utility lots

Utility lots are lots used primarily for storage or housing boats, vehicles or goods and not as a residence, office or shop.

If the registration of a strata certificate creates one or more utility lots and a condition of the relevant development consent allows the lot(s) to be used only by someone who owns or occupies a lot in the strata that is not a utility lot, the accredited certifier must note that restriction on the strata certificate.

Forms and record keeping

The existing form for a strata certificate has been amended to allow an accredited certifier to sign the form. The Strata Schemes (Freehold Development) Amendment (Strata Approvals) Regulation 2000, which also commences on 1 June 2000, has introduced record keeping requirements for accredited certifiers.

Issues for councils in assessing development applications

Merit at DA Stage

Councils will consider all merit issues relating to a strata subdivision or conversion at the development consent stage. Where development consent is required for strata subdivision or the building, the changes to the Strata Acts mean a council no longer considers the merits of the proposed subdivision or conversion when it considers a strata certificate application.

After a development consent has been granted, an accredited certifier may issue a strata certificate.

Conditions of consent

Conditions of consent must include any restrictions on title and utility lots. The wording of conditions must be clear so that accredited certifiers can ensure the relevant conditions have been complied with.

Timing on the issuing of strata certificates

The granting of a strata certificate can be critical to the financing of a strata project. Councils can reasonably require building work to be completed before a strata certificate is issued but not such things as landscaping. Councils can use bonds or other enforcement measures to enforce conditions of consent.

What development applications do the changes apply to?

The changes to the Strata Acts do not apply to development applications for strata subdivision made before 1 June 2000.

When are accredited certifiers prevented from issuing strata certificates?

Where there is no relevant development consent in force, only a council can issue a strata certificate. The council must consider the structural adequacy and fire safety precautions of the building before it issues the certificate. This requirement gives councils an opportunity to bring older buildings into line with new standards.

Can applicants appeal to the court?

The changes to the Strata Acts give applicants a right to appeal to the Land and Environment Court after 14 days if a council has not issued a certificate or notified the applicant of its decision. Previously, councils had 40 days to issue a certificate or notify the applicant before the applicant could appeal.

Applicants cannot appeal to the Court if an accredited certifier does not issue a certificate or notify the applicant about his/her decision. An applicant may, however, be able to take legal action under the contract the applicant has with the certifier.

Copies of the Amendment Act

The Strata Acts are available from the NSW Government Information Service (phone 02 9743 7200 or 1800 463 955) or from the Australasian Legal Information Institute (www.austlii.edu.au).

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