



New South Wales

Strata Schemes Legislation Amendment (Strata Approvals) Act 1999 No 74

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New South Wales

Strata Schemes Legislation Amendment (Strata Approvals) Act 1999 No 74

Act No 74, 1999

An Act to amend the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* with respect to private certification of strata plans, strata plans of subdivision and notices of conversion, and accredited certifiers; and for other purposes. [Assented to 3 December 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Acts

The Acts specified in Schedules 1 and 2 are amended as set out in those Schedules.

Schedule 1 Amendment of Strata Schemes (Freehold Development) Act 1973 No 68

(Section 3)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

accredited certifier, in relation to a strata certificate, means a person who is accredited under section 37E in relation to those certificates.

relevant development consent—see section 37B.

strata certificate means a certificate issued under Division 4 of Part 2 that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

[2] Section 8 Registration of strata plans

Omit “certificate issued by the local council under section 37” from section 8 (2) (b).

Insert instead “strata certificate issued by the local council under section 37 or an accredited certifier under section 37A”.

[3] Section 8A Subdivision of development lot

Omit “certificate issued by the local council under section 37” from section 8A (3) (a).

Insert instead “strata certificate issued by the local council under section 37 or an accredited certifier under section 37A”.

[4] Section 9 Subdivision of lots and common property

Omit “certificate given by the local council” from section 9 (3) (b).

Insert instead “strata certificate issued by the local council or an accredited certifier”.

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Schedule 1 Amendment of Strata Schemes (Freehold Development) Act 1973
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[5] Section 9 (3) (b) (i)

Insert “or section 37A (4)” after “section 37 (3)”.

[6] Section 9 (3) (b) (ii)

Insert “or section 37A (5)” after “section 37 (4)”.

[7] Section 11 Unit entitlements of lots in subdivisions involving common property

Insert “or section 37A (5) (b)” after “section 37 (4) (a)” in section 11 (b).

[8] Section 13 Conversion of lots into common property

Omit “certificate” from section 13 (2) (a).

Insert instead “strata certificate”.

[9] Section 13 (2) (a)

Insert “or by an accredited certifier in accordance with section 37A (6)” after “section 37 (5)”.

[10] Part 2, Division 4

Omit the heading. Insert instead:

Division 4 Strata certificates

[11] Section 37 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property

Omit “certificate of approval of” where firstly and secondly occurring in section 37 (1).

Insert instead “strata certificate in respect of”.

[12] Section 37 (1) (a) (i) and (ii)

Omit the subparagraphs. Insert instead:

- (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* with respect to the erection of any building containing any proposed lots to which that plan relates, and
- (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation, and

[13] Section 37 (1) (a) (iii)

Omit “certificate of approval”. Insert instead “strata certificate”.

[14] Section 37 (1) (b) (v)

Omit “Order No 4 in the Table to section 124 of the *Local Government Act 1993*”.

Insert instead “Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*”.

[15] Section 37 (1A)

Omit “certificate of approval of” wherever occurring.

Insert instead “strata certificate in respect of”.

[16] Section 37 (1B)

Omit the subsection. Insert instead:

(1B) For the purposes of subsection (1) (b) (iv), the orders and provisions referred to in this subsection are as follows:

- (a) any order of the kind referred to in Orders Nos 2, 4, 8 or 9 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,

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No 68

- (b) any order of the kind referred to in Orders Nos 21, 22, 23, 24 or 25 in the Table to section 124 of the *Local Government Act 1993*,
- (c) provisions of regulations made under the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979* that are prescribed for the purposes of this subsection.

[17] Section 37 (2)

Omit “certificate of approval of”.

Insert instead “strata certificate in respect of”.

[18] Section 37 (3)

Omit “certificate of approval of”.

Insert instead “strata certificate in respect of”.

[19] Section 37 (4)

Omit “certificate of approval of”.

Insert instead “strata certificate in respect of”.

[20] Section 37 (4)

Omit “certificate of approval” where secondly occurring.

Insert instead “strata certificate”.

[21] Section 37 (5)

Omit “certificate of approval of”.

Insert instead “strata certificate in respect of”.

[22] Section 37 (6)–(8)

Insert after section 37 (5):

- (6) Despite any other provision of this section, a council, in considering an application for a strata certificate where there is a relevant development consent in force, is not required to satisfy itself of the following matters:

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- (a) the matters set out in subsection (1) (b) (iii) (as required by subsections (1), (1A) (a), (3) (c) and (4) (b)),
 - (b) the matters set out in subsection (3) (b),
 - (c) the matters set out in subsection (5) (b).
- (7) Despite any other provision of this section, a local council must not grant a strata certificate in respect of a proposed strata plan, strata plan of subdivision or notice of conversion for which no relevant development consent is in force or is required unless it has considered the following:
- (a) whether the following will be appropriate to the building's proposed use:
 - (i) the structural strength and load-bearing capacity of the building the subject of the plan or notice,
 - (ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire,
 - (iii) the measures to restrict the spread of fire from the building to other buildings nearby,
 - (b) whether the building complies, or will, when completed, comply, with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.
- (8) In subsection (7):
- Category 1 fire safety provisions* means the provisions prescribed for the purposes of this section by the regulations.

[23] Sections 37A–37F

Insert after section 37:

37A Approvals by accredited certifiers

- (1) An accredited certifier may issue a strata certificate in respect of a proposed strata plan, proposed strata plan of subdivision or proposed notice of conversion in accordance with this section.

- (2) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that does not include a development lot or lots if the certifier is satisfied as to each of the following matters:
 - (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) the matters specified in section 37 (1) (a) or (1) (b) (i), (ii), (iv), (v) and (vi).
- (3) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that includes a development lot or development lots, or in respect of a proposed strata plan of subdivision of a development lot, if the certifier is satisfied as to each of the following matters:
 - (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) the matters specified in section 37 (1) (a) or (1) (b) (i), (ii), (iv), (v) and (vi),
 - (d) the matters specified in section 37 (1A) (b).
- (4) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (a) if the certifier is satisfied as to each of the following matters:
 - (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,

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- (c) that the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision,
 - (d) the matters specified in section 37 (1) (b) (i) and (ii) (as if the reference in section 37 (1) (b) to a plan were a reference to the plan to which the application for certification relates).
- (5) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (b), (c) or (d) if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) that the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision,
 - (d) the matters specified in section 37 (1) (b) (i) and (ii) (as if the reference in section 37 (1) (b) to a plan were a reference to the plan illustrating the proposed subdivision).
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) that the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed conversion.

- (7) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless the certifier is satisfied that the requirements of any regulations with respect to the provision of such certificates have been complied with.
- (8) For the purposes of being satisfied of the matters in section 37 (1) (a) (iii), an accredited certifier must be satisfied that the building was completed not more than 12 months before the application for the strata certificate was made.

37B Relevant development consents

- (1) For the purposes of this Act, a relevant development consent is in force in relation to a proposed strata plan or strata plan of subdivision if:
 - (a) development consent is required to the subdivision the subject of the proposed strata plan or strata plan of subdivision and the development consent has been granted, or
 - (b) such development consent is not required but development consent is required with respect to the building concerned and development consent has been granted to building work in respect of a building, or a change of use of a building, having proposed lots designed for separate occupation as illustrated by the plan,
and the development consent has not lapsed.
- (2) For the purposes of this Act, a relevant development consent is in force in relation to a notice of conversion if:
 - (a) development consent is required to the conversion the subject of the notice and the development consent has been granted, or
 - (b) such development consent is not required but development consent is required with respect to a change of use or building work associated with the conversion and the development consent has been granted,
and the development consent has not lapsed.

37C Regulations

The regulations may make provision for or with respect to the following matters:

- (a) applications for and the issue of strata certificates,
- (b) the matters to be notified by accredited certifiers to local councils with respect to strata certificates,
- (c) the records to be kept by accredited certifiers and local councils with respect to strata certificates issued, or refused, by accredited certifiers.

37D Satisfaction as to compliance with conditions precedent to issue of strata certificates

- (1) A person who exercises functions under this or any other Act in reliance on a strata certificate issued under this Act is entitled to assume:
 - (a) that the certificate has been duly issued, and
 - (b) that all conditions precedent to the issue of the certificate have been duly complied with, and
 - (c) that all things that are stated in the certificate as existing or having been done do exist or have been done,and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.
- (2) This section does not apply to an accredited certifier in relation to any strata certificate that he or she has issued.

37E Accreditation of certifiers

- (1) Part 4B of the *Environmental Planning and Assessment Act 1979* applies, with any necessary modifications and any modifications prescribed by the regulations, in respect of the following:
 - (a) the appointment and accreditation of accredited certifiers for the purposes of this Act,
 - (b) accredited certifiers,
 - (c) the authorisation of accreditation bodies,
 - (d) accreditation bodies,

- (e) the exercise of functions under this Act by accredited certifiers.
- (2) Without limiting subsection (1), Part 4B of the *Environmental Planning and Assessment Act 1979* applies to a strata certificate in the same way as it applies to a Part 4A certificate under that Act.

37F Insurance of accredited certifiers

Division 3 of Part 4C of the *Environmental Planning and Assessment Act 1979* applies, with any necessary modifications and any modifications prescribed by the regulations, to accredited certifiers exercising functions under this Act in the same way that it applies to accredited certifiers exercising the functions of a certifying authority in relation to any building work or subdivision work.

[24] Section 38 Encroachments

Omit “approve of” from section 38 (1).

Insert instead “issue a strata certificate in respect of”.

[25] Section 38 (1A)

Insert after section 38 (1):

- (1A) An accredited certifier must refuse to issue a strata certificate in respect of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on to a public place unless the certifier is satisfied as to the matters set out in paragraph (a) or (b) and the matters set out in paragraph (c):
 - (a) that the building complies with any relevant development consent in force with respect to the building with the encroachment,
 - (b) that any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment,
 - (c) that the plan clearly indicates the existence of the encroachment and its nature and extent.

[26] Section 38 (2)

Omit “proposed strata plan or strata plan of subdivision illustrating a building referred to in subsection (1) has been approved by the local council”.

Insert instead “local council or an accredited certifier issues a strata certificate in respect of a proposed strata plan or a strata plan of subdivision illustrating a building referred to in subsection (1) or (1A)”.

[27] Section 38 (2) (a)

Omit “the local council shall not issue a certificate of approval”.

Insert instead “in the case of an approval by a local council, the council must not issue a strata certificate”.

[28] Section 38 (2) (a1)

Insert after section 38 (2) (a):

- (a1) in the case of an approval by an accredited certifier, the accredited certifier must not issue a strata certificate under section 37A (2), (3), (4) or (5) unless the certificate refers to the existence of the encroachment and indicates that:
 - (i) the local council has granted a relevant development consent that is in force for the building with the encroachment, or
 - (ii) the local council has granted a relevant development consent that is in force for the subdivision the subject of the plan specifying the existence of the encroachment, and

[29] Section 39 Utility lots

Omit “its approval” from section 39 (1).

Insert instead “the issue of a strata certificate”.

[30] Section 39 (1)

Omit “certificate of approval”.

Insert instead “strata certificate”.

[31] Section 39 (1A)

Insert after section 39 (1):

(1A) If the registration of a plan submitted to an accredited certifier for issue of a strata certificate would result in the creation of one or more utility lots as referred to in subsection (1) and the relevant development consent contains a condition restricting the use of that utility lot or those utility lots to use by a proprietor or occupier of a lot or proposed lot, not being such a utility lot, the certifier must note the restriction on the strata certificate.

[32] Section 39 (2)

Insert “or noted under subsection (1A)” after “subsection (1)”.

[33] Section 39 (3)

Insert “or in a development consent referred to in subsection (1A)” after “subsection (1)”.

[34] Section 39 (4)

Insert “or (1A)” after “subsection (1)”.

[35] Section 40 Notices of and appeals against refusal of approval

Omit “for a certificate of approval of” from section 40 (1).

Insert instead “or an accredited certifier for a strata certificate in respect of”.

[36] Section 40 (2)

Insert “or an accredited certifier” after “council”.

[37] Section 40 (2)

Omit “its”. Insert instead “the”.

[38] Section 40 (2A)

Insert after section 40 (2):

(2A) A notice of refusal by an accredited certifier to approve of an application must specify the grounds of refusal.

[39] Section 40 (4)

Omit “forty days” wherever occurring.

Insert instead “14 days”.

[40] Section 40 (4) (b)

Omit “certificate of approval”.

Insert instead “strata certificate”.

[41] Section 44 Recording of condition restricting use imposed by local council

Insert “strata” before “certificate” in section 44 (1).

[42] Section 44 (1A)

Insert after section 44 (1):

(1A) If a strata certificate issued by an accredited certifier under section 37A is qualified by noting, in accordance with section 39, a condition restricting the use of a lot, the Registrar-General must, when creating a folio of the Register for the lot, suitably record the condition in the folio.

[43] Section 44 (2)

Insert “or (1A)” after “subsection (1)”.

[44] Schedule 4 Transitional and savings provisions

Insert after Part 3:

**Part 4 Transitional provisions relating to the Strata
Schemes Legislation Amendment (Strata
Approvals) Act 1999**

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Application to existing developments

- (1) The amendments made to this Act by the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999* do not apply to any proposed strata plan, strata plan of subdivision or notice of conversion in respect of which an application for development consent was lodged before the commencement of this clause.

- (2) For the purposes of satisfying section 37 (1) (a) (i), as amended by the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*, it is sufficient if the provisions of that subparagraph as in force immediately before that amendment are satisfied in respect of a building.

3 References to approvals under section 37

A reference in any Act (other than in this clause) or in any instrument made under any Act or in any instrument of any kind to:

- (a) an approval under section 37, or
- (b) a certificate of approval under section 37,

is to be read as a reference to a strata certificate issued under section 37 or 37A.

Schedule 2 Amendment of Strata Schemes (Leasehold Development) Act 1986 No 219

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

accredited certifier, in relation to a strata certificate, means a person who is accredited under section 66E in relation to those certificates.

relevant development consent—see section 66B.

strata certificate means a certificate issued under Division 7 of Part 2 that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

[2] Section 7 Registration of strata plans

Omit “certificate issued by the local council under section 66” from section 7 (2A) (b).

Insert instead “strata certificate issued by the local council under section 66 or an accredited certifier under section 66A”.

[3] Section 10 Subdivision of development lot

Omit “certificate issued by the local council under section 66” from section 10 (3) (a).

Insert instead “strata certificate issued by the local council under section 66 or an accredited certifier under section 66A”.

[4] Section 11 Subdivision of lots and common property

Omit “certificate given by the local council” from section 11 (2) (b).

Insert instead “strata certificate issued by the local council or an accredited certifier”.

[5] Section 11 (2) (b) (i)

Insert “or section 66A (4)” after “section 66 (4)”.

[6] Section 11 (2) (b) (ii)

Insert “or section 66A (5)” after “section 66 (5)”.

[7] Section 14 Unit entitlement of lots in subdivision involving common property

Insert “or section 66A (5) (b)” after “section 66 (5) (a)” in section 14 (b).

[8] Section 16 Conversion of lots into common property

Omit “certificate” from section 16 (2) (a).
Insert instead “strata certificate”.

[9] Section 16 (2) (a)

Insert “or by an accredited certifier in accordance with section 66A (6)”
after “section 66 (6)”.

[10] Part 2, Division 7

Omit the heading. Insert instead:

Division 7 Strata certificates

[11] Section 66 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property

Omit “certificate of approval of” where firstly and secondly occurring in
section 66 (1).
Insert instead “strata certificate in respect of”.

[12] Section 66 (1) (a) (i) and (ii)

Omit the subparagraphs. Insert instead:

- (i) a construction certificate has been issued under
the *Environmental Planning and Assessment Act*

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1979 with respect to the erection of any building containing any proposed lots to which that plan relates, and

- (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation, and

[13] Section 66 (1) (a) (iii)

Omit “certificate of approval”. Insert instead “strata certificate”.

[14] Section 66 (1) (b) (v) and (c) (v)

Omit “Order No 4 in the Table to section 124 of the *Local Government Act 1993*” wherever occurring.

Insert instead “Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*”.

[15] Section 66 (1A)

Omit the subsection. Insert instead:

- (1A) For the purposes of subsection (1) (b) (iv) and (c) (iv), the orders and provisions referred to in this subsection are as follows:
 - (a) any order of the kind referred to in Orders Nos 2, 4, 8 or 9 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979*,
 - (b) any order of the kind referred to in Orders Nos 21, 22, 23, 24 or 25 in the Table to section 124 of the *Local Government Act 1993*,
 - (c) provisions of regulations made under the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979* that are prescribed for the purposes of this subsection.

[16] Section 66 (2)

Omit “certificate of approval of” wherever occurring.
Insert instead “strata certificate in respect of”.

[17] Section 66 (3)

Omit “certificate of approval of”.
Insert instead “strata certificate in respect of”.

[18] Section 66 (4)

Omit “certificate of approval of”.
Insert instead “strata certificate in respect of”.

[19] Section 66 (5)

Omit “certificate of approval of”.
Insert instead “strata certificate in respect of”.

[20] Section 66 (5)

Omit “certificate of approval” where secondly occurring.
Insert instead “strata certificate”.

[21] Section 66 (6)

Omit “certificate of approval of”.
Insert instead “strata certificate in respect of”.

[22] Section 66 (7)–(9)

Insert after section 66 (6):

- (7) Despite any other provision of this section, a council, in considering an application for a strata certificate where there is a relevant development consent in force, is not required to satisfy itself of the following matters:
 - (a) the matters set out in subsection (1) (b) (iii) or (1) (c) (iii) (as required by subsections (1), (2) (a), (4) (c) and (5) (b)),

- (b) the matters set out in subsection (4) (b),
 - (c) the matters set out in subsection (6) (b).
- (8) Despite any other provision of this section, a local council must not grant a strata certificate in respect of a proposed strata plan, strata plan of subdivision or notice of conversion for which no relevant development consent is in force or is required unless it has considered the following:
- (a) whether the following will be appropriate to the building's proposed use:
 - (i) the structural strength and load-bearing capacity of the building the subject of the plan or notice,
 - (ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire,
 - (iii) the measures to restrict the spread of fire from the building to other buildings nearby,
 - (b) whether the building complies, or will, when completed, comply, with such of the Category 1 fire safety provisions as are applicable to the building's proposed use.
- (9) In subsection (8):
- Category 1 fire safety provisions* means the provisions prescribed for the purposes of this section by the regulations.

[23] Sections 66A–66F

Insert after section 66:

66A Approvals by accredited certifiers

- (1) An accredited certifier may issue a strata certificate in respect of a proposed strata plan, proposed strata plan of subdivision or proposed notice of conversion in accordance with this section.
- (2) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that does not include a development lot or lots if the certifier is satisfied as to each of the following matters:
 - (a) that there is a relevant development consent in force,

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- (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) the matters specified in section 66 (1) (a) or either of section 66 (1) (b) (i), (ii), (iv), (v) and (vi) or (1) (c) (i), (ii), (iv), (v) and (vi).
- (3) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that includes a development lot or development lots, or in respect of a proposed strata plan of subdivision of a development lot, if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) the matters specified in section 66 (1) (a) or either of section 66 (1) (b) (i), (ii), (iv), (v) and (vi) or (1) (c) (i), (ii), (iv), (v) and (vi),
 - (d) the matters specified in section 66 (2) (b).
- (4) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 4 (7) (a) if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) that the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision,

- (d) the matters specified in section 66 (1) (b) (i) and (ii) or (1) (c) (i) and (ii) (as if the reference in section 66 (1) (b) or (c) to a plan were a reference to the plan to which the application for certification relates).
- (5) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 4 (7) (b), (c) or (d) if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) that the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision,
 - (d) the matters specified in section 66 (1) (b) (i) and (ii) or (1) (c) (i) and (ii) (as if the reference in section 66 (1) (b) or (c) to a plan were a reference to the plan illustrating the proposed subdivision).
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if the certifier is satisfied as to each of the following matters:
- (a) that there is a relevant development consent in force,
 - (b) that all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with,
 - (c) that the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed conversion.
- (7) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless the certifier is satisfied that the requirements of any regulations with respect to the provision of such certificates have been complied with.

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- (8) For the purposes of being satisfied of the matters in section 66 (1) (a) (iii), an accredited certifier must be satisfied that the building was completed not more than 12 months before the application for the strata certificate was made.

66B Relevant development consents

- (1) For the purposes of this Act, a relevant development consent is in force in relation to a proposed strata plan or strata plan of subdivision if:
- (a) development consent is required to the subdivision the subject of the proposed strata plan or strata plan of subdivision and the development consent has been granted, or
 - (b) such development consent is not required but development consent is required with respect to the building concerned and development consent has been granted to building work in respect of a building, or a change of use of a building, having proposed lots designed for separate occupation as illustrated by the plan,
- and the development consent has not lapsed.
- (2) For the purposes of this Act, a relevant development consent is in force in relation to a notice of conversion if:
- (a) development consent is required to the conversion the subject of the notice and the development consent has been granted, or
 - (b) such development consent is not required but development consent is required with respect to a change of use or building work associated with the conversion and the development consent has been granted,
- and the development consent has not lapsed.

66C Regulations

The regulations may make provision for or with respect to the following matters:

- (a) applications for and the issue of strata certificates,
- (b) the matters to be notified by accredited certifiers to local councils with respect to strata certificates,
- (c) the records to be kept by accredited certifiers and local councils with respect to strata certificates issued, or refused, by accredited certifiers.

66D Satisfaction as to compliance with conditions precedent to issue of strata certificates

- (1) A person who exercises functions under this or any other Act in reliance on a strata certificate issued under this Act is entitled to assume:
 - (a) that the certificate has been duly issued, and
 - (b) that all conditions precedent to the issue of the certificate have been duly complied with, and
 - (c) that all things that are stated in the certificate as existing or having been done do exist or have been done,and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.
- (2) This section does not apply to an accredited certifier in relation to any strata certificate that he or she has issued.

66E Accreditation of certifiers

- (1) Part 4B of the *Environmental Planning and Assessment Act 1979* applies, with any necessary modifications and any modifications prescribed by the regulations, in respect of the following:
 - (a) the appointment and accreditation of accredited certifiers for the purposes of this Act,
 - (b) accredited certifiers,
 - (c) the authorisation of accreditation bodies,
 - (d) accreditation bodies,

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- (e) the exercise of functions under this Act by accredited certifiers.
 - (2) Without limiting subsection (1), Part 4B of the *Environmental Planning and Assessment Act 1979* applies to a strata certificate in the same way as it applies to a Part 4A certificate under that Act.

66F Insurance of accredited certifiers

Division 3 of Part 4C of the *Environmental Planning and Assessment Act 1979* applies, with any necessary modifications and any modifications prescribed by the regulations, to accredited certifiers exercising functions under this Act in the same way that it applies to accredited certifiers exercising the functions of a certifying authority in relation to any building work or subdivision work.

[24] Section 67 Encroachments

Omit “approve of” from section 67 (1).

Insert instead “issue a strata certificate in respect of”.

[25] Section 67 (1A)

Insert after section 67 (1):

- (1A) An accredited certifier must refuse to issue a strata certificate in respect of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on to a public place unless the certifier is satisfied as to the matters set out in paragraph (a) or (b) and the matters set out in paragraph (c):
 - (a) that the building complies with any relevant development consent in force with respect to the building,
 - (b) that any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment,
 - (c) that the plan clearly indicates the existence of the encroachment and its nature and extent.

[26] Section 67 (2)

Omit “proposed strata plan or strata plan of subdivision illustrating a building referred to in subsection (1) has been approved by the local council”.

Insert instead “local council or an accredited certifier issues a strata certificate in respect of a proposed strata plan or a strata plan of subdivision illustrating a building referred to in subsection (1) or (1A)”.

[27] Section 67 (2) (a)

Omit “the local council shall not issue a certificate of approval”.

Insert instead “in the case of an approval by a local council, the local council must not issue a strata certificate”.

[28] Section 67 (2) (a1)

Insert after section 67 (2) (a):

- (a1) in the case of an approval by an accredited certifier, the accredited certifier must not issue a strata certificate under section 66A (2), (3), (4) or (5) unless the certificate refers to the existence of the encroachment and indicates:
 - (i) the local council has granted a relevant development consent that is in force for the building with the encroachment, or
 - (ii) a relevant development consent that is in force for the subdivision the subject of the plan specifying the existence of the encroachment, and

[29] Section 68 Utility lots

Omit “its approval” from section 68 (1).

Insert instead “the issue of a strata certificate”.

[30] Section 68 (1)

Omit “certificate of approval”.

Insert instead “strata certificate”.

[31] Section 68 (1A)

Insert after section 68 (1):

- (1A) If the registration of a plan submitted to an accredited certifier for issue of a strata certificate would result in the creation of one or more utility lots as referred to in subsection (1) and the relevant development consent contains a condition restricting the use of that utility lot or those utility lots to use by a proprietor or occupier of a lot or proposed lot, not being such a utility lot, the certifier must note the restriction on the strata certificate.

[32] Section 68 (2)

Insert “or noted under subsection (1A)” after “subsection (1)”.

[33] Section 68 (3)

Insert “or in a development consent referred to in subsection (1A)” after “subsection (1)”.

[34] Section 68 (4)

Insert “or (1A)” after “subsection (1)”.

[35] Section 69 Notices of and appeals against refusal of approval

Omit “for a certificate of approval of” from section 69 (1).

Insert instead “or an accredited certifier for a strata certificate in respect of”.

[36] Section 69 (2)

Insert “or an accredited certifier” before “to which”.

[37] Section 69 (2)

Omit “its”. Insert instead “the”.

Strata Schemes Legislation Amendment (Strata Approvals) Act 1999
No 74

Schedule 2 Amendment of Strata Schemes (Leasehold Development) Act 1986
No 219

[38] Section 69 (2A)

Insert after section 69 (2):

(2A) A notice of refusal by an accredited certifier to approve of an application must specify the grounds of refusal.

[39] Section 69 (4)

Omit “40 days” wherever occurring. Insert instead “14 days”.

[40] Section 69 (4) (b)

Omit “certificate of approval”. Insert instead “strata certificate”.

[41] Section 73 Recording of condition restricting use imposed by local council

Insert “strata” before “certificate” in section 73 (1).

[42] Section 73 (1A)

Insert after section 73 (1):

(1A) If a strata certificate issued by an accredited certifier under section 66A is qualified by noting, in accordance with section 68, a condition restricting the use of a lot, the Registrar-General must, when creating a folio of the Register for the lot, suitably record the condition in the folio.

[43] Section 73 (2)

Insert “or (1A)” after “subsection (1)”.

[44] Schedule 5 Transitional and savings provisions

Insert after Part 2:

**Part 3 Provisions relating to the Strata Schemes
Legislation Amendment (Strata Approvals)
Act 1999**

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Application to existing developments

- (1) The amendments made to this Act by the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999* do not apply to any proposed strata plan, strata plan of subdivision or notice of conversion in respect of which an application for development consent was lodged before the commencement of this clause.

Strata Schemes Legislation Amendment (Strata Approvals) Act 1999
No 74

Schedule 2 Amendment of Strata Schemes (Leasehold Development) Act 1986
No 219

- (2) For the purposes of satisfying section 66 (1) (a) (i), as amended by the *Strata Schemes Legislation Amendment (Strata Approvals) Act 1999*, it is sufficient if the provisions of that subparagraph as in force immediately before that amendment are satisfied in respect of a building.

3 References to approvals under section 66

A reference in any Act (other than in this clause) or in any instrument made under any Act or in any instrument of any kind to:

- (a) an approval under section 66, or
- (b) a certificate of approval under section 66,

is to be read as a reference to a strata certificate issued under section 66 or 66A.

[Minister's second reading speech made in—
Legislative Assembly on 10 November 1999
Legislative Council on 24 November 1999]

BY AUTHORITY