

[Act 1999 No 74]



New South Wales

Strata Schemes Legislation Amendment (Strata Approvals) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Strata Schemes (Freehold Development) Act 1973* to enable approvals to strata plans, strata subdivisions and conversion of lots to common property to be given, in certain circumstances, by private accredited certifiers, and
 - (b) to amend the *Strata Schemes (Leasehold Development) Act 1986* to enable approvals to strata plans, strata subdivisions and conversion of lots to common property to be given, in certain circumstances, by private accredited certifiers, and
 - (c) to provide for the accreditation of certifiers and other related matters, and
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- (d) to make other consequential amendments and amendments of a savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the Acts set out in Schedule 1.

Amendments generally

Currently, a strata plan, a strata plan of subdivision or a notice of conversion of a lot to common property may not be registered by the Registrar-General under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* unless the local council has given a certificate of approval and the certificate is indicated on the plan or notice when it is lodged for registration. This approval is in addition to development consents that may be required to be given by the council or other consent authorities under the *Environmental Planning and Assessment Act 1979*.

Under recent amendments to that Act, provision was made for certain consents and approvals, including subdivision consents, to be given by accredited certifiers so as to reduce duplication of decisions by councils and other consent authorities.

The proposed amendments to the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* enable the certificate of approval (to be known as a ***strata certificate***) to be given by an accredited certifier, if a relevant development consent under the *Environmental Planning and Assessment Act 1979* is in force in relation to the proposed subdivision the subject of the plan or subdivision concerned, or a building the subject of the plan or subdivision concerned, or the conversion concerned or an associated change of use. This will not prevent a person from applying to a local council for such a certificate in these cases and strata certificates will not be available from an accredited certifier in any other case (for example, where development consent of a relevant kind is not required).

Schedule 1 Amendment of Strata Schemes (Freehold Development) Act 1973

Schedule 1 [23] inserts proposed sections 37A–37F. Proposed section 37A enables an accredited certifier to issue a strata certificate in respect of a proposed strata plan, strata plan of subdivision or notice of conversion of a lot to common property. The matters as to which the certifier must be satisfied before issuing a strata certificate are the same as those as to which a local council must be satisfied except that the certifier is not required to be satisfied as to discretionary matters relating to amenity and other matters (these will have been considered in relation to the granting of a development consent). In addition, the certifier cannot issue a strata certificate in respect of a strata plan or strata plan of subdivision unless there is a relevant development consent in force in relation to the subdivision the subject of the plan or strata plan of subdivision or a relevant development consent in force in relation to the building the subject of the plan or subdivision and conditions of any consent relating to the issue of a strata certificate have been complied with. The certifier cannot issue a strata certificate in respect of a notice of conversion unless there is a relevant development consent in force in relation to the conversion or an associated change of use and conditions of any consent relating to the issue of a strata certificate have been complied with.

Proposed section 37B defines the kind of development consent required to be in force before an accredited certifier can issue a strata certificate.

Proposed section 37C enables regulations to be made with respect to strata certificates, notification of strata certificates and records relating to strata certificates.

Proposed section 37D excludes a person who exercises functions under the Act or any other Act in reliance on a strata certificate from liability for loss or damage arising from any matter in respect of which a certificate has been issued.

Proposed section 37E applies the provisions of the *Environmental Planning and Assessment Act 1979* that relate to the accreditation of accredited certifiers and disciplinary proceedings to accredited certifiers issuing strata certificates.

Proposed section 37F applies the provisions of the *Environmental Planning and Assessment Act 1979* that relate to insurance requirements for accredited certifiers to accredited certifiers issuing strata certificates.

Schedule 1 [1] inserts definitions of *accredited certifier*, *relevant development consent* and *strata certificate*.

Schedule 1 [2]–[11], [13], [15], [17]–[21], [24], [27], [29], [30], [40] and [41] make amendments consequential on the amendment made by Schedule 1 [23].

Schedule 1 [12], [14] and [16] update references to provisions and tables.

Schedule 1 [22] provides that a local council is not required to be satisfied as to certain discretionary matters in considering whether to issue a strata certificate if a relevant development consent is in force. This reflects the requirements in relation to certification by accredited certifiers where a relevant development consent is in force. Schedule 1 [22] also requires a council, in determining whether to issue a strata certificate where there is no relevant development consent, to consider specified matters relating to fire safety, similar to those considered by a council when considering whether to consent to a proposed change of use of a building.

Schedule 1 [25] requires an accredited certifier to refuse to issue a strata certificate if a building illustrated by a proposed strata plan or strata plan of subdivision encroaches on a public place unless satisfied that the building complies with a development consent, that any relevant subdivision development consent indicates the encroachment and that the plan clearly indicates the encroachment.

Schedule 1 [26] and [28] make amendments consequential on the amendment made by Schedule 1 [25].

Schedule 1 [31] requires an accredited certifier to note a restriction on the use of a utility lot, arising from a development consent, on the strata certificate.

Schedule 1 [32]–[34] make amendments consequential on the amendment made by Schedule 1 [31].

Schedule 1 [36] requires an accredited certifier to give notice of refusal of an application for a strata certificate to the applicant.

Schedule 1 [35] and [37] make amendments consequential on the amendment made by Schedule 1 [36].

Schedule 1 [38] requires the notice of refusal to specify the grounds of refusal.

Schedule 1 [39] shortens the period within which an applicant to a council for a strata certificate may appeal to the Land and Environment Court from 40 days to 14 days after the relevant decision.

Schedule 1 [42] requires the Registrar-General to record a restriction as to the use of a utility lot, noted on a strata certificate by an accredited certifier, on a folio of the register when creating a folio for the lot.

Schedule 1 [43] makes an amendment consequential on the amendment made by Schedule 1 [42].

Schedule 1 [44] makes provision of a savings and transitional nature.

Schedule 2 Amendment of Strata Schemes (Leasehold Development) Act 1986

Schedule 2 [23] inserts proposed sections 66A–66F. Proposed section 66A enables an accredited certifier to issue a strata certificate in respect of a proposed strata plan, strata plan of subdivision or notice of conversion of a lot to common property. The matters as to which the certifier must be satisfied before issuing a strata certificate are the same as those as to which a local council must be satisfied except that the certifier is not required to be satisfied as to discretionary matters relating to amenity and other matters (these will have been considered in relation to the granting of a development consent). In addition, the certifier cannot issue a strata certificate in respect of a strata plan or strata plan of subdivision unless there is a relevant development consent in force in relation to the subdivision the subject of the plan or strata plan of subdivision or a relevant development consent in force in relation to the building the subject of the plan or subdivision and conditions of any consent relating to the issue of a strata certificate have been complied with. The certifier cannot issue a strata certificate in respect of a notice of conversion unless there is a relevant development consent in force in relation to the conversion or an associated change of use and conditions of any consent relating to the issue of a strata certificate have been complied with.

Proposed section 66B defines the kind of development consent required to be in force before an accredited certifier can issue a strata certificate.

Proposed section 66C enables regulations to be made with respect to strata certificates, notification of strata certificates and records relating to strata certificates.

Proposed section 66D excludes a person who exercises functions under the Act or any other Act in reliance on a strata certificate from liability for loss or damage arising from any matter in respect of which a certificate has been issued.

Proposed section 66E applies the provisions of the *Environmental Planning and Assessment Act 1979* that relate to the accreditation of accredited certifiers and disciplinary proceedings to accredited certifiers issuing strata certificates.

Proposed section 66F applies the provisions of the *Environmental Planning and Assessment Act 1979* that relate to insurance requirements for accredited certifiers to accredited certifiers issuing strata certificates.

Schedule 2 [1] inserts definitions of *accredited certifier*, *relevant development consent* and *strata certificate*.

Schedule 2 [2]–[11], [13], [16]–[21], [24], [27], [29], [30], [40] and [41] make amendments consequential on the amendment made by Schedule 2 [23].

Schedule 2 [12], [14] and [15] update references to provisions and tables.

Schedule 2 [22] provides that a local council is not required to be satisfied as to certain discretionary matters in considering whether to issue a strata certificate if a relevant development consent is in force. This reflects the requirements in relation to certification by accredited certifiers where a relevant development consent is in force. Schedule 2 [22] also requires a council, in determining whether to issue a strata certificate where there is no relevant development consent, to consider specified matters relating to fire safety, similar to those considered by a council when considering whether to consent to a proposed change of use of a building.

Schedule 2 [25] requires an accredited certifier to refuse to issue a strata certificate if a building illustrated by a proposed strata plan or strata plan of subdivision encroaches on a public place unless satisfied that the building complies with a development consent, that any relevant subdivision consent indicates the existence of the encroachment and that the plan clearly indicates the encroachment.

Schedule 2 [26] and [28] make amendments consequential on the amendment made by Schedule 2 [25].

Schedule 2 [31] requires an accredited certifier to note a restriction on the use of a utility lot, arising from a development consent, on the strata certificate.

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Schedule 2 [36] requires an accredited certifier to give notice of refusal of an application for a strata certificate to the applicant.

Schedule 2 [35] and [37] make amendments consequential on the amendment made by Schedule 2 [36].

Schedule 2 [38] requires the notice of refusal to specify the grounds of refusal.

Schedule 2 [39] shortens the period within which an applicant to a council for a strata certificate may appeal to the Land and Environment Court from 40 days to 14 days after the relevant decision.

Schedule 2 [42] requires the Registrar-General to record a restriction as to the use of a utility lot, noted on a strata certificate by an accredited certifier, on a folio of the register when creating a folio for the lot.

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Schedule 2 [43] makes an amendment consequential on the amendment made by Schedule 2 [42].

Schedule 2 [44] makes provision of a savings and transitional nature.