

Environmental Planning Legislation Amendment Act 2006 No 123

[2006-123]



New South Wales

Status Information

Currency of version

Repealed version for 4 July 2007 to 20 July 2007 (accessed 19 December 2024 at 4:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

The Act was repealed by sec 6 (1) of this Act with effect from 21.7.2007.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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Environmental Planning Legislation Amendment Act 2006 No 123



New South Wales

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to the certification of development, development contributions, major projects and other miscellaneous matters; to amend the *City of Sydney Act 1988* with respect to the Central Sydney Planning Committee; and for other purposes.

1 Name of Act

This Act is the *Environmental Planning Legislation Amendment Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided in subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
 - (a) Schedule 1 [6]-[31] and [42]-[46],
 - (b) Schedule 3.3 and 3.4.

3 Amendment of *Environmental Planning and Assessment Act 1979 No 203*

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

4 (Repealed)

5 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.

- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1]-[8] (Repealed)

[9] Section 75J (3)

Omit the subsection. Insert instead:

- (3) In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

[10]-[14] (Repealed)

[15] Section 75O (3)

Omit the subsection. Insert instead:

- (3) In deciding whether or not to give approval for the concept plan for a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for a concept plan for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

[16]-[19] (Repealed)

[20] Section 75P (2) (c1)

Insert after section 75P (2) (c):

- (c1) a provision of an environmental planning instrument prohibiting or restricting the carrying out of the project or that stage of the project under Part 4 (other than a project of a class prescribed by the regulations) does not have effect if the Minister so directs,

[21], [22] (Repealed)

[23] Section 75R (3A)

Insert after section 75R (3):

- (3A) The Minister may, by order published in the Gazette, amend an environmental planning instrument to authorise the carrying out of any of the following development (or to remove or modify any provisions of the instrument that purport to prohibit or restrict the carrying out of any of the following development):
- (a) development that is an approved project,
 - (b) development that is a project for which a concept plan has been approved (whether or not approval for carrying out the project or any part of the project is subject to this Part).

[24]-[30] (Repealed)

[31] Section 75ZA Savings, transitional and other provisions

Omit section 75ZA (2) and (3). Insert instead:

- (2) The regulations may make provision for or with respect to the effect of any such action under Part 4 or Part 5 after the declaration is made or to the effect of the revocation of a declaration after an approval has been given under this Part. In particular, the regulations may make provision for or with respect to:
- (a) the termination or consolidation of consents or approvals under Part 4 or Part 5, and
 - (b) the revival of consents or approvals under Part 4 or Part 5 or the preservation of the effect of approvals under this Part, and
 - (c) the recognition of any environmental assessment under Part 4 or Part 5 for the purposes of this Part or of any environmental assessment under this Part for the purposes of Part 4 or Part 5.
- (3) Any development that has been approved by the Minister under this Part (at any time after the commencement of this Part) is taken to be a project to which this Part applies, and to have been such a project for the purposes of any application, concept plan or other matter under this Part in relation to the development.
- (4) Subsection (3) extends to things that purport to be done under this Part.

[32]-[43] (Repealed)

[44] Sections 109F (1) and 109G

Omit “the certifying authority is satisfied that” wherever occurring.

[45] Section 109H

Omit the section. Insert instead:

109H Restrictions on issue of occupation certificates

- (1) There are two kinds of occupation certificates, as follows:
 - (a) an ***interim occupation certificate*** that authorises a person to commence occupation or use of a partially completed new building, or to commence a new use of part of a building resulting from a change of building use for an existing building,
 - (b) a ***final occupation certificate*** that authorises a person to commence occupation or use of a new building, or to commence a new use of a building resulting from a change of building use for an existing building.

It is not necessary for an interim occupation certificate to be issued before a final occupation certificate is issued with respect to the same building.

- (2) An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent or complying development certificate have been met.
- (3) An interim occupation certificate must not be issued to authorise a person to commence to occupy or use a partially completed new building unless:
 - (a) a development consent or complying development certificate is in force with respect to the building, and
 - (b) in the case of a building erected pursuant to a development consent but not a complying development certificate, a construction certificate has been issued with respect to the plans and specifications for the building, and
 - (c) the partially completed building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (d) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (4) An interim occupation certificate must not be issued to authorise a person to commence a new use of part of a building resulting from a change of building

use for an existing building unless:

- (a) a development consent or complying development certificate is in force with respect to the change of building use, and
 - (b) the part of the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (c) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (5) A final occupation certificate must not be issued to authorise a person to commence occupation or use of a new building unless:
- (a) a development consent or complying development certificate is in force with respect to the building, and
 - (b) in the case of a building erected pursuant to a development consent but not a complying development certificate, a construction certificate has been issued with respect to the plans and specifications for the building, and
 - (c) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (d) such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (6) A final occupation certificate must not be issued to authorise a person to commence a new use of a building resulting from a change of building use for an existing building unless:
- (a) a development consent or complying development certificate is in force with respect to the change of building use, and
 - (b) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (c) such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

(7) In this section:

new building includes an altered portion of, or an extension to, an existing building.

[46] Section 109]

Omit the section. Insert instead:

109J Restriction on issue of subdivision certificates

- (1) A subdivision certificate must not be issued for a subdivision unless:
- (a) the subdivision is not prohibited by or under this Act, and
 - (b) in the case of subdivision that may not be carried out except with development consent, a development consent (or, in the case of complying development, a complying development certificate) is in force with respect to the subdivision, and
 - (c) in the case of subdivision for which a development consent has been granted, the applicant has complied with all conditions of the consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision, and
 - (d) in the case of subdivision for which a “deferred commencement” consent under section 80 (3) has been granted, the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the consent can operate, and
 - (e) in the case of subdivision that relates to land within a water supply authority’s area of operations, the applicant has obtained a certificate of compliance from the water supply authority with respect to the subdivision of the land, and
 - (f) in the case of subdivision the subject of an order made by the Court under section 40 of the *Land and Environment Court Act 1979* concerning the provision of drainage easements, all such drainage easements have been acquired by the council as referred to in that section, and
 - (g) in the case of subdivision the subject of a development consent for which the consent authority is required by the regulations to notify any objector:
 - (i) at least 28 days have elapsed since the objector was notified, or
 - (ii) if an appeal has been made by the objector within that time, the appeal has been finally determined.
- (2) Without limiting subsection (1), a subdivision certificate must not be issued for a subdivision that involves subdivision work unless:
- (a) the work has been completed, or
 - (b) agreement has been reached between the applicant for the certificate and the consent authority:
 - (i) as to the payment by the applicant to the consent authority of the cost of

carrying out the work, and

- (ii) as to when the work will be completed by the consent authority, or
- (c) agreement has been reached between the applicant for the certificate and the consent authority:
 - (i) as to the security to be given by the applicant to the consent authority with respect to the work to be completed, and
 - (ii) as to when the work will be completed by the applicant.
- (3) Subsection (2) does not prohibit the issue of a subdivision certificate for part only of land that may be subdivided in accordance with a development consent as long as the requirements of that subsection have been complied with in relation to that part.
- (4) In this section:

certificate of compliance, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority under the Act under which the water supply authority is constituted.

water supply authority means:

- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the [Water Management Act 2000](#), or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#).

[47]-[57] (Repealed)

Schedule 2 (Repealed)

Schedule 3 Amendment of other Acts

(Section 5)

3.1, 3.2

(Repealed)

3.3 Strata Schemes (Freehold Development) Act 1973 No 68

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

Omit section 37 (1) and (1A). Insert instead:

- (1) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that does not include a development lot or lots, issue to the applicant a strata certificate in respect of that plan if:
- (a) where the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (b) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi), (vii) and (viii) are satisfied:
 - (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 the strata plan relates,
 - (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,
 - (iii) any such building was completed not more than 12 months, or such longer period as the local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) having regard to the circumstances of the case and the public interest, the local council is satisfied that the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood,
 - (vii) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in subsection (1B),
 - (viii) if the local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has

been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.

(1A) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that includes a development lot or lots, or of a proposed strata plan of subdivision of a development lot, issue to the applicant a strata certificate in respect of that plan if:

(a) the requirements of subsection (1) (a) and (b) are satisfied, and

(b) the plan and any building containing proposed lots to which the plan relates:

(i) satisfy any applicable development consent conditions, and

(ii) give effect to the stage of the strata development contract to which they relate.

[2] Section 37 (1B)

Omit “subsection (1) (b) (iv)”. Insert instead “subsection (1) (b) (vii)”.

[3] Section 37 (3) (c) and (4) (b)

Omit “subsection (1) (b) (i), (ii) and (iii), as if the reference in subsection (1) (b)” wherever occurring.

Insert instead “subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1)”.

[4] Section 37 (6) (a)

Omit “subsection (1) (b) (iii)”. Insert instead “subsection (1) (b) (vi)”.

[5] Section 37A

Omit the section. Insert instead:

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:

(a) there is a relevant development consent in force, and

(b) 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, and

- (c) where the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (d) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi) and (vii) are satisfied:
 - (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 the strata plan relates,
 - (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,
 - (iii) any such building was completed not more than 12 months, or such longer period as the relevant local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in section 37 (1B),
 - (vii) if the relevant local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.
- (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:

- (a) the requirements of subsection (2) (a)-(d) are satisfied, and
- (b) the plan and any building containing proposed lots to which the plan relates:
 - (i) satisfy any applicable development consent conditions, and
 - (ii) give effect to the stage of the strata development contract to which they relate.
- (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:
 - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied, and
 - (b) the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision.
- (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:
 - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied, and
 - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if:
 - (a) the requirements of subsection (2) (a) and (b) are satisfied, and
 - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (7) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless all regulations with respect to the provision of such certificates have been complied with.

[6] Section 38 Encroachments

Omit “it is satisfied that” from section 38 (1).

[7] Section 38 (1) (c)

Insert “it is satisfied that” before “retention”.

[8] Section 38 (1A)

Omit the subsection. Insert instead:

- (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:
- (a) the plan clearly indicates the existence of the encroachment and its nature and extent, and
 - (b) either one of the following matters is satisfied:
 - (i) the building complies with any relevant development consent in force with respect to the building with the encroachment,
 - (ii) any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment.

[9] Schedule 4 Transitional and savings provisions

Insert after Part 5:

Part 6 Transitional provisions relating to the [Environmental Planning Legislation Amendment Act 2006](#)

1 Strata certificates

Division 4 of Part 2, as amended by the [Environmental Planning Legislation Amendment Act 2006](#), does not apply to or in respect of an application for a strata certificate made, but not determined, before the commencement of Schedule 3.3 to that Act and that Division, as in force immediately before that commencement, continues to apply to and in respect of any such application.

3.4 Strata Schemes (Leasehold Development) Act 1986 No 219

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

Omit section 66 (1). Insert instead:

- (1) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that does not include a development lot or lots, issue to the applicant a strata certificate in respect of that plan if:
- (a) where the land proposed to be subdivided is situated within a water supply

authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and

- (b) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi), (vii) and (viii) are satisfied:
- (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 the strata plan relates,
 - (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,
 - (iii) any such building was completed not more than 12 months, or such longer period as the local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) having regard to the circumstances of the case and the public interest, the local council is satisfied that the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood,
 - (vii) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in subsection (1A),
 - (viii) if the local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.

[2] Section 66 (1A)

Omit “subsection (1) (b) (iv) and (c) (iv)”.

Insert instead “subsection (1) (b) (vii)”.

[3] Section 66 (2)

Omit the subsection. Insert instead:

(2) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that includes a development lot or lots, or of a proposed strata plan of subdivision of a development lot, issue to the applicant a strata certificate in respect of that plan if:

(a) the requirements of subsection (1) (a) and (b) are satisfied, and

(b) the plan and any building containing proposed lots to which the plan relates:

(i) satisfy any applicable development consent conditions, and

(ii) give effect to the stage of the strata development contract to which they relate.

[4] Section 66 (4) (c)

Omit “subsection (1) (b) (i), (ii) and (iii) or subsection (1) (c) (i), (ii) and (iii), as if the reference in subsection (1) (b) or (c)”.

Insert instead “subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1)”.

[5] Section 66 (5) (b)

Omit “subsection (1) (b) (i), (ii) or (iii) and subsection (1) (c) (i), (ii) and (iii) as if the reference in subsection (1) (b) or (c)”.

Insert instead “subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1)”.

[6] Section 66 (7) (a)

Omit “subsection (1) (b) (iii) or (1) (c) (iii)”.

Insert instead “subsection (1) (b) (vi)”.

[7] Section 66 (7A)

Insert after section 66 (7):

(7A) For the purposes of subsections (1), (2), (4), (5) and (7), if an Act provides that Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply to the carrying out of the development on the land to which the strata plan relates, a reference in subsection (1) (b) (iv) or (v) to the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument is taken to be a

reference to the Act under which development consent to the carrying out of development on that land may be granted or an instrument made under that Act as the case requires.

[8] Section 66A

Omit the section. Insert instead:

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:
 - (a) there is a relevant development consent in force, and
 - (b) 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, and
 - (c) where the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (d) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi) and (vii) are satisfied:
 - (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 the strata plan relates,
 - (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,
 - (iii) any such building was completed not more than 12 months, or such longer period as the relevant local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within

the meaning of that Act,

- (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in section 66 (1A),
 - (vii) if the relevant local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.
- (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:
- (a) the requirements of subsection (2) (a)–(d) are satisfied, and
 - (b) the plan and any building containing proposed lots to which the plan relates:
 - (i) satisfy any applicable development consent conditions, and
 - (ii) give effect to the stage of the strata development contract to which they relate.
- (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:
- (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied (as if the reference in subsection (2) (d) (iv) or (v) is a reference to the plan to which the application for certification relates), and
 - (b) the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision.
- (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:
- (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied (as if the reference in subsection (2) (d) (iv) or (v) is a reference to the plan illustrating the proposed subdivision), and

- (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if:
 - (a) the requirements of subsection (2) (a) and (b) are satisfied, and
 - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (7) For the purposes of subsections (2)–(5), if an Act provides that Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply to the carrying out of the development on the land to which the strata plan relates, a reference in subsection (2) (d) (iv) or (v) to the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument is taken to be a reference to the Act under which development consent to the carrying out of development on that land may be granted or an instrument made under that Act as the case requires.
- (8) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless all regulations with respect to the provision of such certificates have been complied with.

[9] Section 67 Encroachments

Omit “it is satisfied that” from section 67 (1).

[10] Section 67 (1) (c)

Insert “it is satisfied that” before “retention”.

[11] Section 67 (1A)

Omit the subsection. Insert instead:

- (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:
 - (a) the plan clearly indicates the existence of the encroachment and its nature and extent, and
 - (b) either one of the following matters is satisfied:
 - (i) the building complies with any relevant development consent in force with respect to the building with the encroachment,

- (ii) any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment.

[12] Schedule 5 Transitional and savings provisions

Insert after Part 4:

Part 5 Transitional provisions relating to the [Environmental Planning Legislation Amendment Act 2006](#)

1 Strata certificates

Division 7 of Part 2, as amended by the [Environmental Planning Legislation Amendment Act 2006](#), does not apply to or in respect of an application for a strata certificate made, but not determined, before the commencement of Schedule 3.4 to that Act and that Division, as in force immediately before that commencement, continues to apply to and in respect of any such application.