



EXEMPTION CERTIFICATES

An exemption certificate releases the owner of a premises from the need to get approval for assessable development that would usually require a development approval.

The effect of an exemption certificate is that the development is still classified as assessable development, but a development approval is no longer required. They can only be issued in limited circumstances.

When an exemption certificate can be given

There are three circumstances in which an exemption certificate may be applied for and given (section 46(3)(b) of the [Planning Act 2016](#)). At least one circumstance must apply to the proposed development. These circumstances include:

- › development is categorised assessable as a result of an error; or
- › development is categorised assessable solely due to circumstances that no longer apply; or
- › the effects of the development would be minor or inconsequential considering the circumstances under which the development was categorised as assessable development.

See the 'When an exemption certificate can be given' section below for greater detail around these circumstances and some case studies.

Factsheet – September 2021

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Requesting and issuing exemption certificates

Exemption certificates are not intended to deal with major or complex development, but to cover work that should not reasonably be categorised as assessable development. There is no requirement for a person to apply for an exemption certificate, but there is nothing to prevent a person asking an assessment manager for an exemption certificate.

Local governments or the department's chief executive may issue exemption certificates; however, they are not obliged to do so. Requests for an exemption certificate are most often made to the relevant local government. Contact your local government to find out how exemption certificates may be used in your local government area.

The decision to consider a request or to issue an exemption is entirely up to the relevant local government or department's chief executive. The decision maker may give an exemption certificate for premises without first being requested to do so.

The department's chief executive is prevented from giving an exemption certificate for a development:

- › that is assessable under a local categorising instrument, such as the [local government's planning scheme](#)
- › made assessable under the regulation where the local government is the assessment manager, such as reconfiguring a lot.

If there is a referral agency for the proposed development, the referral agency must agree in writing to the exemption certificate being given.

Once an exemption certificate is given, a copy must be given to:

- › each owner with an interest in the premises to which the exemption certificate relates
- › each referral agency
- › the local government, if the department's chief executive issues the exemption certificate.

An exemption certificate attaches to the premises, and benefits the owner, the owner's successors in title, and any occupiers of the premises.

An exemption certificate has effect for two years or a later period as stated in the exemption certificate.

An assessment manager may give a further exemption certificate for the same development before or after the expiry of an exemption certificate for the same development.

Requirements placed on an exemption certificate

An exemption certificate may not be given subject to conditions. However, an exemption certificate may include:

- › requirements about when certain actions, related to development under the certificate, must be taken
- › a description of the size, height or bulk of the accepted development
- › the location of the premises of the accepted development
- › stated periods in which the development must be completed or start, or a plan for reconfiguring a lot is given to the local government.

If conditions are required to be placed on the proposed development, the development should follow the development assessment process, the outcome of which is contestable by the applicant and any submitters.

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Publishing the reasons for the decision

Where an exemption certificate is given, the decision maker is required to publish a notice about that decision that states the reasons for giving the exemption certificate.

This notice must:

- › describe the premises for which the exemption certificate was given
- › describe the development to which the exemption certificate relates
- › state the reasons for giving the exemption certificate.

This notice must be published on the decision maker's website. Exemption certificates given by the local government as the decision maker can be viewed by visiting the local government's website. Exemption certificates given by the department's chief executive can be viewed [here](#).

Disputing an exemption certificate

There is no provision for a person to appeal a decision to give or not to give an exemption certificate. However, although the impacts of a decision to give an exemption certificate are not appealable, a person may bring a proceeding before the Planning and Environment Court to test aspects of the lawfulness of a decision to give an exemption certificate, such as whether the circumstances under which the exemption certificate was given did not conform with the limitations in the Planning Act.

CASE STUDIES

The Planning Act prescribes three circumstances in which an exemption certificate may be given. At least one circumstance must apply to the proposed development, but more than one may apply. These three circumstances are set out below.

Option 1 – minor or inconsequential

The effects of the development would be minor or inconsequential, considering the circumstances under which the proposed development was categorised as assessable development. In this circumstance, 'minor or inconsequential' should be read in the ordinary meaning of these terms.

Case study

A local planning scheme identifies a flood line in a residential zone. Within the area defined by the flood line, development for a house (which would normally be accepted development in the zone and, therefore, not subject to a development approval) becomes assessable development. The owner of the house is proposing to renovate a deck on the house so that the new deck will extend a short distance into the flood line. The assessment manager considers that the new deck on the house would have only a minor or inconsequential effect – having regard to the risk of flooding, which was the circumstance that led to development being categorised as assessable in the first instance. As there are no referral agencies, the assessment manager may issue an exemption certificate for the deck extension to the house.

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CASE STUDIES

Option 2 – circumstances that no longer apply

The proposed development was categorised as assessable development only because of particular circumstances that no longer apply. Under this provision, an exemption certificate cannot be given on the basis of general ‘changed circumstances’, but only if the sole ground upon which the development was assessable in the first place no longer exists.

Case study

A local planning scheme identifies a flood line in a residential zone. Within the area defined by the flood line, development for a house (which would normally be accepted development in the zone and, therefore, not subject to a development approval) becomes assessable development. The owner of the house is proposing to renovate a deck on the house so that the new deck will extend a short distance into the flood line. However, upstream works have recently been undertaken, which means the area subject to the flood line is no longer liable to flooding. As the sole circumstance under which the proposed development is assessable development is no longer applicable, the assessment manager may issue an exemption certificate for the deck extension to the house.

Option 3 – identified error

The proposed development was categorised as assessable development because of an error. Under this provision, there must be a clear error in the categorising instrument, such as a local planning scheme, in relation to the assessable development.

Case study

A local planning scheme identifies a flood line in a residential zone. Within the area defined by the flood line, development for a house (which would normally be accepted development in the zone and, therefore, not subject to a development approval) becomes assessable development. The owner of the house is proposing to renovate a deck on the house so that the new deck will extend a short distance into the flood line. If the flood studies, upon which the flood line was established, demonstrate that the effects of flooding do not in fact extend to the house, and that an error in interpreting or applying the study findings has made the house subject to the flood line, then the assessment manager may give an exemption certificate.