

Better Planning for Queensland

Planning Act 2016 / Development Assessment

Fact sheet Exemption certificates

The option to give an exemption certificate under particular limited circumstances was included in the *Planning Act 2016 (Planning Act)* in response to feedback from the local government sector. It relates to situations where a development permit is required due to an error in the planning scheme – like a mapping error – or where the circumstances requiring assessment of the development no longer apply, or the effect of the development is minor or inconsequential.

Amending a planning scheme to correct the error or applying a development assessment process to development under these circumstances is an expensive and time consuming exercise for both the applicant and assessment manager with little or no benefit to the development outcome.

The certificate can only be given in very limited and particular circumstances. The local government or chief executive is not obliged to consider a request for an exemption certificate or to give a certificate. Whether a request for an exemption certificate is considered or given or not is at the discretion of the relevant local government or chief executive.

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 certificate.

What is an exemption certificate?

Exemption certificates are a new tool under the *Planning Act*.

Section 46 enables a local government or the chief executive to give to an owner of premises an exemption certificate which states a development approval is not required for assessable development.

An exemption certificate is intended to be used as a tool to address the inappropriate categorisation of development while more permanent measures, such as amending the categorising instrument (for example a local planning scheme), are implemented. The effect of an exemption certificate is that the development subject to the certificate is still classified as assessable development; however a development approval is not required.

Who can give an exemption certificate?

A local government or the chief executive can give an exemption certificate. However the chief executive may not give an exemption certificate for development where the local government would be the assessment manager if that particular development and no other development were the subject of a development application.



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This means that the 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.

When can an exemption certificate be given?

If there is a referral agency for the development, the referral agency must agree in writing to the certificate being given. Section 46(3)(b) prescribes the three circumstances in which an exemption certificate may be given. At least one circumstance must apply to the development, however more than one may apply.

These are set out below:

Option 1

Section 46(3)(b)(i) – the effects of the development would be minor or inconsequential, considering the circumstances under which the development was categorised as assessable development.

This requires a consideration of whether the effects of the development would be minor or inconsequential in the context of the reasons the development was categorised as assessable because determining whether the effects of development are minor or inconsequential is a contextual consideration. In this circumstance, 'minor or inconsequential' should be read in the ordinary meaning of these terms.

Case study

A 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 would not require a development approval) becomes assessable development. The owner of the house is proposing to extend a deck on the house so that the new deck would 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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Option 2

Section 46(3)(b)(ii) – the 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

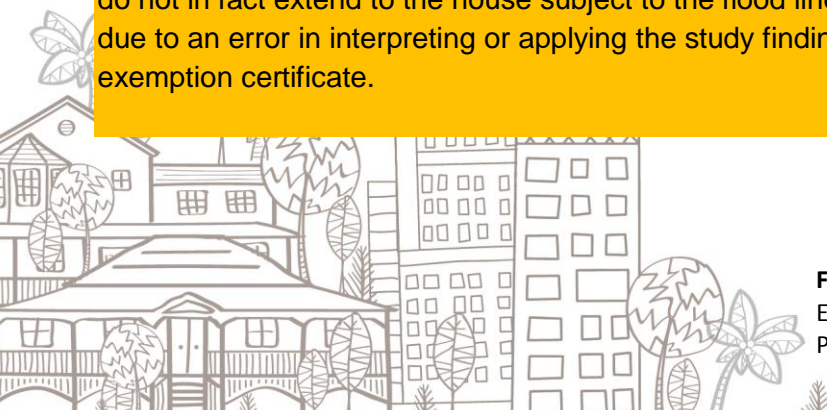
A planning scheme identifies a flood line in a residential zone. Within the area defined by the flood line, development for a house that would normally be accepted development in the zone (and therefore would not require a development approval) becomes assessable development. The owner of the house is proposing to extend a deck on the house so that the new deck would 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 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

Section 46(3)(b)(ii) – the 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 planning scheme identifies a flood line in a residential zone. Within the area defined by the flood line, development for a house that would normally be accepted development (and therefore would not require a development approval) in the zone becomes assessable development. The owner of the house is proposing to extend a deck on the house so that the new deck would 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 subject to the flood line, and that the house is subject to the flood line due to an error in interpreting or applying the study findings, then the assessment manager may give an exemption certificate.



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How is an exemption certificate given?

A copy of the exemption certificate must be given to:

- each owner of an interest in the premises to which the certificate relates
- each referral agency
- the local government if the 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 certificate.

There are specific provisions in the *Planning Act* for development that does not comply with the requirements of the exemption certificate and for any development that has substantially started under the 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.

How is the reason for the decision known?

The *Planning Act* requires that, where a decision is made to give an exemption certificate, the decision-maker must publish a notice about the decision on their website. This notice must state:

- a description of the premises for which the certificate was given
- a description of the development to which the certificate relates
- the reasons for giving the exemption certificate.

The Planning Regulation can also prescribe other matters that are required in this notice of reasons, but no matters have been prescribed at this time.

Can an applicant apply for an exemption certificate?

There is no provision for a person to apply for an exemption certificate – though in practice, there is nothing preventing a person asking an assessment manager for an exemption certificate. An assessment manager may give an exemption certificate for premises without first being requested to do so.

For this reason, an assessment manager may establish an administrative process for accepting, assessing and deciding such requests.



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Can conditions be 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 on the premises of the accepted development
- stated periods in which the development must be completed, use must start, or a plan for reconfiguring a lot is given to the local government.

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

Are exemption certificates subject to appeal?

There is also 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 decision was beyond power because the circumstances under which the exemption certificate was given did not conform with the limitations in the *Planning Act*.

For more information contact us at bestplanning@dilgp.qld.gov.au.

