



# Fact sheet: Exemption certificates

This fact sheet explains to local governments and developers how exemption certificates work.

## What is an exemption certificate?

An exemption certificate is a tool designed to deal with the inappropriate categorisation of development while more permanent measures, such as amending the categorising instrument (for example, a local planning scheme), are implemented. Exemption certificates release the owner of premises from the need to get approval for assessable development. They are issued only in special circumstances.

## Why are they needed?

Sometimes the effect of a proposed development is so minor or inconsequential that development approval is probably not necessary. At other times, the circumstances that gave rise to the need for development approval in the first place may no longer apply. Or there might be an error in the planning scheme – for example, a requirement for a development permit might have come about from a mapping error in the scheme.

Amending a planning scheme ad hoc is expensive and time consuming for everyone, with little or no benefit to the development outcomes. It makes more sense for local governments to issue exemptions for particular cases until such time as the planning schemes can be amended.

The effect of an exemption certificate is that the development is still classified as assessable development but a development approval is no longer required.

## Who issues them?

Local governments or chief executives may issue exemption certificates in limited and particular circumstances. However, they are not obliged to do so.

A 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.

## Can developers request an exemption?

There is no provision 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. 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.

The decision to consider a request or to issue an exemption is entirely up to 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.

## How is the reason for the decision made 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:

- describe the premises for which the certificate was given
- describe the development to which the certificate relates
- state 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.

## 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) of the Planning Act prescribes three circumstances in which an exemption certificate may be given. At least one circumstance must apply to the development, but 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. 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 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.

### 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 (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

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 (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.

## How is an exemption certificate given?

A copy of the exemption certificate must be given to:

- each owner with 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 do 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.

## 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 of 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 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.

## More information

For more information contact us at [bestplanning@dilgp.qld.gov.au](mailto:bestplanning@dilgp.qld.gov.au).