

Strata Renovations & Subdivisions – Exempt & Complying Development Laws May Remove the Need for Council Approval



Owners and developers of strata units considering renovations or subdivisions need to consider whether council approval is required. Failure to obtain a required approval can have serious consequences, including penalties, upgrade or demolition orders and prejudice to insuring, leasing, mortgaging or selling the property in the future.

Owners corporation approval may also be required and further information about that can be obtained here [What Approvals Do I Need to Renovate My Unit?](#)

That said, owners and developers may get a pleasant surprise to discover how much work can actually be done without approval as exempt development or with a straightforward approval process as complying development. This is how it works:

- Under the Environmental Planning and Assessment Act 1979 and related laws, most subdivisions or renovations of strata units will represent development, requiring approval, unless the law provides otherwise.
- Various environmental planning instruments (“EPIs”), including council local environmental plans (“LEPs”) and state environmental planning policies (“SEPP’s”) do provide otherwise, specifying certain types of development to be exempt or complying development. The most important of these will be the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (“Codes SEPP”) and the LEP for your council area. Other EPIs can be important, e.g. “granny flats” may be complying development under the State Environmental Planning Policy (Affordable Rental Housing) 2009.
- The Codes SEPP contains many important codes, including the General Exempt Development Code, the General Housing Code, the Rural Housing Code, the Housing Alterations Code, the Commercial and Industrial Alterations Code and the Commercial and Industrial (New Buildings & Additions) Code, the Subdivisions Code and the Demolitions Code. These may specify certain types of development to be “exempt development” not requiring approval or “complying development” subject to a greatly simplified process, involving issue of a complying development certificate (“CDC”), generally by a private certifier.
- An LEP may also specify certain types of development to constitute “exempt development” or “complying development”. The Codes SEPP generally prevails over an LEP in case of inconsistency, but there are situations where the Codes SEPP will not apply and other situations where an owner can choose between the Codes SEPP and LEP, so an owner should always consider whether the relevant LEP (or another EPI) may apply.

- Exempt development generally involves low impact works, such as access ramps, antennas, air conditioning units, balconies, decks & verandahs, carports & garages, driveways, garden structures, clothes lines, fences & retaining walls, hot water systems, skylights and minor internal alterations. Some low impact property uses can be complying development, e.g. some home businesses and changes of use. There are many others and it is worth checking if you are considering low impact works or changes of use.
- Complying development, generally involves more substantial works such as building a new one or two storey house, renovating an existing house or adding a swimming pool to an existing house. Changes in February 2014 expanded the scope for use of complying development certificates in a strata context, particularly for internal alterations to foyers and other common areas and some strata subdivisions, where there are several dwellings at ground level.
- In each case, one needs to establish that:
 - the relevant EPI applies to the particular property and development. Some properties will be excluded, e.g. this may be the case with properties with environmental or heritage significance.
 - the type of development is one listed in the relevant EPI as exempt or complying development.
 - the prescribed development standards will be satisfied. These vary with the type of development involved, but typically involve compliance with Building Code of Australia (“BCA”) requirements, not causing a change in classification of the property under the BCA and often other detailed requirements.
- If you have established that, you can proceed with the works if they are exempt development or contact a private certifier or council to apply for a CDC if the works are complying development.

It is usually a straight forward exercise to determine whether proposed works are exempt or complying development and this is very much “a stitch in time saves nine” area, so owners and developers should obtain legal advice before proceeding with works if they have questions about planning law approval issues.

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