



# EXEMPTION CERTIFICATES

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2	Reviewed	November 2021	Review December 2022
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## Purpose

- 1 Amending the planning scheme ad hoc is expensive and time consuming for everyone, with little or no benefit to the development outcomes.
- 2 The *Planning Act 2016* (Qld) (**Planning Act**) allows Council to give an exemption certificate in limited circumstances to obviate the need for a development permit to be obtained for development made assessable under Council's planning scheme. No development offence under the Planning Act will be committed if the development is carried out in accordance with an exemption certificate.
- 3 It makes sense for Council to issue an exemption certificate in particular cases.

## Scope

- 4 Where warranted the issuing of an exemption certificate will streamline the administration of development delivery by providing better customer service, promoting economic development and remove unnecessary internal administration processes.
- 5 There are three circumstances under the Planning Act which would allow Council to issue an exemption certificate:
  - **first** – the effects of the development would be minor or inconsequential, considering the circumstances under which the development was categorised as assessable development;
  - **second** – the development was categorised as assessable development only because of particular circumstances that no longer apply; and

- **third** – the development was categorised as assessable development because of an error.
- 6 This policy only applies to the first circumstance.
- 7 It is intended that this policy would only apply to the following development as defined by the Planning Act:
- Material Change of Use; and
  - Building Work, but only to the extent the building work is made assessable under the planning scheme.
- 8 This policy is not ordinarily intended to apply to assessable development which triggers referral to a referral agency, unless Council itself is the referral agency and has agreed in writing to the giving of an exemption certificate.
- 9 This policy is intended to provide a guide to Council and the public as to the circumstances in which Council may give an exemption certificate if requested to do so. There may be nuance in any individual case, which will need to be considered by Council that may suggest that this policy should not be applied in a given case and accordingly that Council should not give an exemption certificate.

### **Application**

- 10 The Planning Act does not provide a process for a person to apply for an exemption certificate and accordingly there is no statutory criteria associated with Council's consideration of these requests. However there is nothing to prevent a person asking Council for an exemption certificate. For this reason, the request form provides transparency for accepting, assessing and deciding such requests that fit within the scope of this policy.
- 11 Council is ultimately accountable for its decision to issue an exemption certificate as it needs to publish its reasons for doing so on its website.

### **When can an exemption certificate be given?**

- 12 Section 46(3)(b) of the Planning Act prescribes the circumstances in which an exemption certificate may be issued. Only the first circumstance noted above is within the scope of this policy.
- 13 The words 'minor or inconsequential' are to be given their ordinary meaning but Council's consideration of the meaning of those words does involve a question of fact and degree. Issues relating to the scale and intensity of development may be relevant in a given case.
- 14 Without removing the right of everyone to request an exemption certificate, Council will look more favourably upon requests which involve a non-habitable building which is proposed to be constructed:
- within the setback requirements of the planning scheme where a coherent streetscape character of the area is maintained and the development will not detract from the amenity of adjoining premises; or

- in an area affected by the flood hazard overlay under the planning scheme which makes a development assessable where it would otherwise have been accepted development.

### ***Case Study One***

- 15 The planning scheme identifies a flood overlay in a zone within an area defined by a flood hazard overlay, where there is an existing lawful house. There is a proposal for a new, or extension to, a non-habitable class 10 shed which is of a relatively small scale. Council considers the shed extension would have only a minor or inconsequential effect having regard to the risk of flooding, which was the circumstance that led to the development being categorised as assessable development in the first instance. As there are no referral agencies, Council may issue an exemption certificate for the new or proposed extensions to the non-habitable class 10 shed, subject to the requirements of the Planning Act

### ***Case Study Two***

- 16 A new, or extension to an existing, non-habitable class 10 shed which is of a relatively small scale is proposed to be built within the boundary setbacks as required in the planning scheme. Council considers the setback encroachment to be minor or inconsequential having regard to the impacts upon the amenity of neighbours and that a coherent streetscape is maintained. Council also has regard to the Queensland Development Code, which provides guidance to ensure good residential design that promotes the efficient use of a lot and acceptable amenity to residents. As there are no referral agencies, Council may issue an exemption certificate for the new or proposed extensions to the non-habitable class 10 shed, subject to the requirements of the Planning Act.

### ***Case Study Three***

- 17 A landowner wishes to construct a non-habitable class 10 shed which is of a relatively small scale three metres from the rear boundary of their lot that happens to be serviced by a rear lane. This would trigger an assessable Material Change of Use in the planning scheme to build within the 4.5m setback for secondary road frontage. Council also has regard to the Queensland Development Code, which provides guidance to ensure good residential design that promotes the efficient use of a lot and acceptable amenity to residents. As there are no referral agencies, Council may issue an exemption certificate for the new or proposed extensions to the non-habitable class 10 shed, subject to the requirements of the Planning Act.

### **How is an exemption certificate given?**

- 18 A copy of the exemption certificate must be given by Council to:
- each owner with an interest in the premises to which the certificate relates; and
  - each referral agency.
- 19 An exemption certificate attaches to the premises and benefits each of the owners, the owners' successors in title and any occupiers of the premises.
- 20 An exemption certificate has effect for two years or a later period as stated in the certificate. Council may also state, in an exemption certificate, a period, or periods, within which:
- stated development must be completed;

- a use that is the natural and ordinary consequence of the development must start; or
  - a plan for reconfiguring a lot that is required under a regulation to be given to Council for its approval must be given.
- 21 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 premises of the accepted development; and
  - A period in which the development must be completed and use must start.

### **Public notification**

- 22 Where an exemption certificate is given, Council is required to publish a notice about that decision on Council's website. The notice must describe the premises for which the certificate was given, describe the development to which the certificate relates and state the reasons for giving an exemption certificate.

### **Reference**

- 23 *Planning Act 2016* (Qld)

### **Review date**

- 24 30 December 2021