

Chapter 7

PLANNING APPROVALS AND APPEALS

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CHAPTER 7

PLANNING APPROVALS AND APPEALS

This Chapter sets out to give only a brief outline of the planning processes required to allow deposit of a strata plan in the Lands Titles Registration Office. Full details of the requirements of the Development Act may be gained by reference to a series of Guideline Booklets on the Integrated Planning System, available from the Development Assessment Commission, Department of Housing and Urban Development.

701 THE PLANNING APPROVAL PROCESS

Before application can be made to the Registrar-General for the deposit of a Strata Plan, an applicant must first gain a Land Division Certificate. This approval, issued by the Development Assessment Commission represents final approval in the processes prescribed by the Development Act 1993. The Development Act came into operation on 15/1/1994 and repealed all previous planning legislation including the Planning Act 1982, Division II (Certificates of Council and the Commission) of Part XIXAB of the Real Property Act Division V (Planning Approvals) of the Strata Titles Act 1988.

There are four actions that can be taken in respect of a strata scheme. E.g.,

- | | |
|---|----------------------|
| 1) Create it. | ← SEE S.7 STA |
| 2) Amend it. | ← SEE SS.12 & 13 STA |
| 3) Amalgamate it with an adjacent scheme. | ← SEE S.16 STA |
| 4) Cancel it. | ← SEE S.17 STA |

The Strata Titles Act, 1988 requires the actions under 1) and 2) above to receive the consent (planning approval) of the council of the area and the Development Assessment Commission.

The process, in basic terms only, is:

- application for development approval.
This is the approval given that will allow a development to proceed to finality. This approval is similar to the planning authorisation issued under the repealed Planning Act. The approval may be subject to conditions that must be fulfilled.
- issue of a Decision Notification Form by the relevant authority indicating approval (with conditions and requirements, if any) or a refusal. ← SEE S.50 Dev. Act
- fulfilment of conditions and requirements (if any).
- Issue of a Land Division Certificate by the Development Assessment Commission, the final approval given under the Development Act
- Application to the Registrar-General for the deposit of the strata plan.

The process is shown in flow chart form in Fig. 32 at the end of this Chapter.

STRATA FACTS

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702 DEFINITIONS USED IN THIS CHAPTER

1 COUNCIL

For the purposes of strata titling land, the Development Act defines a council as a municipal or district council.

← SEE S.3 DEV ACT

In relation to areas of the state that lie outside local government areas, the Development Assessment Commission is the relevant planning authority.

← SEE PARA 703.3

A council is the principal planning authority, except where the Development Act provides otherwise.

2 THE DEVELOPMENT ASSESSMENT COMMISSION

The Development Assessment Commission is established under the Development Act 1993 (as a successor to the SA Planning Commission and resides in the Department of Housing and Urban Development. It has the statutory functions to:-

← SEE S.10, DEV ACT 1993

1. participate in the assessment of development proposals where appropriate,
2. report to the Minister on matters relevant to the development of land,
3. to make recommendations as to the regulations that should be made under this Act
4. to perform other functions assigned under this Act.

The Commission monitors the planning approval processes

3 RELEVANT AUTHORITY

The Development Act provides that a strata plan (or plan of division) lodged for planning approval must be assessed by the council of the area and the Development Assessment Commission. In most cases the council will, if approving a scheme, issue the **planning development approval**. In this case the council is the relevant authority.

There are instances where the Commission is the relevant authority.

← SEE S.34 DEV ACT and, R.38.

E.g.,

- where the site of a strata plan is either partly or totally outside a council area.
- where the site of a strata plan straddles the boundaries of two or more council areas and the councils are not in agreement with the proposal.
- where the council has an interest in the scheme.
- where the council declares the Commission to be the relevant authority.
- there is a matter of state significance involved in a proposal.

4 STATE DEVELOPMENT PLAN

The Development Plan is a document containing a consolidated statement of provisions, proposals and policies for the development, conservation and management of land by planning authorities.

← SEE S.23, DEVELOPMENT ACT 1993

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702(4) The principles of the plan can:-

- permit development absolutely or subject to conditions,
- prohibit development.
- set out guidelines and conditions against which the merits of proposals are to be assessed.

The division of land, whether into allotments under Part XIXAB of the Real Property Act or Units under the Strata Titles Act, requires the approval of the council and the Development Assessment Commission. Each authority must give consideration to the development plan and any other laws of the State relevant to development whether application is made for a land division certificate for a plan of division or a strata plan.

5 DEVELOPMENT APPROVAL

← SEE S.33 DEV. ACT

The Development Act states that any acts or activities defined as development can be undertaken on issue of a development approval. A development approval could be made up of one or more of six consents from relevant authorities. In this regard, the required number of consents depends on the nature and kind of development proposal. When all necessary consents have been issued, the relevant authority can issue a development approval to the applicant.

In the case of a strata plan, the relevant authority must consider the following matters:

- (a) the provisions of the appropriate Development Plan ("provisional development plan consent");
- (b) the provisions of the Building Rules ("provisional building rules consent");
- (c) the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under this Act):
 - (i) each unit that would be created or affected by the development is appropriate for separate occupation;
 - (ii) any encroachment of a unit over other land has been dealt with in a satisfactory manner;
 - (iii) where land is to be vested in a council or other authority—the council or authority consents to the vesting;
 - (iv) the building or buildings shown on the plan as forming part of a unit or units are of sufficient substance and quality, and are structurally sound and in good condition;
NOTE: there are cases known where the owner of a relatively old house has utilised a large yard area and erected units to the site and applied for the deposit of a strata plan. Problems arise where little or no attempt is made to upgrade the standard of the house to that of the new units.

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702(5)(c)(i)

Upon deposit of the plan and subsequent sale of the new units, the developer, as the owner of the house (now a unit) asks the strata corporation for funds to repair that portion of the former house that is now common property. Although there is a provision in the Act to levy expenses that benefit a particular unit, the corporation should not be placed in this position by a developer. Councils should question their own liability in cases such as this.

← SEE S.27 (6) STA

- (v) the division of the land by strata plan is, having regard to the relevant Development Plan, appropriate;
- (vi) open space will be provided, or a payment will be made in accordance with the requirements imposed under this Act;
- (vii) the requirement that any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) has been dealt with in a satisfactory manner;
- (viii) such other matters as may be prescribed.

← SEE PARA 708

The relevant authority may issue a development approval subject to conditions that must be fulfilled prior to the next stage in the process, issue of a land division certificate.

6 LAND DIVISION CERTIFICATE

Final planning approval is evidenced by the issue of a land division certificate. Regardless of who is the relevant authority, the certificate is issued by the Development Assessment Commission.

The land division certificate is given in the form of an endorsement made on a copy print of the relevant plan. A sample is shown in Figure 31.

DEVELOPMENT ASSESSMENT COMMISSION	
LAND DIVISION (STRATA) CERTIFICATE	
Council/Commission has consented to the encroachment(s) over public land	
The building(s)/Structure was erected on	
The postal address of the site is	
.....	
Approved in accordance with the requirements of Section 51 of the Development Act 1993	
Signed	
Description of signatory:	Supervisor Land Division as delegate of D.A.C.
Dated	

Figure 31

LAND DIVISION CERTIFICATE
(May also be signed by the Manager
Planning Services Branch, DAC)

STRATA FACTS

703 APPLICATION FOR DEVELOPMENT APPROVAL

An application for development approval is made to the Commission. Application is made on a form known as a "Development Application Form". The Commission will forward a copy to the council of the area for assessment. The Commission will assign to the application a development number prefixed with the letter "S" (for strata). Similarly, an application for development approval for land division will be prefixed with the letter D. The application must be accompanied by 9 copies of the plan, 3 copies of relevant certificates of title for the site, and the current prescribed fees.

An application may be made for all or any of the consents required for the approval of a proposed development, or for any one or more of those consents.

A relevant authority may, in granting a provisional development plan consent, reserve its decision on a specified matter until further assessment of the relevant development under this Act.

704 APPLICATION FOR DEVELOPMENT APPROVAL INCLUDES BUILDING APPROVAL

An application for development approval in respect of a scheme where the structure is to be built, a request for **building rules consent must be included**. A request for this consent was previously made under the now repealed Building Act.

705 DECISION NOTIFICATION

Once the relevant authority has assessed the application, the applicant is notified of the decision on a form known as a **Decision Notification Form**.

The decision may include an approval, approval subject to conditions or a refusal. The form will show what consents have been given.

706 LAND DIVISION CERTIFICATE

A land division certificate is issued once the applicant to a strata plan has fulfilled all conditions and requirements of a development approval. Note that only one certificate is issued. This is in contrast to the two certificate system of the repealed provisions.

← BUT SEE PARA 711
FOR CROWN
DEVELOPMENT

Where development approval is unconditional, the council (if the relevant authority) will notify the Commission. The Commission will then issue the land division certificate.

The Development Act prescribes a period of 12 months during which the certificate must be lodged at the Lands Titles Registration Office with an application for the deposit of a strata plan or it will lapse. The Act also provides for the Commission to extend the life of the certificate at the Commission's discretion.

707 SPECIFIC PROVISIONS APPLICABLE TO COUNCIL APPROVAL

1. LAND DIVISION CERTIFICATE SHOULD NOT BE GIVEN UNTIL WORK COMPLETE

Although the Development Act provides for issue of a land division certificate prior to the completion of construction of a strata scheme where binding arrangements have been made between the developer and council, notification by the council to the Commission that all consents have been given, the structure must be completed to the extent that all boundaries defined by that structure must be in place. Similarly, a surveyor cannot complete the plan until the scheme is in its final form.

← SEE R.59 DEV ACT

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707 2. CONTENTS OF CERTIFICATE

A land division certificate is required to either contain or be accompanied by a statement from council with the following information:-

← SEE R.60 (4) DEV. ACT REGS. and SS. 7 (6)(b)(i) & 12 (3a)(d)(i) of STA

■ CONSENT OF COUNCIL to

- First, to the vesting of public land.
- Secondly, to the encroachment of buildings onto public land.

■ THE POSTAL ADDRESS OF THE SITE.

The council is required to fix the address of the building(s) on the site. It is the intention of the act that this be the address to which all notices to a strata corporation may be sent, especially by post. Some confusion has been experienced by some councils as to whether they are required to give an address for each building on the site that may have frontages to different streets. This is not the intention as the address required is that of the strata corporation and councils are requested to give the address of the portion of the site on which the corporation letter box is erected.

← SEE S. 49

■ DATE OF CONSTRUCTION IN SOME CASES

Regulations also provide that a council should, if the information is available in its records, supply the date of completion of the structure. This information is only required where application is to be made for the deposit of a strata plan as an existing scheme. Where this information is not available, the person certifying an application correct for the purposes of registration under the Real Property Act will need to determine this date by other means or make application as a new scheme. Before making this decision, the conveyancer should consider the affect on the payment of contribution to the Planning and Development Fund.

← R. 60 (4) DEV ACT REGS

In the case of a strata development out of council districts, the above information will be provided by the Commission.

708 OPEN SPACE CONTRIBUTIONS

The Development Act provides that The Commission cannot issue a land division certificate unless the applicant pays the contribution to the Planning and Development Fund established for the purpose of providing open space.

A monetary contribution is payable for each unit created in a strata plan on the same basis as for allotments in a plan of land division.

A contribution must be paid in respect of:-

- all new units created in a new scheme
- all additional units created by virtue of an application for amendment,

← SEE R.50(5) DEV ACT REGS.

The contribution is not payable for

← SEE R.56 DEV ACT REGS

- units created pursuant to an "existing building unit scheme" application, except any units erected on the site after 22/2/1968.
- units that exceed one hectare in area. This may be important where staged development is achieved by the amendment method.

← SEE S.50 (5) DEV. ACT

709 APPEALS AGAINST DECISIONS

The Environment, Resources and Development Court (ERD) is established under the Environmental, Resources and Development Act 1993 to hear, inter alia, appeals against decisions of a relevant authority on proposals to divide land. The court is part of the Judiciary and therefore operates independently of the Minister, DAC and councils

← SEE SS. 8 AND 14 OF ERD COURT ACT

The Court may :-

← SEE S.15 ERD COURT ACT

- confirm, vary or reverse any decision under appeal
- confirm, vary or quash any order under appeal
- make an order for a person to carry out or to refrain from certain actions
- make an order in relation to building work.

The Court may hear, inter alia:-

- an appeal by a person who has applied for a development approval, against a refusal to grant approval or the conditions attached to the approval;
- an appeal by a third party
- an appeal by a person who has been served with any order for completion of work

Applicant appeals may be made against a refusal to grant a development approval or conditions attached to a development approval.

710 COMPULSORY PRE-APPEAL CONFERENCE

A conference of the parties is held under the chairmanship of a member of the court. Its purpose is to try and resolve the outstanding differences between the parties other than through the formal hearing of any proceedings.

The member of the court may dispense with this conference if they consider no useful purpose will be served by holding it, or they consider that some other reason justifies not holding a conference.

Any compromise or settlement agreed on behalf of a party through counsel or other representative at a conference shall be binding on the party represented. The member of the court may, without further enquiry, make any determination or order necessary to give effect to any such compromise or settlement. Subject to the above, anything said or done during the proceedings of a conference is inadmissible to the proceedings of the court except by consent of all parties. The chair of a conference may also give a judgement at a conference (with costs) where a party delays or obstructs a conference.

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711 DEVELOPMENT ACT BINDS THE CROWN

The Crown is bound by virtue of the fact that the Development Act requires the Crown to gain approval of the Minister in order to strata title land. A land division certificate is not required, however the Crown or a Crown agency must make the following certification within a strata application or an application to amend a strata plan:-

← SEE S.49 Dev. Act

"This application does not contravene Section 49 of the Development Act 1993"

← SEE S.16 ERD COURT ACT

712 AUTHORISED LAND USE OF A UNIT AND COMMON PROPERTY

A council, on considering an application, will look closely at the land use of each unit and common property.

For example, in a residential scheme, the council may require car parking spaces (including carports, garages, etc) to be assigned to each unit and visitor car parking spaces to be provided in the common property. Need for these spaces may have been determined by council after giving consideration to the nature of an adjoining street, which may be, for example, unsuitable for carparking. It is therefore not within the power of a strata corporation to assign visitor carparks to unit holders or permit the use of common property, units and unit subsidiaries for purposes other than the approved land use.

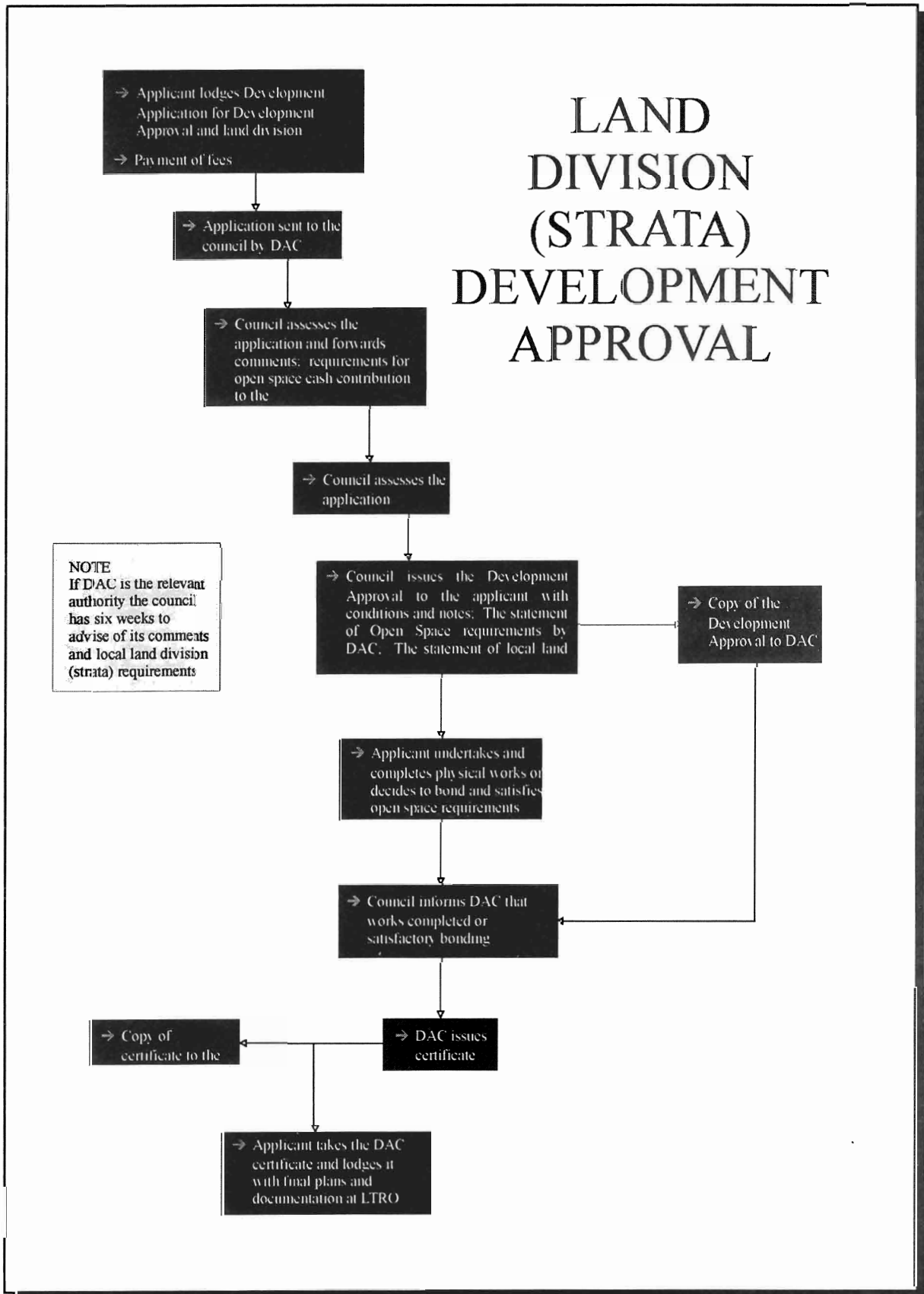


Figure 32

THE DEVELOPMENT APPROVAL PROCESS FOR STRATA PLANS