



SUBDIVISION ACT 2002

[Consolidated as at 10 June 2008
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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NORFOLK ISLAND

Subdivision Act 2002

An Act in association with the *Planning Act 2002* to provide for planning controls on the subdivision and amalgamation of land, and for related purposes

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Subdivision Act 2002*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the Gazette.
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

The Crown and the Administration

3. (1) This Act binds the Crown and the Administration.
(2) Nothing in this Act makes the Crown in any capacity or the Administration liable to be prosecuted for an offence.

Interpretation

4. In this Act, unless the contrary intention appears —
“authorised officer” means a person appointed as such under section 24;
“Chief Executive Officer” means the Chief Executive Officer within the meaning of *the Public Sector Management Act 2000*;

“interest”, in relation to land, means —

- (a) any legal or equitable interest in the land; or
- (b) any easement, right, power or privilege in, or in connection with, the land;

“Norfolk Island Plan” means the Norfolk Island Plan established by the *Planning Act 2002*;

“preliminary plan” of a proposed subdivision or amalgamation, means a plan of the subdivision or amalgamation proposed to be surveyed for the subdivision or amalgamation;

“Registrar of Titles” means the Registrar of Titles under the *Land Titles Act 1996*;

“subdivision” means —

- (a) the subdivision under the *Land Titles Act 1996* of a single parcel of land into 2 or more separate parcels;
- (b) the amalgamation under the *Land Titles Act 1996* of two or more adjacent parcels of land into a single parcel other than an amalgamation of land under section 40 of that Act; or
- (c) the adjustment of a boundary between two or more adjacent parcels of land so as neither to amalgamate nor subdivide the parcels; or
- (d) any combination of such a subdivision or amalgamation;

“subdivision development application” means a development application under the *Planning Act 2002* for a subdivision development approval;

“subdivision development approval” means a development approval under the *Planning Act 2002* for a subdivision proposal;

“subdivision proposal” means a proposal for a subdivision;

“this Act” includes the Regulations.

PART 2 — SUBDIVISION DEVELOPMENT APPROVALS

Applicants

5. For the purposes of Part 5 of the *Planning Act 2002* as it applies to a subdivision development application in relation to land, the owner of the land is —

- (a) the holder of the fee simple interest in the land; or
- (b) if the land is leased from the Crown — the Crown.

Subdivision development applications

6. (1) In addition to the requirements set out in Division 1 of Part 5 of the *Planning Act 2002*, a subdivision development application shall only be processed under Division 2 of Part 5 of that Act if —

- (a) it is accompanied by a preliminary plan of the proposed subdivision or amalgamation prepared by a surveyor authorised under the *Surveys Act 1937*; and

- (b) it is accompanied by the written consent to the subdivision proposal (in the form indicated by the preliminary plan) by each person (other than the applicant)—
- (i) with an interest in the land registered under the *Land Titles Act 1996*; or
 - (ii) whom the applicant believes to have an interest in the land which is registrable under the *Land Titles Act 1996*.

(2) A person with an interest in the land must not unreasonably withhold consent to a subdivision proposal.

(3) On application, the Supreme Court may dispense with the requirement for consent under subsection 6(1) if satisfied that such consent is being unreasonably withheld.

(4) In this section—

“an interest in the land” means an interest affected by the proposed subdivision development.

Further requirements before subdivision development approval given

7. (1) Before referring the application to the Norfolk Island Planning and Environment Board under section 44 of the *Planning Act 2002*, the Chief Executive Officer may, by notice to the applicant, require the applicant to do such of the following things as are specified in the notice —

- (a) have a survey plan of the proposed subdivision or amalgamation —
 - (i) prepared and certified to be accurate by a surveyor authorised under the *Surveys Act 1937*; and
 - (ii) certified to be accurate by the Surveyor-General; and
- (b) comply with specified conditions in respect of the proposed subdivision or amalgamation.

(2) Where the Chief Executive Officer has required the preparation and certification of a survey plan under paragraph 7(1)(a), subsection 49(4) of the *Planning Act 2002* does not apply to any extension or further extension by the executive member pursuant to subsection 49(3) of that Act.

Matters to be considered

8. In considering a subdivision development application, in addition to any applicable matters referred to in section 46 of the *Planning Act 2002*, the executive member shall have regard to —

- (a) whether the applicant has complied with any further requirements made under section 7; and
- (b) any relevant requirements under the Norfolk Island Plan for such subdivision.

Conditional approval

9. The conditions that the executive member may impose under Division 2 of Part 5 of the *Planning Act 2002* on subdivision development approval include conditions about the following matters —

- (a) the timing of any works (including the construction of roads, other services, and landscaping) to be carried out in association with the subdivision proposal;
- (b) the standards for the carrying out of any such works;
- (c) the provision of performance security for failure to comply with the conditions of the approval.

Registrar of Titles to be notified

10. The Chief Executive Officer shall forward a copy of a subdivision development approval to the Registrar of Titles as soon as practicable after it is received by the Chief Executive Officer.

PART 3 — REGISTRATION OF PLANS OF SUBDIVISION**Certification required before registration**

11. (1) The Registrar of Titles shall not register a subdivision or amalgamation of land under the *Land Titles Act 1996* without a written notice from the Chief Executive Officer stating that the Chief Executive Officer is satisfied that—

- (a) subdivision development approval has been given to a subdivision proposal for that subdivision or amalgamation; and
- (b) the survey plan of the subdivision or amalgamation has been —
 - (i) prepared and certified to be accurate by a surveyor authorised under the *Surveys Act 1937*; and
 - (ii) certified to be accurate by the Surveyor-General; and
- (c) all the conditions of the subdivision development approval have been complied with.

(2) The Chief Executive Officer may, if the Chief Executive Officer considers it reasonable in the circumstances require a person requesting registration of a subdivision or amalgamation of land to provide relevant information or documents to substantiate the request, by written notice to the person.

Notice of decision on request for certificate

12. (1) As soon as practicable after the Chief Executive Officer gives a certificate under section 11, the Chief Executive Officer shall give —

- (a) the certificate to the Registrar of Titles; and
- (b) a copy of the certificate to the holder of the development approval.

(2) As soon as practicable after the Chief Executive Officer refuses to give a certificate under section 11, the Chief Executive Officer shall give written notice of the decision to —

- (a) the Registrar of Titles; and
- (b) the holder of the development approval.

- (3) The notice of the decision shall include —
- (a) a statement of reasons for the decision;
 - (b) particulars of the holder's right to apply to the Administrative Review Tribunal for review of the decision.

Time limits for dealing with requests for certificates

13. (1) A request for a certificate under section 11 which is not given within 28 days from the making of the request is to be taken to have been a decision to refuse to give the certificate for the purposes of Part 4 of this Act.

(2) The Chief Executive Officer may extend, or further extend, the time limit for dealing with a request by instrument made before the expiry of the time limit, or extended time limit (as the case may be).

PART 4 — ADMINISTRATIVE REVIEW

Reviewable decisions

14. The refusal by the Chief Executive Officer to give a certificate under section 11 is a reviewable decision for the purposes of this Act.

Review

15. (1) Application may be made to the Administrative Review Tribunal for the review of a reviewable decision within the meaning of section 14.

(2) For the purposes of section 16 of the *Administrative Review Tribunal Act 1996*, a person whose interests are affected by the decision made on a subdivision development application is the holder of the relevant subdivision development approval.

PART 5 — ENFORCEMENT

Subdivision of land

16. (1) A person must not carry out work on a subdivision of land if development approval has not been granted in accordance with the *Planning Act 2002*.

(2) Subsection 16(1) does not apply to survey work on land to support a proposed subdivision or amalgamation of the land.

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Documentary evidence

19. In any civil or criminal proceedings, a copy of a subdivision development approval is evidence of the contents of the approval and that the approval was given.

False information

20. (1) A person shall not knowingly make a false or misleading statement in connection with a request for a certificate under section 11.

(2) A person shall not make a false or misleading statement with the intention of misleading a person performing a function under this Act.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

Obstruction of officials

21. A person shall not obstruct or hinder a person performing a function under this Act.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

PART 6 — MISCELLANEOUS**Delegation by executive member**

22. (1) The executive member may, by instrument, delegate any of the powers of the executive member under this Act except this power of delegation.

(2) A delegation under subsection 22(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the executive member is required to comply with in making such a decision.

Delegation by Chief Executive Officer

23. (1) The Chief Executive Officer may, by instrument, delegate any of the powers of the Chief Executive Officer under this Act except this power of delegation.

(2) A delegation under subsection 23(1) may be made —

- (a) to a specified person; or
- (b) to the holder for the time being of a specified office or position.

(3) A delegate, in making a decision in accordance with a delegation under this section, shall comply with the requirements of this Act which the Chief Executive Officer is required to comply with in making such a decision.

Authorised officers

24. The executive member may, by instrument, appoint persons to be authorised officers for the purposes of this Act.

Regulations

25. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may prescribe penalties not exceeding 10 penalty units for a contravention of the Regulations.

PART 7 — REPEALS**Repeal of Subdivision Acts**

26. (1) The *Subdivision Act 1996* and the *Subdivision Amendment Act 1997* are repealed.

(2) The *Subdivision (Moratorium) Act 2000* and the *Subdivision (Moratorium) Amendment Act 2001* are repealed.

NOTES

The *Subdivision Act 2002* as shown in this consolidation comprises Act No. 5 of 2003 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Subdivision Act 2002</i>	5, 2003	27.2.04	
<i>Subdivision (Amendment) Act 2008</i>	9, 2008	6.6.08	

Table of Amendments

ad = added or inserted am = amended rep = repealed rs = repealed and substituted

Provisions affected	How affected
11(1)(c)	rs 9, 2008
16(1)	rs 9, 2008
17	rep 9, 2008
18	rep 9, 2008
19	rs 9, 2008

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