

# ISNSW Annual Conference

## Strata Update



Webinar – 21 January 2021

Adrian Barden – Land Development Certificates  
Registered Certifier

[www ldc com au](http://www ldc com au)

- ▶ Strata Certificates
- ▶ Construction Certificates
- ▶ Subdivision Works Certificates
- ▶ Subdivision Certificates
- ▶ Complying Development Certificates



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# Power

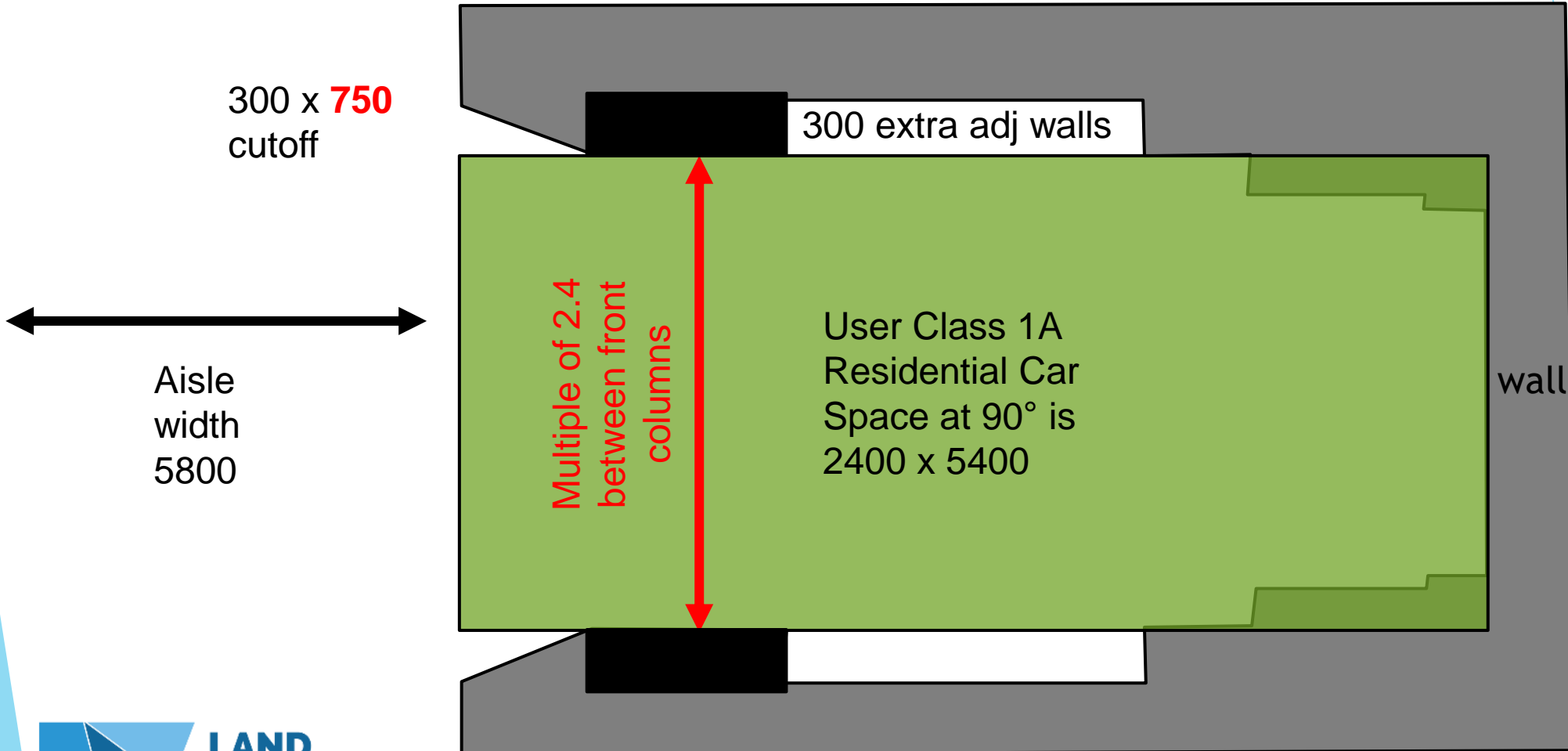
The legislative framework that grants Registered Land Surveyors power to determine boundaries

# Authority

The court of public opinion decides whether Registered Land Surveyors have legitimate power to determine boundaries



# Car Spaces



Development Consent, DCP

AS2890.1:2004 Off-street car parking

CP	2.4 (13m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.4 (13m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.4 (13m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.4 (13m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.4 (13m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	4.95 (14m <sup>2</sup> )	2.55 (14m <sup>2</sup> )	2.55 (14m <sup>2</sup> )
	CS 2.4	CS 2.55	CS 2.55	CS 2.4	CS 2.55	CS 2.55	CS 2.4	CS 2.55	CS 2.55	CS 2.4	CS 2.55	CS 2.55	CS 2.4	CS 2.55	CS 4.95	CS 2.55	ACS 2.55
		5.4		5.4	5.4		5.4	5.4		5.4	5.4		5.4	5.4		5.4	5.4
			0.75			0.75		0.75		0.75		0.75		0.75			0.75



Be wary of signing off on a strata plan that has perfect measurements. Has a draft plan been inserted by mistake?

Undersized carspaces should be designated as “small car space” where a traffic engineer has given this advice. A purchaser or future purchaser needs this information disclosed so that they can make an informed decision.

Registered Surveyors should measure boundaries in the public interest without fear of favour.



# Construct NSW – Six Pillars

## The Construct NSW Transformation Program

Legislative Reform

Ratings Information

Education

Contracting

Digital

Research

Customer focused regulatory framework

Identify risky players

Open source resources for all institutions

Clear standards, viable risk allocation and performance accountability

Shared industry wide platforms that build confidence

Case studies, measure and improve confidence



# Construct NSW Strategy



Phoenixing risk



Safety record



Complaints



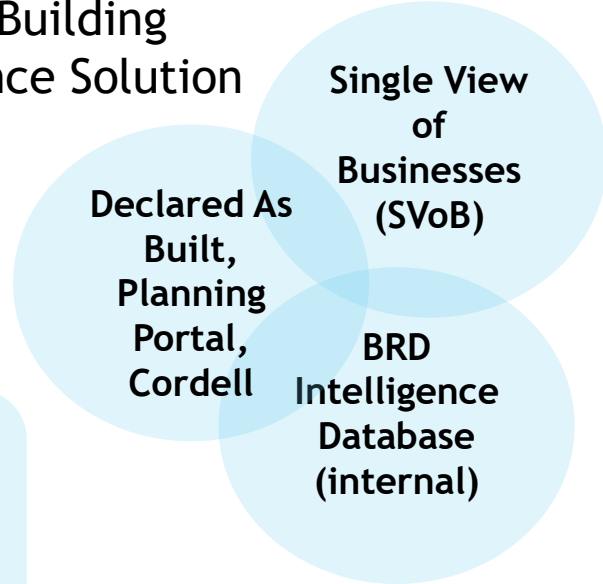
Company Structures



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Digital Building Assurance Solution

**BRD**  
Better Regulation Division



Single View of Project (SVoP)



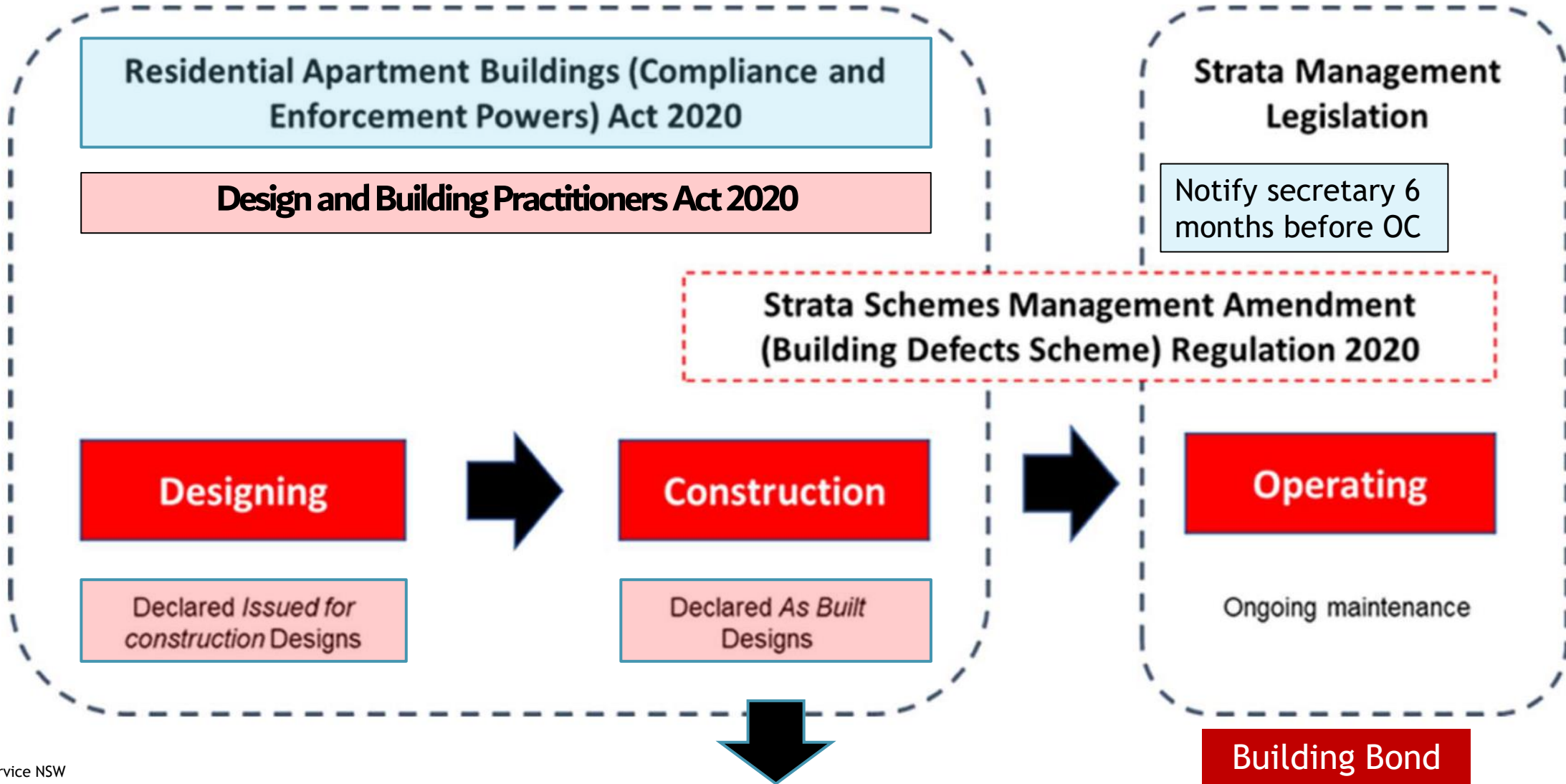
*Building and Development Certifiers Act 2018*

*Design and Building Practitioners Act 2020*

*Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*

# Legislative Reforms Landscape

Planning Portal



Source: Based upon silde by Service NSW

# Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)

## How do I notify the Secretary of the date I intend to seek an OC?



Is your planning application in the NSW Planning Portal?

Your Notice should be lodged in the [NSW Planning Portal](#)

or

If your planning application is not in the NSW Planning Portal?

Your Notice should be lodged on the [Fair Trading website](#).



What do I need to do if the date changes?



If circumstances change and the expected completion date has moved, you must amend your expected completion date within 7 days.

“Within 60 days of the expected date specified”  
(s 8(4))

**Note:** Councils and Principal Certifying Authorities (PCAs) in the Sydney Metropolitan, Illawarra, Central Coast and Newcastle areas commenced using the ePlanning Digital Services from 1 July 2020, and must process all planning applications this way from 31 December 2020



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Source: <https://www.mbansw.asn.au/media/industry-news/rab-act-comes-effect>

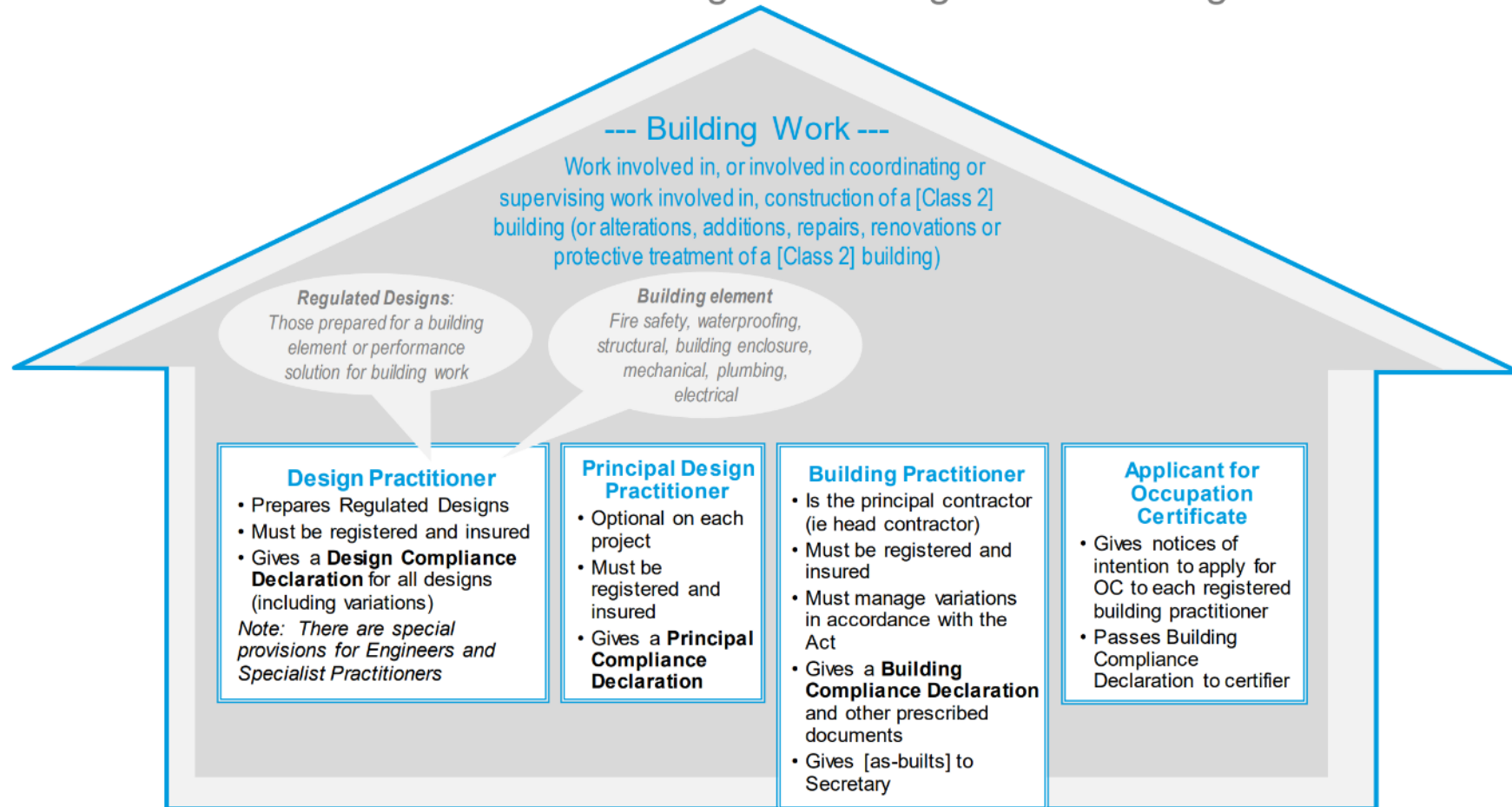


# Design and Building Practitioners Act 2020 (DBP Act)

## Quick guide – Practitioners and their roles

### Part 2 of the D&BP Act – Regulated designs and building work

- ▶ Statutory duty of Care
  - ▶ Can't be delegated (s 39) or contracted out (s 40)
- ▶ Retrospective
  - ▶ Existing buildings 10 years
- ▶ Design and Building Work
- ▶ Registration with Department of Customer Service
  - ▶ Designers
  - ▶ Engineers
  - ▶ CPD
- ▶ Enforcement Powers
  - ▶ Stop Work Orders
  - ▶ Court Orders
  - ▶ Investigation and Audit



Please note this diagram is intended for guidance only. You should refer to the D&BP Act for details.  
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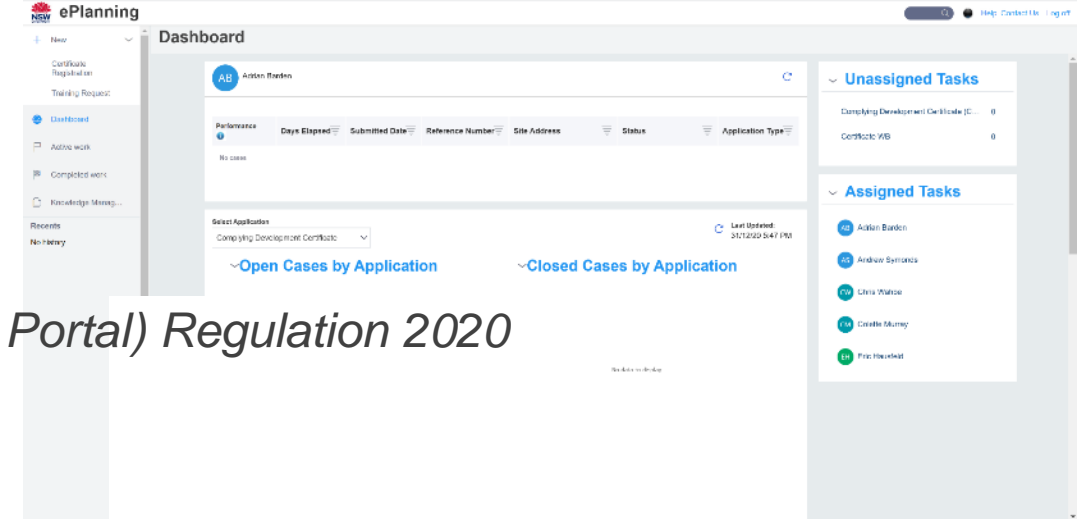
This document is for guidance only. Each person should seek their own legal advice. This document is a draft only.

# Commencement of Part 6 *EPAA 1979*

- ▶ Occupation Certificate (OC) – no longer interim or final certificate.
  - ▶ Expected completion notice (*RAB s 7*)
- ▶ Subdivision Works Certificate (SWC) – for Notice of Determination issued after 1 December 2019.
- ▶ Construction Certificate (CC)

**Subdivision works** means any physical activity authorised to be carried out in connection with a subdivision under the conditions of a development consent for the subdivision of land.

- ▶ *Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020*
- ▶ From 31 December 2020 (**relevant local government area**)
  - ▶ Development Consent
  - ▶ Modification of Development Consent
  - ▶ Review of Determination
  - ▶ A construction certificate
  - ▶ A subdivision works certificate
  - ▶ An occupation certificate
  - ▶ A subdivision certificate (including strata certificate)
- ▶ All Council areas from 1 July 2021.
- ▶ Additionally, many other notices and certificates must go through the portal including complying development certificates, appointment of principal certifier, intention to commence subdivision work or erection of building



# Other Strata Issues

- ▶ Project Remediate
  - ▶ Interest free loans to rectify combustible cladding on Class 2 residential apartment buildings
- ▶ Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2020
  - ▶ Embedded networks
- ▶ Low Rise Medium Diversity Housing Code
- ▶ Short term rental accomodation
- ▶ Electronic Dealings from 22 March 2021
  - ▶ Majority of dealings must now be lodged via electronic lodgment network (ELNO)



Lacrosse tower, Melbourne, 2015



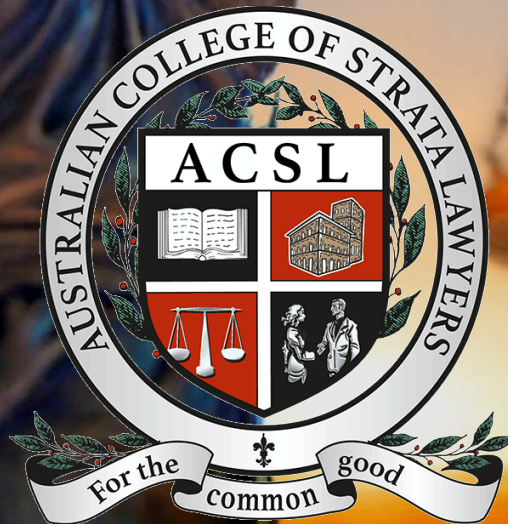
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# Recent Case Law

Surveyors should advise their clients to seek independent legal advice.

It is the authors opinion that the best Lawyer to advise on a strata or community matter is a member of the Australian College of Strata Lawyers. **A member directory is available on the colleges website.** Alternatively, seek a referral directly from the NSW Law Society for an accredited specialist in property law.

The following summaries are provided for your personal information only. It is not legal or professional advice nor should it be used as a substitute for such advice. You and your clients should seek legal advice for your specific circumstances.



# Common Property Right By-Laws

## Khadvizad v The Owners - Strata Plan 53457 [2019] NSWSC 157

- ▶ In December 1999 the owners corporation had passed a special resolution to repeal the existing by-laws and replace them with new by-laws.
- ▶ Mr Khadvizad and his wife bought lot 9 in April 2000.
- ▶ Lot 9 had a common property right by-law for a car parking space listed in schedule 2 of the title and marked on the strata plan as an area “H”
- ▶ a lawyer wrote a letter to the owners corporation threatening to take action
- ▶ The owners corporation registered the change of by-law in November 2001 without the owners permission
- ▶ The court ruled that the then s 52(3) of the Act presume “that condition or preliminary step precedent is conclusively presumed to have taken place if no challenge is made to the by-law within two years.”

# Unlocked Mailbox - *Murray v Raynor* [2019] NSWCA 274

- ▶ Mr Raynor emailed Ms Murray advising that her letterbox was being left unlocked.
- ▶ Several months on, Mr Raynor emailed all the lot owners stating Ms Murray's open letterbox may have been the source of thieves sourcing a master key to access to the letterboxes.
- ▶ Ms Murray wrote to Mr Raynor in a sarcastic reply. Her email accused Mr Raynor of using email to shame, harass, menace and threaten.
- ▶ Ms Murray was eventually taken to NCAT to order her to lock the letterbox.
- ▶ Furthermore, Mr Raynor took Ms Murray to the District Court and was awarded \$120,000 in damages over the sarcastic email being defaming.
- ▶ Ms Murray went to the Court of Appeal and had the defamation set aside and was awarded costs of \$200,000.



Careful what you write in correspondence and certainly don't post your squabble on social media.

# Strata Legislation Review

- ▶ It has been 5 years since the commencement of the new Strata legislation
- ▶ Discussion Paper
- ▶ Comments close on **7 March 2021**
- ▶ Please send your comments to ISNSW as soon as possible so they can be incorporated into our submission.

**Have  
your say**



[Home](#) > [Have your say](#) > [Help shape the future of strata in NSW](#)

## Help shape the future of strata in NSW



If you own, live or rent in a strata property, such as a townhouse or apartment, or work in strata, we want to hear your views on how the laws are working.

**We're reviewing the rules**

### Timeline

**Consultation open**  
Have your say to help shape the future of living and working in strata. Submissions close **5pm, 7 March 2021**.

**Under review**  
Contributions to this consultation are closed for



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# Questions

[www.ldc.com.au](http://www.ldc.com.au)

Download Summary and PowerPoint from our Resources section

[adrian@ldc.com.au](mailto:adrian@ldc.com.au) or phone (02)47228278



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