

Instruction Sheet – Section 35 subdivisions under the MSA Act

Version 1

The Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020

The *Melbourne Strategic Assessment (Environment Mitigation Levy) Act 2020* (MSA Act) establishes a Victorian legislative framework for the Melbourne Strategic Assessment (MSA) program. The Act's purpose is to impose a levy to fund measures to mitigate impacts on biodiversity caused by the development of land in Melbourne's growth corridors. More information about the MSA Act and the MSA program can be found on the MSA website (msa.vic.gov.au).

Levies are payable under the Act if a 'levy event' occurs on land within the MSA Levy Area. The most common levy event (representing 95%+ of cases) is the issue of a statement of compliance for a plan of subdivision.

Section 35 subdivision

However, some plans of subdivision do not require a statement of compliance. In the context of the development of Melbourne's growth corridors, the most notable example of this kind of plan is those plans submitted under section 35 of the *Subdivision Act 1988* (section 35 subdivisions). Section 35 subdivisions are generally those where land is being acquired by or vested in an acquiring authority for a public purpose.

Because (most) section 35 subdivisions do not require a statement of compliance, the MSA Act takes the certification of these plans as the levy event.

Plan of Subdivision Type	Levy Event
Standard Subdivision with statement of compliance	Issue of statement of compliance
Section 35 subdivision that does not require a statement of compliance	Certification of plan

The levy liability

In the case of a standard subdivision, the levy is payable over the whole area of the parcel(s) being subdivided. The land owner is liable for the payment of the levy.

In the case of a section 35 subdivision that doesn't require a statement of compliance, the levy is payable **only over the area of the land being acquired**. The remainder of the land shown on the plan of subdivision is not affected by the levy event.

The first levy event

MSA levies are only payable in relation to **the first levy event** to occur on an area of land. In many cases, the MSA levies applicable to a land parcel will have already been 'triggered' by prior subdivisions before a s.35 plan is certified. No levy is payable in relation to the certification of the s.35 plan in these circumstances. To confirm whether the MSA levies in relation to a land parcel have:

- already been triggered and paid for, or
- already been triggered and are being paid for in stages under a staged payment approval,

please contact the MSA team at msa.habitatcompensation@delwp.vic.gov.au

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The levy payment process

1. Where a plan of subdivision under section 35 of the Subdivision Act for land within the MSA levy area is certified, where MSA levies have not previously been paid, DELWP will be notified of the event via the SPEAR system, DELWP will then issue a levy assessment notice to the acquiring authority via email.
2. The subdivision process will not be held up by the triggering of the levy liability, and the plan can proceed to lodgement prior to the payment of the MSA levies.
3. Once the levy liability is triggered, the payment is due 3 months after the date the plan of subdivision is certified.
4. As with other levy events, the liable party (the acquiring authority) may apply for a Staged Payment Approval (SPA) to pay the levy in stages over time (details can be found on the MSA website - msa.vic.gov.au).
5. Once the levy liability has been paid, DELWP will issue the appropriate certificate (usually a certificate of release) to the liable party.

Example

R1 is being acquired by a statutory authority.
Under the MSA Act, only R1 (the land to be acquired) triggers the levy liability.
This levy liability belongs to the acquiring authority - in this case the statutory authority.
The remainder of the land does not have its levy liability triggered at this time.

