



BYRON SHIRE COUNCIL

POLICY NO. 5.11

BUILDING CERTIFICATES

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PREAMBLE

Council has a number of roles dealing with development issues. It makes planning policies, it makes decisions on Development Applications and it has responsibility for enforcing compliance with the planning laws.

A Construction Certificate or Complying Development Certificate is required for building works prior to construction. If building works have already constructed (whether through pre-dating the regulations or oversight) a building certificate may be issued, however this does not make the structure/s lawful.

Building Certificates have elements of approval roles and compliance. Typically Building Certificates have been obtained by purchasers of property to check compliance of buildings on those properties with Council's regulations.

Increasingly property owners are obtaining Building Certificates to seek protection against Council taking action (typically demolition) to rectify unlawful building work. The issuing of a Building Certificate by Council prevents Council, for a period of 7 years from the date of issue of the certificate:

- (a) from making an order (or taking proceedings for the making of an order or injunction) under the Environmental Planning and Assessment Act 1979 or the Local Government Act 1993 requiring the building to be repaired, demolished, altered, added to or rebuilt, and
- (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of Council,

in relation to matters existing or occurring before the date of issue of the certificate except for matters arising only from the deterioration of the building as a result solely of fair wear and tear.

This Policy specifies the information required and the fundamental considerations, which are to be applied in the determination of an application for a Building Certificate by Council.

OBJECTIVES

- a) To provide a framework for consistent and equitable assessment of applications for Building Certificates.
- b) To ensure that outstanding requirements of development consents, , building approvals and Construction Certificates are complied with prior to the issue a Building Certificate.
- c) To ensure Council's infrastructure is protected.
- d) To specify criteria and information which Byron Shire Council may require for assessment and determination of applications for Building Certificates.

- e) To ensure the adequacy and safety of buildings within the Byron Shire.
- f) To incorporate issues raised by other Council policies including the Unauthorised Development and Activities Policy.

APPLICATION REQUIREMENTS

Application, determination and the issue of Building Certificates must be in accordance with sections 149 A to 149G of the Environmental Planning and Assessment Act, 1979.

All applications for Building Certificates must be accompanied by an up to date registered land surveyor's report and diagram, identifying property boundaries and all structures constructed on the property and the structure's location to property boundaries. In accordance with 149C of the Act, if the applicant is able to provide evidence that no material change has occurred in relation to the structures on-site since the date of the survey report and diagram then Council will not require the applicant to supply a more recent survey report and diagram.

All prescribed fees, in accordance with Council's adopted Schedule of Fees and Charges, must be paid prior to the registration of a Building Certificate Application. Where a re-inspection of a building(s) is required, the prescribed re-inspection fee is to be paid prior to re-inspection.

When an applicant requests cancellation or withdrawal of an application for a Building Certificate, the application fee will not be refunded if the property has already been inspected.

COMPLIANCE WITH EXISTING CONSENTS AND APPROVALS

All outstanding development consent conditions and Construction Certificates, and complying development certificates must be complied with before the issuing of a Building Certificate on any whole structure.

If a Building Certificate is requested for a partially completed structure such a certificate can be issued with advice that the structure has not been given final approval.

Where the building has been erected prior to building and/or planning controls the application must also include:

1. A report by an appropriately qualified person (e.g. building surveyor or architect) advising how the building complies with the Building Code of Australia.
2. Works-as-executed building plans and specifications. Plans are to be professionally drawn at a scale of 1:100.
3. A certificate from a by a qualified practising structural engineer indicating that the works are structurally sound. The structural engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.
4. Evidence of the existence of the building prior to building and/or planning controls. Evidence must have a verifiable date. Such acceptable forms of evidence include, newspaper articles, rates records, tax records, survey certificates and aerial photographs.

BUILDINGS WITH SANITARY DRAINAGE

Where buildings have sanitary drainage (i.e. showers, toilets, kitchens etc) all plumbing and drainage must be in accordance with Council's requirements and the requirements of AS3500 - National Plumbing and Drainage Code and the New South Wales Code of Practice – Plumbing and Drainage, prior to the issuing of a Building Certificate.

Where buildings with sanitary drainage are located within sewerred areas and are not connected to Council's sewerage system or alterations to the existing system are required approval must be obtained under section 68 of the Local Government Act 1993 to carryout the required work. Such connection to Council's sewerage infrastructure or alterations to plumbing and drainage must be carried out prior to the issuing of a Building Certificate.

Where buildings with sanitary drainage are not located within a sewerred area an On-site Sewerage Management System must be provided that meets the requirements of Council's policy. If a new system must be installed or an existing system altered approval must be gained under Section 68 of the Local Government Act 1993 to construct or alter the system. The system is to be constructed or altered and an approval under Section 68 of the Local Government Act 1993 must be obtained to *Operate an On-site Sewerage Management System* prior to the issuing of the Building Certificate.

Where a building is connected to Council's reticulated water supply, a water supply meter in accordance AS3500 - National Plumbing and Drainage Code and Section 12 of the New South Wales Code of Practice – Plumbing and Drainage must be installed by the water authority prior to the issuing of a Building Certificate.

BUILDINGS WHERE UNLAWFUL WORKS HAVE OCCURRED

Generally the following information will be required where unlawful building works are identified: -

1. A report by an appropriately qualified person (e.g. building surveyor or architect) advising how the building complies with the Building Code of Australia.
2. Works-as-executed building plans and specifications. Plans are to be professionally drawn at a scale of 1:100 and must clearly show both approved and unlawful building works.
3. A certificate from a by a qualified practising structural engineer indicating that the works are structurally sound. The structural engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.
4. A certificate from licensed pest controller indicating that the works have been treated against termites as per AS3660.1
5. A certificate from a licensed glazier indicating that all glass in the building is in accordance with AS1288.
6. A certificate from a licensed plumber indicating that drainage from the works has been carried out in accordance with AS3500.
7. A licensed electrician's certificate certifying that the smoke alarm/s installed in the building is in accordance with AS3786 and that the electrical works comply with AS 3000 - 2000 "Wiring Rules"
8. A certificate from a licensed installer certifying that wet area waterproofing is in accordance with AS3740.
9. An Environmental Consultant's proposal for installation and/or upgrade of wastewater system, were installed the property.

Where an applicant for a Building Certificate is seeking to regularise an unlawful building works those works will be considered under Council's *Unauthorised Development and Activities Policy*. In particular the three principal heads of consideration will be applied, being:

TEST 1 – Would development consent have been granted for the building works 'but for' the failure to make application for a development consent?

TEST 2 – Are the unlawful building works likely to cause a significant environmental impact, including impacts on the natural and the built environment?

TEST 3 – Are there any significant health and/or safety risk created by the building works?

Where the unauthorised building works potentially satisfy the heads of consideration under Council's *Unauthorised Development and Activities Policy* Council will require that a Development Application be submitted for the use of the unlawful building. Any Development Application will be notify to neighbouring properties owners and/or publicly exhibited in accordance with *Development Control Plan No. 17 Public Exhibition and Notification of Development Applications* (DCP17). Only after the Development Application is determined will the Building Certificate application be assessed and determined.

Where an application for a Building Certificate is received for unlawful building works and those works would have required notification or exhibition under *Development Control Plan No. 17 Public Exhibition and Notification of Development Applications* the application for the Building Certificate is to be notified or exhibited in accordance with DCP17. Notification or exhibition is not required if a Development Application has been submitted for the use of the building and that application has been notified or exhibited.

Appendix 1 – Excerpts from the Environmental Planning and Assessment Act 1979

149D Obligations of council to issue building certificate

- (1) The council must issue a building certificate if it appears that:
 - (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the *Local Government Act 1993* :
 - (i) to order the building to be demolished, altered, added to or rebuilt, or
 - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
 - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
 - (b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.
- (2) If the council refuses to issue a building certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.
- (3) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.
- (4) The council must not refuse to issue or delay the issue of a building certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in subsection (1) (a).
- (5) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.

149E Effect of building certificate

- (1) A building certificate operates to prevent the council:
 - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the Local Government Act 1993 requiring the building to be repaired, demolished, altered, added to or rebuilt, and
 - (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,in relation to matters existing or occurring before the date of issue of the certificate.
- (2) A building certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate:
 - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the Local Government Act 1993 requiring the building to be repaired, demolished, altered, added to or rebuilt, and
 - (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.
- (3) However, a building certificate does not operate to prevent a council:
 - (a) from making order No 6 in the Table to section 121B, [Note Added: relates to fire safety] or
 - (b) from taking proceedings against any person under section 125 with respect to that person's failure:
 - (i) to obtain a development consent with respect to the erection or use of the building, or
 - (ii) to comply with the conditions of a development consent.
 - (iii) An order or proceeding that is made or taken in contravention of this section is of no effect."