



# Byron Shire Development Control Plan 2014

## Chapter B13 Access and Mobility



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# Chapter B13 – Access and Mobility

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### ***Document History***

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## B13.1 Introduction

### B13.1.1 Statutory Requirements and Obligations

The Commonwealth *Disability Discrimination Act 1992* (DDA) is the primary Australian statute that aims to eliminate discrimination on the grounds of **disability**. Section 23 of the DDA makes it unlawful to discriminate against people with a **disability** or their associates in relation to **access** to and use of premises that the public enter or use. Exemptions may be made for 'unjustifiable hardship'.

While this DCP provides guidelines to help with design and construction of appropriate **access** to both new and refurbished buildings, the final responsibility for ensuring compliance with the DDA rests with the owner or other person responsible for a building.

Various other Acts and statutory instruments and Australian Standards deal with equity of **access** and mobility, including (but not limited to):

1. *Anti-Discrimination Act 1977* (ADA). This New South Wales Act is similar in its intent to the *Disability Discrimination Act*;
2. *Local Government Act 1993*: Section 8 of the *Local Government Act* sets out a charter which commits Councils to consultation and to providing adequate, equitable and appropriate services and facilities to the community;
3. *Building Code of Australia (BCA)*. The BCA sets out technical requirements for design and construction of buildings. It specifies minimum requirements for **access** to new buildings and buildings undergoing refurbishment. It requires the provision of **access** for people with mobility **disabilities** to all classes of buildings except residential buildings;
4. Australian Standards. The Australian standards work in conjunction with the BCA to provide detailed technical requirements for individual building elements, e.g. in size and shapes of ramps, doors, rooms and lifts.

### B13.1.2 Byron Disability Access and Inclusion Plan 2008-2013

In 2008 Council adopted the Disability Access and Inclusion Plan 2008-2013 (DAIP). The DAIP reflects Council's commitment to ensuring that the community environment is accessible for, and inclusive of people with **disabilities**, their families and carers. Its strategic actions are reflected in this DCP.

### B13.1.3 Aims of this Chapter

The Aims of this Chapter are:

1. To implement Council's obligations under the *Disability Discrimination Act 1992* in the development process.
2. To ensure that the development process provides for equitable **access** to community facilities and services, places of work, leisure and community activity.
3. To establish standards for Council's assessment of provision of **access** to all new and upgraded buildings, services and places.



4. To ensure that the range of housing opportunities available for people with disabilities or other special mobility needs is representative of the local market in terms of **access**, size, location, orientation and general amenity of accommodation.
5. To inform the community, including building owners and developers, of their obligations under the *Disability Discrimination Act 1992* and the *Anti-Discrimination Act 1997* in the development process.
6. To provide guidance on the type of work required to provide non-discriminatory **access** to premises.

### B13.1.4 Application of this Chapter

This Chapter applies to all **residential accommodation** in addition to development that is intended to be used by the public or entered by the public on land subject to Byron LEP 2014.

For all such development, **access** must be provided to and within the facilities in accordance with the provisions of the BCA and AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings.

For all such development, parking must be provided in accordance with Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.

### B13.1.5 Unjustifiable Hardship

Council is bound by the requirements of the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993* to ensure that adequate **access** is provided for people with **disabilities**. However, the DDA makes provision for discrimination against a person with a **disability** where to do otherwise would cause unjustifiable hardship. Such cases of hardship must be proven to the Human Rights and Equal Opportunity Commission (HREOC).

The matters to be considered when deciding if the provision of **access** will cause unjustifiable hardship include:

1. the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
2. the effect of the **disability** of a person concerned; and
3. the financial circumstances and the estimated expenditure required to be made by the person claiming unjustifiable hardship; and
4. in the case of the provision of services, or the making available of facilities - an action plan given to the Commission under Section 64 of the DDA.

The DDA does not provide any specific exemptions for buildings or places of heritage significance.

## B13.1.6 Special Requirements for Development Applications

Development Applications must include evidence to demonstrate that the requirements of the *Disability Discrimination Act* have been considered and addressed in the design of the development. If the case for unjustifiable hardship is made, a copy of the decision of the Australian Human Rights Commission must be provided to Council with a Development Application.

## B13.2 Development Controls

### B13.2.1 Dwellings, Dwelling Houses, Semi – Detached Dwellings and Dual Occupancies

#### Objectives

1. To encourage the provision of equitable access in new and refurbished **dwelling houses** and **dual occupancy** developments.

#### Performance Criteria

In recognition of the objectives, principles and goals of the Byron Disability Access and Inclusion Plan 2008 – 2013, proponents are encouraged to provide Design and Access in accordance with AS 4299 - Adaptable Housing.

#### Prescriptive Measures

There are no Prescriptive Measures.

### B13.2.2 Multi Dwelling Housing, Attached Dwellings, Residential Flat Buildings, Shop Top Housing and Serviced Apartments

#### Objectives

1. To implement the requirements and objectives of the *Disability Discrimination Act, 1992*, relevant equitable **access** legislation and the *Byron Disability Access and Inclusion Plan 2008 - 2013*.
2. To nominate **adaptable housing** standards for multi unit residential development in Byron Shire.

#### Performance Criteria

There are no Performance Criteria.

#### Prescriptive Measures

1. Design and Access in accordance with AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings (for class 3, 5, 6, 7, 8 and 9 buildings) and AS 4299 -Adaptable Housing must be provided to and within new developments and major alterations for residential development to which this Section applies as follows:

- a) **Dwelling Units:** A minimum of 10% of units, rounded up to the nearest whole number should be **adaptable housing**. Where a development is undertaken in stages after commencement of this DCP (including where earlier stages have been subdivided subsequently from the subject land) the calculation of the 'minimum 10% of units' shall include the units provided in those earlier stages.

The **adaptable housing** units must be located throughout the development with a variety of outlooks. **Access** to the upper level of townhouses can be by lift, stair lift, chair lift, inclinor or platform lift or ramp in accordance with the relevant Australian Standards. Any lift must comply with the relevant Australian Standards.

- b) **Access:** **A continuous accessible path of travel** in accordance with AS1428 or an inclinor/ lift/ hoist (in accordance with AS1735) as appropriate must be provided between the main street entrance to the residential complex, **adaptable housing** units, **access** or car parking spaces, letterboxes, garbage storage area, recreation areas and clothes drying areas.
- c) **Car Parking:** At least one accessible car parking space for the disabled must be provided for each **adaptable housing** unit, if a parking space is provided or if it is required pursuant to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access or any other Chapter of this DCP. These spaces must be located close to and accessible from the entrance to the **adaptable housing** units and from the main entrance to the building. The spaces must be attached to the title of the **adaptable housing** unit in any Strata Plan or Community Title plan. Car parking must be in accordance with the requirements of BCA Section D Part D3.5 and Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.
2. In the interest of promoting the objectives, principles and goals of the Byron Disability Access and Inclusion Plan 2008 – 2013, the above standards are also encouraged in the case of refurbishment of existing buildings and developments that do not include major alterations.

### B13.2.3 Boarding Houses, Group Homes, and Hostels

#### Objectives

1. *To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable **access** legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013.*
2. *To nominate **adaptable housing** standards for shared **residential accommodation** in Byron Shire.*

#### Performance Criteria

There are no Performance Criteria.

#### Prescriptive Measures

1. Design and Access in accordance with BCA Part D3; AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings for class 3, 4 and 9 buildings; and AS 4299 - Adaptable Housing must be provided to and within new developments and major alterations for residential development to which this Section applies as follows:



- a) If the complex contains less than 20 beds: A minimum of two bedrooms plus associated bathroom/toilet facilities should be adaptable.
  - b) If the complex contains more than 20 beds: At least 10% or part thereof, plus 10% or part thereof of bathrooms/ toilets, rounded up to the nearest whole number should be adaptable.
  - c) Access: **Access** via **a continuous accessible path of travel** must be available to all communal areas including lounge, bathroom, kitchen, laundry, drying area and recreation areas.
  - d) Car Parking: Accessible car parking spaces equivalent in number to the number of **adaptable housing** units must be provided close to the entrance to the development, with **a continuous accessible path of travel** between the entrance and the car spaces. Car parking must be in accordance with the requirements of BCA Section D Part D3.5 and Australian Standard AS/NZS 2890.6:2009 Parking Facilities – Part 6: Off-street parking for people with disabilities.
2. In the interest of promoting the objectives, principles and goals of the Byron Disability Access and Inclusion Plan 2008 – 2013, the above standards are also encouraged in the case of refurbishment of existing buildings and developments that do not include major alterations.

## **B13.2.4 Commercial Premises and Industrial Premises – BCA Classes 5, 6, 7 & 8.**

### **Objectives**

1. *To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable **access** legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013.*
2. *To nominate **access** standards for BCA Class 5, 6, 7, 8 and 9 development including Office/ Commercial, Retail and Service and Industrial Development in Byron Shire.*

### **Performance Criteria**

There are no Performance Criteria.

### **Prescriptive Measures**

1. For new developments and development involving major alterations and / or extensions:

Design and **access** in accordance with AS1428.1 – Design for Access and Mobility – General Requirements for Access – New Buildings must be provided to and within all the areas or facilities of the development where there is a reasonable expectation of **access** by any owner, occupier, employee or visitor. This must at least consist of the entrance floor and any other floor to which vertical access is provided in accordance with AS 1428.1 by way of a ramp, step ramp, kerb ramp or passenger lift. It does not include service/ plant areas.

2. For work that involves changes to an existing entrance/exit but not any major alterations to other parts of the property:

**Access** must be provided to areas used by the public and if possible to all staff areas. If car parking is provided, spaces must be accessible and must be connected to the

premises by a **continuous accessible path of travel**. The owner must also be advised of the obligations imposed by the DDA.

3. For minor works that do not affect access to the property:

- a) The applicant is encouraged to provide **access** at the same time as carrying out minor works to the premises.
- b) No work will be permitted which may result in a decrease in the existing level of **access**.
- c) The owner should be advised of the obligations imposed by the DDA.

4. For change of use that includes building work:

A change in the use of the building may also change its classification under the BCA. If this is the case, Council can require the premises to be made fully accessible. As a minimum:

- a) if major new work, alterations and or additions are proposed, the above measures required for new developments and development involving major alterations and or extensions shall apply;
- b) if minor works are proposed that include a change of entrance/exit, the above measures applying to work that involves changes to existing entrance/exit but not any major alterations shall apply;
- c) if no change of classification applies and only minor building work is proposed, the above measures required for minor works that do not affect **access** to the property shall apply.

5. For change of use that does not involve building work:

The owner should implement obligations imposed by the DDA, where applicable.

## **B13.2.5 Development Affecting Heritage Conservation Areas and Heritage Items**

### **Objectives**

1. *To implement the requirements and objectives of the Disability Discrimination Act, 1992, relevant equitable **access** legislation and the Byron Disability Access and Inclusion Plan 2008 - 2013.*
2. *To nominate **access** standards for development in or near **heritage conservation areas** and **heritage items**.*

### **Performance Criteria**

1. Design and Access must be provided in accordance with the DDA and the relevant provisions of this DCP based on the type of development proposed. This includes compliance with AS1428.1 – Design for Access and Mobility –General Requirements for Access – New Buildings for class 3, 5, 6, 7, 8 and 9 buildings and AS 4299 - Adaptable Housing. Development Applications must demonstrate:
  - a) that the design of the **access** arrangements has regard to the heritage sensitivity of the site, and is consistent with the provisions of Chapter C1 Non-Indigenous Heritage



- b) that the proposed **access** arrangements are designed to avoid adverse impact on the heritage significance of the site, item or area, consistent with the provisions of Chapter C1 Non-Indigenous Heritage.

**Prescriptive Measures**

There are no Prescriptive Measures.