



Policy

Building Information Certificates

2020

Information about this document

Date Adopted by Council	29/03/94
Resolution No	
Document Owner	Director Sustainable Environment and Economy
Document Development Officer	Building Services Coordinator
Review Timeframe	4 years
Last Review Date	26 November 2020
Next Scheduled Review Date	26 November 2024

Document History

Doc No.	Date Amended	Details/Comments eg Resolution No.
#DM636388	29/3/94	
#DM532662	23/3/04	Res No. 04-279
E2020/74359	26/11/20	Per resolution 20-672 - Updated references to EP&A Act, updated reference to related policy, removed appendix 1 since relevant sections of Act have been linked within the Policy. Amendments to Policy to be aligned with current requirements

Further Document Information and Relationships

Related Legislation	Environmental Planning and Assessment Act 1979 Local Government Act 1993 Plumbing & Drainage Act 2011
Related Policies	Draft Unauthorised Dwellings Policy
Related Standards, Procedures, Statements, documents	

Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.



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1. 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 been constructed (whether through pre-dating the regulations or oversight) a Building Information Certificate may be issued, however this does not make the structure/s lawful and able to be legally occupied.

Building Information Certificates have elements of approval roles and compliance. Typically Building Information 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 Information Certificates to seek protection against Council taking action (typically demolition) to rectify unlawful building work or where a critical stage inspection was missed and the registered certifier is unable to complete their certification of a development. The issuing of a Building Information 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 Information Certificate by Council.

2. Objectives

- a) To provide a framework for consistent and equitable assessment of applications for Building Information Certificates.
- b) To ensure that outstanding requirements of development consents, building approvals and Construction Certificates are complied with prior to the issue a Building Information 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 Information Certificates.
- e) To ensure the adequacy and safety of buildings within the Byron Shire.
- f) To incorporate issues raised by other Council policies.



3. Application requirements

Application, determination and the issue of Building Information Certificates must be in accordance with sections 6.22 to 6.26 and 8.25 of the Environmental Planning and Assessment Act 1979.

All applications for Building Information Certificates must be accompanied by sufficient information for Council to make a full and proper assessment.

The level of detailed information required is provided on Councils website at time of lodgement of the application. Council may require separate approval/s for any works which should have been undertaken under the Local Government Act 1993 or any other legislation associated with the building subject to the Building Information Certificate.

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.

4. Buildings where unlawful works have occurred

Where an applicant for a Building Information Certificate is seeking to regularise an unlawful building works those works will be considered under Council's *Unauthorised Dwellings Policy*.

The issue of a Building Information Certificate does not permit the occupation and use of the building.

Where Council's *Unauthorised Dwellings Policy* has been considered and an opportunity exists to legalise the works, Council will require that a Development Application be submitted for the use of the unlawful building. Any Development Application will be notified to neighbouring property owners and/or publicly exhibited in accordance with *Part A of Development Control Plan 2014* and the Byron Shire Community Participation Plan 2019.

Only after the Development Application is determined will the Building Information Certificate application be assessed and determined.

Where an application for a Building Information Certificate is received for unlawful building works and those works would have required notification or exhibition under DCP17 the application for the Building Information Certificate is to be notified or exhibited in accordance with Part A of DCP2014 and the Byron Shire Community Participation Plan 2019.

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.

Where a Building Information Certificate is able to be issued for building works that have not been inspected during construction by a contracted registered certifier for the works and/or Council has relied upon installer or third party certification of works, Council reserves the right to alert any potential land owners that no independent inspections have been undertaken of the works.