



Unauthorised Dwelling Guidelines

2022

Information about this document

Date Adopted by Council	28 October 2021
Resolution No	21-448
Document Owner	Director Sustainable Environment and Economy
Document Development Officer	Development Investigations Lead
Review Timeframe	Four years
Last Review Date	N/A
Next Scheduled Review Date	TBA

Document History

Doc No.	Date Amended	Details/Comments
E2020/59113	06/08/2020	Draft document prepared
E2022/43749	13/05/2022	Amended in accordance with Resolution 21-448

Further Document Information and Relationships

Related Legislation	<p>Byron Local Environmental Plan 2014</p> <p>Byron Local Environmental Plan 1988</p> <p>Environmental Planning and Assessment Act 1979</p> <p>Fisheries Management Act 1994</p> <p>Local Government Act 1993</p> <p>Local Government (General) Regulation 2005</p> <p>Protection of the Environment Operations Act 1997</p> <p>Roads Act 1993</p> <p>Rural Fires Act 1997</p>
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	Water Management Act 2000
Related Policies	Policy 3.23 Development Enforcement Policy 2020 Building Information Certificates Policy 2020
Related Standards, Procedures, Statements, documents	Byron Shire Rural Land Use Strategy 2017

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



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1. Objectives

To outline the planning pathways and consequences for unauthorised dwellings seeking regularisation in Byron Shire.

2. Scope

This document is to serve as a guideline to Council Authorised Officers to outline the process for reactive investigations initiated by complaints and owner-initiated actions.

3. Definitions

Listed here are all the terms and acronyms used in the guideline, and their definitions. Listed in alphabetical order.

Guideline acronym	Definition
Building Information Certificate	A Building Information Certificate is the pathway to “regularise” building work that has been carried out unlawfully. For further information please refer to Council’s Building Information Certificates Policy 2020 (as amended).
DCP	Development Control Plan
Dual Occupancy	As defined by Byron LEP 2014.
Dwelling	As defined by Byron LEP 2014.
Dwelling Entitlement	A dwelling entitlement permits dwellings on land with development consent. The circumstances under which a parcel of land has a dwelling entitlement are outlined within Clause 4.2A of Byron LEP 2014 and Clause 15 of Byron LEP 1988.
LEP	Local Environmental Plan
Multiple Occupancy	As defined by Clause 4.2B of Byron LEP 2014 and Clause 17A of Byron LEP 1988
Order	Development Control Order as defined by the Environmental Planning and Assessment Act 1979 (EP&A Act).



Guideline acronym	Definition
Planning Proposal	A planning proposal is a document that explains the intended effect of a proposed amendment to a Local Environmental Plan (LEP) and sets out the justification for making that amendment. It will be used and read by a wide audience including those who are responsible for deciding whether the proposal should proceed, as well as the general community.
Residential Accommodation	As defined by Byron LEP 2014.
Secondary Dwelling	As defined by Byron LEP 2014.
Voluntary Planning Agreement	Voluntary Planning Agreements are legal documents created under the Environmental Planning and Assessment Act 1979 (EP&A Act) between developers and government agencies (including councils) for the provision of funds or works by the developer for infrastructure, services, or other public amenities.

4. Statement

Unauthorised dwellings within Byron Shire are subject to one of the following three (3) planning pathways:

4.1 Pathway 1

Land has a Dwelling entitlement in accordance with Clause 4.2A of LEP 2014 or Clause 15 of LEP 1988 and contains:

- a single unapproved dwelling (or converted farm building), or
- an unapproved dual occupancy, or
- a secondary dwelling.

For unapproved Multiple Occupancy or other residential accommodation refer to Pathway 2.

Requirements:

1. Where land has no significant natural constraints, and the use is capable of approval and complies with LEP and DCP provisions:



2. Development Application pathway subject to assessment of DA for land use, Section 68 application for onsite sewage management, Building Information Certificate for works completed.
3. Payment of Section 7.11 contributions and any applicable Section 64 contributions.

4.2 Pathway 2

Land does not have a Dwelling entitlement and contains:

- a single unapproved dwelling (or converted farm building), or
- an unapproved dual occupancy, or
- a secondary dwelling, or
- a multiple occupancy, or
- other residential accommodation.:

Requirements

1. Land must meet strategic merit test for LEP amendment
2. Planning proposal required to add permitted land use to the particular site in Schedule 1 of LEP 2014 or Schedule 7 of LEP 1988 (depending on the zoning of the land).
3. Development Application pathway subject to assessment of DA for land use, Section 68 application for onsite sewage management, Building Information Certificate for works completed.
4. Cost agreement under Voluntary Planning Agreement equivalent to Section 7.11 contributions and any applicable Section 64 contributions for each dwelling.

4.2 Pathway 3

Land may or may not have a Dwelling entitlement and contains:

- a single unapproved dwelling (or converted farm building), or
- an unapproved dual occupancy, or
- a secondary dwelling, or
- a multiple occupancy, or
- other residential accommodation.

In circumstances where:

1. land does not meet strategic merit test for an LEP amendment
2. does not have the ability to accommodate appropriate effluent disposal



3. is non-compliant with LEP and DCP provisions.

Enforcement action as per Enforcement Policy 2020 to follow. For example, Orders to demolish/restore to previously approved use as appropriate. Orders may be subject to appeal in the Land and Environment Court.

5. Legislative and strategic context

Unauthorised dwellings outlined in this guideline require approval under one or more of the following pieces of legislation:

- Environmental Planning and Assessment Act 1979,
- Local Government Act 1993,
- Roads Act 1993,
- Rural Fires Act 1997,
- Water Management Act 2000
- Fisheries Management Act 1994.