

BUILDING BACK NORTHERN RIVERS

Understanding
development
approvals to support
our flood recovery



We acknowledge the Traditional Custodians of Northern Rivers NSW, the Bundjalung People, and pay respect to their Elders past, present, and emerging.

We honour Australian Aboriginal and Torres Strait Islander Peoples' primary cultural and spiritual relationships to place, and their rich contribution to our society.

This document has been written in collaboration with:



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Disclaimer: Despite best efforts to provide useful information, the planning system is complex and as such the guidelines won't cover everything. It is important that you check the relevant State and Council requirements before proceeding with any work and seek professional advice, from Council or an independent provider, if you need extra help.

ABOUT THIS GUIDELINE

Between late February and early April 2022, the Northern Rivers region encountered some of the worst flooding it has ever seen. The unprecedented scale and severity of the floods has damaged or destroyed thousands of buildings and significantly impacted our local infrastructure.

It will take our community some time to recover, and we have all been affected differently. Some of us have lost our entire homes or businesses and are faced with some big decisions around redevelopment, while others have had more minor damages which need repair.

It can be difficult to navigate planning and development approval processes at the best of times. This guideline is here to assist with your, and the region's, recovery. It contains information about the different types of approvals you might encounter, and where to get the advice and expertise you need to make informed decisions about your property and get you back on your feet.

This guideline has been prepared with, and endorsed by, all the Councils of the Northern Rivers region.

A total of 8364 properties were damaged in the 2022 floods

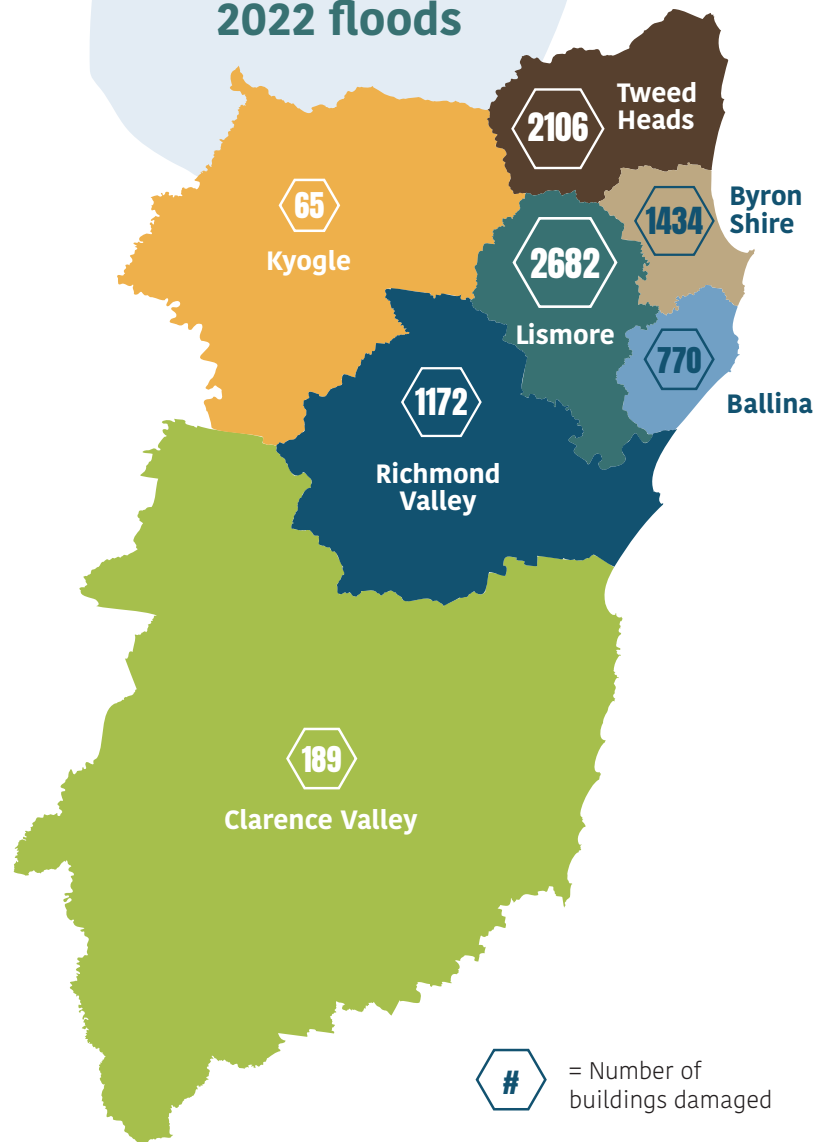


Figure 1 - Buildings damaged by the 2022 floods in the Northern Rivers Region (Data source: SES Built Impact Data, April 2022)

Who is this guideline for?

This guideline has been developed to assist the different members of our Northern Rivers community who are faced with post-flood recovery and rebuilding - including residents, businesses, community groups and landowners.

Why do we need development approvals?

The planning system regulates the location, type and form of new development. It seeks to balance public and private development with the protection of the environment, amenity, and the wider public interest. Planning is all about considering the needs and impacts of land use and development today, as well as in the future.

Different types of development approvals are required to ensure that the way we use and develop land is appropriate to its location and surrounds. This helps to support the liveability, sustainability, and safety of our community and environment.

Land use and development in each local government area is guided by the following legal documents. Together, they inform what you can and can't do on your property and contain the rules and design requirements to shape your development.

State Environmental Planning Policy (SEPP)

SEPPs are developed by the State government and apply across New South Wales. They contain planning rules and requirements for a range of State or regionally important matters, like housing, biodiversity and conservation and resilience and hazards.

Local Environment Plan (LEP)

LEPs are developed by Council and contain the rules and standards to guide what types of land uses can occur on public and private land. It's made up of a written document and a series of accompanying maps.

Development Control Plan (DCP)

DCPs are developed by Council to support the LEP and SEPP. It contains detailed design controls and guidelines for new development and building works. It outlines the localised requirements for things like building form, setbacks and car parking rates.

WHERE TO START

Considering your options and understanding the planning and building processes which relate to your property are the first key steps in rebuilding. Seeking advice from Council or a planning professional will also help get you on the right path.

The following sets out some initial steps and resources that can help you to understand what you can and can't do on your land.

Step 1: Consider your rebuild options

Your rebuild will be subject to contemporary planning, building and flood design requirements. With this in mind you may not be able to rebuild exactly the same as what you had before. Also due to the nature of your flood risk and damage encountered, it may not be practical or safe to rebuild in the same location. The general principle to follow is to 'build back better' which means your building is more able to withstand future natural disaster impacts.



Step 2: Get the professional help you need

Contact your insurer as early as possible for advice regarding your property damage report and insurance claim process.

You should also get advice on the best course of action to start your rebuilding process. This includes advice on the appropriate approvals pathway and building and structural design expertise to ensure you are rebuilding to the required standard. In addition to advice from Council, other professionals who can help you may include builders, architects, town planners, draftspeople, engineers, surveyors, geotechnical consultants and building certifiers.

Step 3:

Check if there are any existing approvals on your land

You can contact Council, or check your Council's DA tracker, depending on the age of the building, to find out about any existing and/or current approvals on your land. This information may mean that you don't need to obtain a new consent for your recovery works, or you may be able to modify the existing approval to gain approval for the development you want to do.

You can also get copies of your house or building plans and previous approval records by enquiring with your local Council.



Step 4:

Find out what planning controls apply to your site

You can download a property report from the NSW Planning Portal. This report outlines what zones, overlays and planning controls apply to your land as well as any State government requirements. These inform what type of uses and development can occur on your land and how different buildings and structures need to be designed and sited. It is important you understand the State and local requirements which apply.

The property report will show whether you are in an area that is mapped as flood or bushfire prone, as well as if there are any special environmental or heritage values or other constraints that you need to be aware of.

WORKS YOU CAN GET ON WITH

There are some small-scale developments or minor works that you can get on with, without any approvals from Council or others. This is known as exempt development.



To be eligible, your works must meet specific standards and land requirements set out in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2009, known as the Codes SEPP. You can find this resource, and other useful information, online at the NSW Planning Portal under the development assessment tab or via the link below.

Exempt building work must be structurally sound and meet the Building Code of Australia. If development doesn't satisfy all the exempt development criteria, you'll need planning approval by lodging a development application or complying development certificate application (more about that later).

Follow the link below to access the Codes SEPP to check your eligibility

<https://www.planningportal.nsw.gov.au/development-assessment/codes-sepp>



The following outlines some examples of works and development you can generally get on with, without approval from Council.

There are, however, some locations where these exemptions are unlikely to apply - for example, if your property is heritage listed.

Demolition

You can demolish a building or part of a building that has been significantly damaged in the flood event without any approvals. Be aware that this exemption applies to buildings where a qualified engineer has assessed that the structural integrity of the building has been compromised, and its re-use is not possible.

This exemption does not apply to heritage items and contributory heritage buildings within conservation areas. Also, be aware that homes constructed prior to 1990 may contain asbestos. Information on the removal and disposal of asbestos and other hazardous materials is available from the NSW Environment Protection Authority.

Minor internal building alterations

You can replace or renovate a doorway, wall, ceiling or floor lining, a deteriorated frame member including stairs and stairwells, a bathroom or kitchen, a built-in fixture such as a vanity, a cupboard or a wardrobe etc. without the need for Council approval.



Minor external building alterations

You can get on with minor external non-structural alterations like painting, plastering, cement rendering, repairing or replacing wall or roof cladding or balustrading.

Rebuilding a residential fence

You can rebuild an existing lawful fence if it is “like for like” without any approval. To be classed as exempt, fences cannot be over 1.8m high, or 1.2m if located within the front setback in a residential area or constructed from masonry. If your fence also encloses a pool area, the requirements around pool safety continue to apply. We encourage you to talk to your neighbour before replacing or rebuilding a fence on a shared boundary.

Re-stumping your house

Re-stumping of a dwelling doesn't require any approvals, provided it does not raise the floor level of the building. If you are looking to improve the resilience of your house, the re-stumping will need to be engineered to withstand the velocity and depth of flood water inundation. If you are considering lifting your dwelling in an effort to prevent floodwater damaging your home in the future, you must first seek approval from Council by lodging a development application.

The Interactive House portal is a helpful tool for identifying different types of works which don't require any development approvals around your house.

Follow the link below to find out more.

[planningportal.nsw.gov.au/
interactive-house](https://planningportal.nsw.gov.au/interactive-house)



But don't get caught out!

There are some locations where even if your works are relatively minor, you are still going to require approval from Council and therefore can't be classed as exempt development.

For example, if your property is **heritage listed**, **affected by the flood overlay** and/or **bushfire overlay** or located on a flood control lot, your works might not be classed as exempt development.



SOME TYPES OF DEVELOPMENT NEED APPROVAL

Most types of building works and development require approval before you can get started, to minimise impacts on the environment and surrounding areas and support community safety.

Some small scale, low impact development can be approved in a faster process by Council or other approved building certifiers – this is called complying development. Other development, due to its scale or the characteristics of the property, requires approval from Council through a development application.

We recommend you seek professional advice or contact Council to confirm what type of consent is required before you get going.

About complying development

Complying development is a process available for some types of smaller scale residential, commercial and industrial development. If your works meet specific development standards, it can be assessed and determined by Council or a private certifier without the need for a full development application. This can be a faster and simpler way of gaining approval.

The Codes SEPP outlines all the requirements about what types of works and development can be classified as complying development. You can find this resource, and other useful information, online at the NSW Planning Portal.

Some examples of complying development can include building a swimming pool or garden shed, or the internal fit out of some commercial businesses like a hairdresser or shop.

How to make an application

You will need to decide, firstly, if you would like to use a Council or private certifier to gain your approval. Then fill out a Complying Development Application form available on the NSW Planning Portal. Here you will also find a full list of the supporting documentation you'll need to submit as part of your application. We recommend working with a professional to help put this information together. Some of the things you'll need to provide include:

- Site plan (drawn to scale)
- Design plans (drawn to scale)
- Building specifications
- Survey plan

There may be some other types of documentation required, depending on the nature of the proposal and your site. For example, you may require a stormwater management plan to show how stormwater runoff will be managed from your development. Or you may need to provide a flood report or bushfire report if your site is in a flood or bushfire prone area.

How long will it take?

A complying development application can be approved as early as 20 days from lodgement for residential development or 10 days for other types of development, if it complies with the relevant requirements and if you've provided all the necessary information.

About development applications

If you're rebuilding works don't qualify as either exempt or complying development you will need to submit a development application. Development Applications (DAs) are a formal request for permission to carry out certain development, including building, subdividing, change of land use, landscaping or other works.

The types of activities which trigger the need for a development application, and their design and siting requirements, vary between the different Councils of the Northern Rivers region.

How to make an application

We recommend that you meet with Council and ask them for advice in the first instance. They will be able to give you some guidance on your application requirements and identify any red flags or key considerations early in the process. For more complex applications you may wish to also arrange a formal pre-lodgement meeting with Council.

Most development applications must be lodged through the NSW Planning Portal, and you will need to complete different forms (e.g. application form, owners consent), provide an estimated cost of the works and pay a lodgement fee.

Consult your Council's website or the NSW Planning Portal to confirm the supporting information to be submitted with your DA. At minimum it is likely to require the following. We recommend working with a professional to help put this information together:

- Scaled site plan
- Proposal drawings (e.g. floor plans, elevations and sections)
- Statement of Environmental Effects
- Site survey.

There may be some other types of documentation required, depending on the nature of the proposal and your site. For example, you may need to prepare a specialist flood or bushfire report if your property is on flood or bushfire prone land. Depending on your use, you may also need to provide a BASIX certificate – this assesses the sustainability of residential developments.

How long will it take?

The timeframe to determine a development application varies depending on the quality and/or complexity of the submission.

The Northern Rivers Councils are trying their best to assess applications for flood affected properties as quickly as possible.

Remember! Be a good neighbour!

We recommend that you talk to your neighbours early in the process to let them know about the development you are planning to undertake, regardless of the type of approval you need. This gives them a 'heads up' so they aren't surprised when they see works onsite or if your application is publicly advertised / notified



WHAT SHOULD I DO?

It can be difficult to know what kinds of works trigger different types of approval. The following provides some examples about common development scenarios our community faces as it recovers from the 2022 floods.

I want to...	Approval pathway guidance...
Rebuild my house	<p>The replacement or rebuilding of a dwelling or part of a dwelling is structural and will likely require development consent.</p> <p>Some Councils have a natural disasters clause in their Local Environment Plan, which specifies the approval requirements associated with rebuilding homes. We suggest that you talk to Council or seek advice from a building professional to help navigate this process.</p> <p>You will also need a construction certificate before you start the works, and an occupation certificate before you move back in.</p>
Repair and re-open my cafe	<p>The repair or rebuilding of a café or restaurant could fall under complying development (requiring Council or private certification) or require development consent from Council, depending on what you are doing. We suggest that you talk to Council or seek advice from a building professional to help navigate this process.</p> <p>You will also need a construction certificate before you start the works, and once you have undertaken your repairs Council's Environmental Health Officer will need to check the premises to make sure that it complies with the consent and is safe to handle and serve food and drinks.</p>
Repair and re-open a shop, office, or business	<p>It really depends on what you need to do to repair and re-open your shop, office or business. There are some minor works that may fall under exempt development, and not require any approvals. While more substantial works may require development consent or a complying development certificate.</p> <p>We recommend that you talk to Council or seek advice from a private building certifier to help navigate this process.</p>
Repair my driveway	<p>If you are repairing an existing lawful driveway in the same location to the same specifications on your property, you don't require any approvals.</p> <p>However, if you intend to change the access point from your property to the public road you will need to lodge an application with Council for Section 138 – Carrying out an activity in a public road and pay the associated lodgement fee via the NSW Planning Portal.</p>



I want to...

Repair or replace a septic tank

Approval pathway guidance...

You need to get a particular type of Council consent if you are planning to install a new, or repair an existing, onsite sewerage system (e.g. septic tank or AWTS). This is known as a Section 68 of the Local Government Act approval. You can lodge this consent and pay the relevant fee via the NSW Planning Portal.

There is also a requirement under the Local Government Act to obtain a second approval to operate an on-site sewage management (OSSM) system. This approval is required for the ongoing operation of OSSM systems and may need to be renewed at certain intervals.

All plumbing works must comply with the relevant requirements of the Plumbing Code of Australia and be undertaken by a NSW licensed plumbing and drainage professional.

Repair my swimming pool

The repair of an approved above or below ground swimming pool is generally classed as minor works and doesn't require any approvals. However, if there is damage to your pool barrier, you should consult Council to determine how best to repair or replace the barrier and to check any approval requirements.

We recommend that you talk to a local pool builder or pool servicing technician before you do anything to your damaged pool, especially emptying it. You also need to make sure that your pool complies with all the relevant safety standards and requirements (e.g., fences, resuscitation charts).

Repair or install an accessway or bridge over a watercourse

If you are repairing an existing lawful access/bridge over a watercourse, at the same location, it does not require any approvals.

However, any new development on or adjacent to a waterway will require development consent from Council. This type of application will also likely be referred to a State government department called the Natural Resources Access Regulator. This approval is required to ensure that the works are structurally safe and minimise environmental impacts on the watercourse.

On house raising

There are a range of different design and siting measures that can be implemented to make your building more flood resilient – from the choice of building materials, to where you locate its power connections and services.

Some people might be thinking about raising their homes to make them more resilient to future flood events. House raising requires development consent from Council before the works can be undertaken.

The following provides an overview of some different instances that house raising may occur and their key considerations.

Find out what's allowed in your area

You are best to contact your Council if you are thinking about raising your house, as there are different requirements depending on where you live and what you are looking to do.

Be aware that when raising your house, your development must also comply with all relevant planning controls, including height requirements. When assessing your application, Council may also consider any potential amenity impacts on surrounding properties.

I want to...

Some things to consider...

Raise my existing dwelling to the minimum required floor level

The minimum required floor level is generally outlined within the Development Control Plan. You will also need to get obtain a flood information certificate which sets out the minimum required floor level required for your site.

Check your Council's website or contact them directly to access this information.

Raise my existing dwelling to a new level so that a new storey is created underneath

Each Council has different requirements for the ground floor – this can relate to the amount and type of floorspace allowed, building materials and methods of construction.

Some Councils allow for non-habitable spaces like a garage, laundry and entry to be provided on the new ground floor, below the minimum required floor level but you are best to check what is allowed in your area first.

Build a second storey on top of the existing dwelling

The lower level can sometimes be maintained as is and form part of the overall dwelling, but the existing and linings and services generally need to be replaced with flood compatible materials and methods of construction.

Be aware that alterations to the existing dwelling below the minimum required floor level may be limited in area, depending on where you live and the extent of the works.

Demolish my existing dwelling and build a new dwelling on the site

In this situation your proposal is regarded as a new development site.

You are best to contact Council to understand the minimum floor level requirements; these can be different between urban and rural areas.

What is a minimum floor level?

If your property is mapped as being vulnerable to floods and is affected by the flood overlay, or within the design flood event area, there will be a minimum floor level specified for your property. Each Council determines its minimum floor level through specialist flood studies and modelling, and this can vary between different areas.

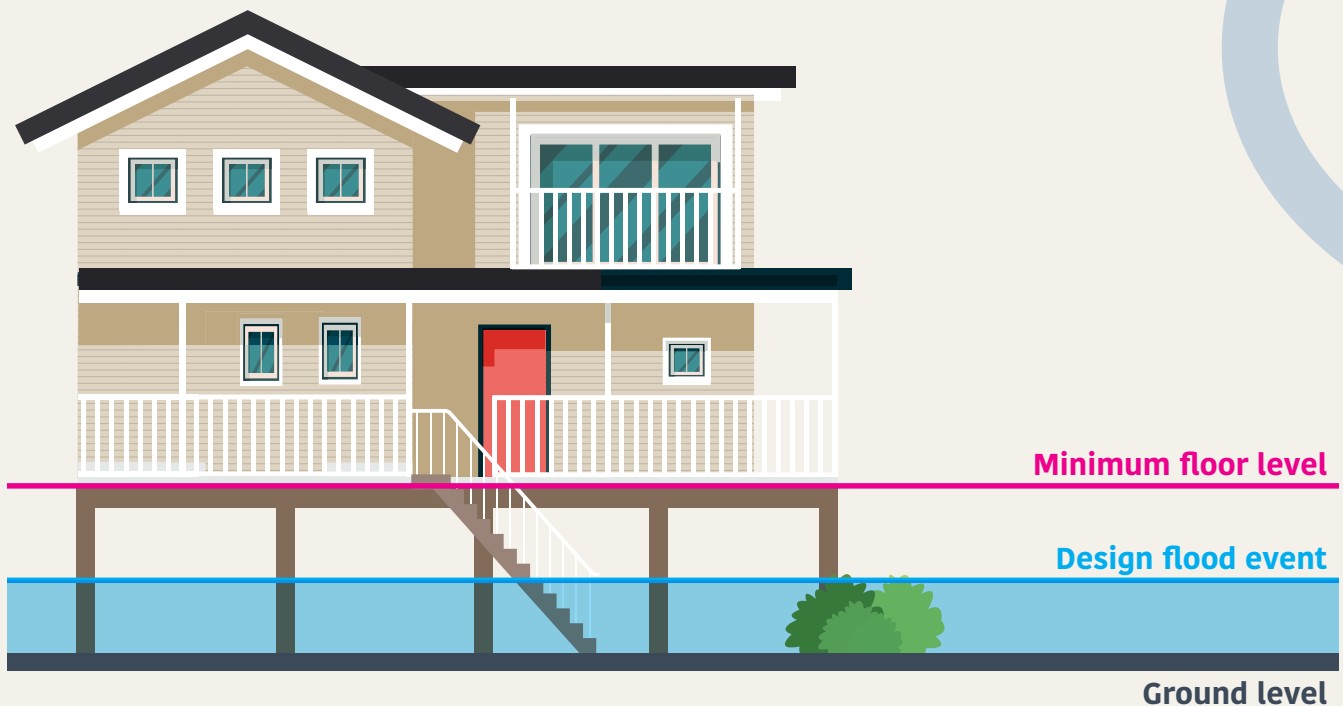
A minimum floor level means that any new, habitable development will need to be constructed to a particular height. Habitable development includes rooms that people live and sleep in, like bedrooms and living areas. So, these spaces need to be provided higher above ground level to minimise impacts to your property and life.

The diagram below conceptually illustrates these three levels:

Ground level: The existing level of a site

Design flood event: A benchmark flood level that forms the basis of design standards for many planning, building and development related criteria, determined through a specialist floodplain study.

Minimum floor level: The minimum floor level for any habitable rooms in a new development. The minimum floor level is based on the design flood event level plus a freeboard. Freeboard is a factor of safety applied to flood levels to account for things like wind, waves and unforeseen blockages.



*Note: Some Councils do not permit enclosure of areas below the minimum floor level.

Figure 2 - Illustrated definitions: floor, flood and ground levels

HOW TO GET THE HELP YOU NEED

It is going to take time for our region to recover from the 2022 floods. There are a range of resources and people available to give you advice on building back better and navigating the planning and development process.

Contact Council's Planning and Building Services Department

Each Council has a team responsible for responding to individual planning and development enquiries from the community. They can help you understand the different planning controls that apply to your land and their associated requirements, approval pathways and other considerations to help get your development underway.

Check your Council's website for their contact details. You can often book a time to talk to a planner to get answers to your questions or concerns.

Other professional help

There are a range of other planning and building professionals that you can call on to help with your flood recovery and the different approval processes. These professionals will charge a fee and provide tailored advice and services to get your development underway.

The following types of professionals can help you with the design and planning process:

- Town planner
- Architect, building designer or draftsman
- Land or building surveyor
- Private certifier

You may require the specialist services of other professionals, including:

- Engineer (wastewater, structural, civil, geotechnical, flood, traffic, stormwater, environmental, flooding, bushfire)
- Bushfire assessor



USEFUL RESOURCES

NSW Planning Portal

Use this site to get information about planning and development approvals, application requirements and to lodge your application:

www.planningportal.nsw.gov.au

Spatial viewer

Use this site to get site-specific information about planning controls and to download a Property Report from:

[ePlanning Spatial Viewer \(nsw.gov.au\)](http://ePlanning Spatial Viewer (nsw.gov.au))

Complying development webpage

This site provides information about complying development, including standard requirements and to access the application form:

<https://www.planningportal.nsw.gov.au/onlinecdc>

You can also send an email to codes@planning.nsw.gov.au to get general (and not legal) advice about complying development and how the Codes SEPP works.

Repair and response works

Contains information about works and repairs that you can undertake after a natural disaster.

<https://www.planning.nsw.gov.au/Policy-and-Legislation/Disaster-and-Pandemic-Recovery/Repair-and-response-works>

Council website

Each Council has a planning and development webpage with locally specific information:

- **Ballina Shire Council:** https://ballina.nsw.gov.au/cp_themes/default/page.asp?c=778
- **Byron Shire Council:** <https://www.byron.nsw.gov.au/Services/Building-development>
- **Clarence Valley Council:** <https://www.clarence.nsw.gov.au/Building-and-development/Building-and-development-services>
- **Kyogle Council:** <https://www.kyogle.nsw.gov.au/planning-development/development-applications/development-information/>
- **Lismore City Council:** <https://lismore.nsw.gov.au/your-step-by-step-guide-to-the-development-application-process>
- **Richmond Valley Council:** <https://richmondvalley.nsw.gov.au/building-and-planning-services/development-services/lodge-an-application/>
- **Tweed Shire Council:** <https://www.tweed.nsw.gov.au/development-business/development-applications>