



UNAUTHORISED DEVELOPMENT FACTSHEET

BACKGROUND

In New South Wales, unauthorised development refers to construction or land use activities carried out without the necessary approvals or permits under the Environmental Planning and Assessment Act 1979. NSW Planning legislation requires developers and property owners to seek appropriate development consent for works, alterations, or changes in land use in addition to the construction of any buildings, structures and the like where there are no exemptions under a State Environmental Planning Policy.

WHAT CONSTITUTES “UNAUTHORISED DEVELOPMENT”

Unauthorised developments generally constitute building without a Development Application (DA) however breaching conditions of consent attached to an approved DA, or making changes that go beyond what was originally approved also can be considered as unauthorised development.

IMPLICATIONS

Unauthorized development has potential to cause risks and nuisance to the general public and therefore Council has a legal obligation to prevent and/or remove such instances. As such penalties, remediation works, or legal action under the Land and Environment Court may be undertaken to rectify, stop or prevent such development from occurring.

WHAT NEXT?

In NSW, unauthorised development may be regularised through certain pathways under the Environmental Planning and Assessment Act 1979, but this depends on the type and scale of the unauthorised work, as well as its compliance with current planning regulations and environmental standards. The following options may be available where the relevant criteria are met.

Retrospective Development Application (DA)

In cases where unauthorised development aligns with the planning controls and standards, property owners may apply for retrospective approval by submitting a Development Application (DA) to the local council. The DA must meet all current zoning, environmental, and building requirements under the Hawkesbury Local Environmental Plan 2012 & the Development Control Plans 2012/2002 to be considered. Councils may impose conditions or require modifications to bring the development into compliance. It is pertinent to consider that Council cannot approve works undertaken without consent under a DA. This option mainly pertains to uses commenced without prior approval.

Building Information Certificate (BIC)

A Building Information Certificate (BIC) is another option available under Section 6.24 of the Environmental Planning and Assessment Act. It can be requested when unauthorised building work has already been carried out. A BIC provides a degree of protection from enforcement action by the council and verifies that the structure, in its current state, is acceptable or safe. However, it does not exempt the owner from meeting DA requirements for further alterations or changes.

Modification Application under Section 4.55 or Section 4.56

If the unauthorised development involves a modification of an already approved DA, a modification application under Section 4.55 or Section 4.56 can be lodged with the council. This allows adjustments to the original consent to cover the unauthorised work, provided it does not significantly alter the original development or compromise planning controls. It is noted that structures already constructed without prior approval may need a BIC lodged in addition to the modification application.

It is noted that a combination of the pathways as above may be required where buildings have been constructed without prior consent. Each pathway is subject to Council discretion, and there is no guarantee of approval, especially if the unauthorised work poses environmental risks, safety hazards, or contradicts planning policies.



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