

# Unauthorised Development

## What is unauthorised development

### Types of development

In New South Wales, developments, referred to as land uses, generally are classified as requiring development consent or being exempt from requiring development consent. The associated requirements for Exempt development are largely set out in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* ([SEPP Codes](#)).

There are also [other State Planning Policies](#) that contains exempt development provisions in certain circumstances.

### Exempt Development

Exempt development is construction works and/or land uses that do not require development consent or Exempt development is generally very low impact development that can be done for certain residential, commercial and industrial properties. A few examples of development that can be exempt development are: decks, garden sheds, carports, fences, repairing a window or painting a house. As long as the proposed works meet all of the development standards (identified in the Codes SEPP), approval may not be needed. Be mindful that there are areas when exempt development may not be permissible regardless of the work being undertaken.

Where a land use does not fully satisfy the requirement for exempt development, approval must be obtained prior to commencing on a site. The most common pathways for obtaining approval are by a [Development Application](#) or [Complying Development Certificate](#).

### Unauthorised development

If the construction work associated with a land use commences without the required development consent, the ability for Council or a private certifier to approve the development is lost. Upon discovery of an instance of unauthorised work, Council can inform the landowner in writing that the work is unlawful and order the work and associated structures to be removed.

## What options are available if this happens

### Option 1 – Comply with the written notice

Following an inspection of the unauthorised works, Council's Compliance Team will provide written direction on how to proceed.

The letter may seek removal of the unauthorised work and reinstatement of the site. Generally, a strict timeframe to complete the work will be quoted in the letter.

Failure to complete the rectification works could result in fines and/ or court proceedings.

## Option 2 – Provide written evidence that the development did not require development consent to proceed

Certain developments can occur without approval and if a landowner considers such works to be exempt development, a written response to Council's letter will be required explaining how this is the case. Council will then decide on how to proceed with the matter.

## Option 3 – Submit a Development Application and Building Information Certificate Application

Council cannot retrospectively approve developments that required development consent to be issued prior to construction.

Council can, in certain circumstances, consent to the ongoing use of a structure if it is satisfied that the unauthorised works are consistent with the applicable development controls and legislation.

All plans and documents ordinarily required for a development application need to be submitted. This can include submission of a structural engineer's report confirming that the construction is sound and meets Australian Standards.

A development application for the use of a structure can be submitted to Council for assessment. However, this does not guarantee approval and it is highly recommended to engage a town planner or planning consultant to assist with preparing and submitting a development application on the [NSW Planning Portal](#)

In addition, regularising unauthorised works will also require an application for a Building Information Certificate (BIC).

A BIC is a certificate that prevents the council from taking the following actions from the date of issue of the certificate:

- make an order (or take proceedings for the making of an order or injunction) under the *Environmental Planning and Assessment Act 1979* ([EP&A Act](#)) or the *Local Government Act 1993*, requiring the building to be repaired, demolished, altered, added to or rebuilt; and
- take civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council

Fees associated with lodging these applications can be more expensive than if approval had been sought prior to commencing the development.

For more general information regarding the process, an appointment can be made to speak to Council's Duty Planner. Please use the following link to make an appointment online: [Duty Planner](#)