



THE WONDERFUL WORLD OF BUILDING INFORMATION CERTIFICATES

Some practical tips regarding applications for building information certificates and the Appeal process:

1. Lodgement of a BIC application and what is a building?
2. Assessing a building information certificate application and appeals to the Land and Environment Court.
3. Other handy hints...

Environmental Planning and Assessment Act 1979 No 203

Division 6.7 Building information certificates

6.22 Who may apply for building information certificates

(cf previous s 149B)

*The following persons may apply for a building information certificate **in relation to a building**—*

- (a) **the owner of the land** on which the **building is erected**,*
- (b) any other person with the consent of the owner of that land,*
- (c) the purchaser under a contract for the sale of property that comprises or includes the building, or the purchaser's Australian legal practitioner or agent,*
- (d) a public authority that has notified the owner of that land of its intention to apply for the certificate.*

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- (1) An application for a building information certificate must be made through the NSW planning portal.*
- (2) A building information certificate must contain the following information—*
 - (a) a description of the building, or the part of the building, including the address,*
 - (b) the day on which the building, or the part of the building, was inspected,*
 - (c) a statement that the council is satisfied about the matters specified in the Act, section 6.25(1),*
 - (d) a statement that describes the effect of the certificate in the same terms as, or in substantially similar terms to, the Act, section 6.25,*
 - (e) the date of issue.*
- (3) A building information certificate must be issued to an applicant through the NSW planning portal.*

Building information certificate: What is a building?

Definition: *Environmental Planning and Assessment Act 1979:*

***building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the Local Government Act 1993.*

A building includes a “*structure or any part of a structure*”. A person may apply for a “building information certificate” in relation to a building if they are the owner of land on which a “**building is erected**”.

Cases:

1. *Hakea Holdings Pty Ltd v Louisiana Properties Pty Ltd* [2018] NSWCA 240

1. *Whether a “road” is a “building” in the context of a construction certificate*

2. *Ballina Shire Council v Joblin* [2022] NSWLEC 90

1. *Whether a swimming pool is a “building” in the context of an appeal against an order*

Assessing building information certificates and the Appeals to the Court:

1. Once a BIC Application is lodged, section 6.25 of the EPA Act sets out circumstances in which a BIC can be issued and section 8.25 of the EPA sets out the powers of the Court in determining a BICA Appeal.
2. Regulations 248 and 289 of the EPA Regulations 2021 are also relevant.
3. The Land and Environment Court Practice Note Classes 1, 2 And 3 Miscellaneous Appeals sets out procedural requirements in relation to Appeals regarding Building Information Certificates

Environmental Planning and Assessment Act 19879

6.25 Issue, nature and effect of building information certificate

(cf previous ss 149D, 149E)

(1) A building information certificate is to be issued by a council only if it appears that—

(a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the [Local Government Act 1993](#)—

(i) to order the building to be repaired, demolished, altered, added to or rebuilt, or

(ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or

(iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or

(b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.

8.25 Appeals with respect to building information certificates(cf previous s 149F)

(1) An applicant—

(a) who is dissatisfied with a council's refusal to issue a building information certificate under Part 6, or

(b) who is dissatisfied with a council's failure to issue a building information certificate within the period prescribed by the regulations, or

(c) who is dissatisfied with a notice from the council to supply information in connection with an application for a building information certificate, may appeal to the Court.

(2) The appeal may be made only within 6 months after the date on which the person is given notice of the decision appealed against or the end of the deemed refusal period referred to in subsection (1).

(3) On hearing the appeal, the Court may do any one or more of the following—

- (a) direct the council to issue a building information certificate in such terms and on such conditions as the Court thinks fit,*
- (b) revoke, alter or confirm a notice to supply information,*
- (c) make any other order that it considers appropriate.*

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(2) For the purposes of the Act, section 8.25(1)(b), the period of 40 days after the later of the following is prescribed—

(a) the day on which the application for the building information certificate is made,

(b) if the applicant receives a notice under the Act, section 6.26(2) to supply information—the day on which the information is supplied.

What should the Council consider when assessing a BIC application?

1. Structural matters
2. Encroachment onto Council land
3. Notional planning assessment

Land and Environment Court Appeals:

1. Timing for the commencement of an Appeal
2. When is the Council's Statement of Facts and Contentions required to be filed
3. Other matters for consideration

Thank you for listening!