



# Having trouble with unlawful development activity?

## What is this fact sheet about?

The fact sheet explains how to find out if approval was required or granted. It also covers how your local council can assist when you think there is possible unlawful development. It explains what to do if you are unhappy with the council's response and how the NSW Ombudsman can help you.

If you would like to get in touch with us, our contact details are provided at the end of this fact sheet.

## Different kinds of development and approvals

Many development activities require an approval of some kind. However, some development may either be exempt from requiring consent or certified as complying as defined by the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP).

### Exempt development

If the standards provided in the **Codes SEPP** can be met for certain activities, this will make that development *exempt* from requiring any approvals from a consent authority. The council has no right to require changes to the development.

### Complying development

If the standards provided in the Codes SEPP can be met for certain development, the developer may apply for a complying development certificate (**CDC**) that certifies the development meets these standards. This kind of development provides that neighbours are to be notified that the development will occur, but they cannot object to the development. A CDC may be issued by a private certifier or by the local council. The issuer of a CDC cannot refuse the issuing of the CDC if the standards can be met.

## Development consent

If your proposed development is of a type that is identified in the Local Environment Plan (LEP) as being permitted with consent for the relevant land use zone, then development consent will be required. The council may issue consent without conditions, issue consent with conditions, or refuse the application.

Development applications (DAs) may or may not be notified to seek comments from *affected* properties. Submissions made about the proposal will be considered as part of the assessment process. The definition of 'affected properties' varies according to the consent authority's notification policy.

Once a DA has been approved, the developer must then obtain a construction certificate (CC). The developer can appoint either a private certifier or the council for this process.



## How do I find out if approval was required or has been granted?

If you have the property address, you may be able to find information in several ways. Many councils have 'development application tracking' functions on their websites. You can search for the property address, and any relevant applications and their decisions will be listed. There may also be limited access to some documents.

Alternatively, you can contact your council and request this information. You can also take the opportunity to express your concerns, and the council will be able to give you information as to whether the development has a CDC, development consent or if you should submit information to them to investigate potentially unlawful activity/development.

## Investigating possible unlawful development

You can make a complaint to the council about possible unlawful development.

### If the issue is complex, the council may need to:

- ✓ conduct inspections
- ✓ seek legal advice, or
- ✓ consult other government agencies.

You can ask your council for information about how they will handle your complaint or the steps they can take to investigate the possible unlawful development. The council should have policies in place on investigation and enforcement action. These are usually called enforcement and prosecution or local orders policies.

It is reasonable to expect progress reports from council staff and asked to be advised in writing when a decision is reached.

## What if I am unhappy with the council's response?

If you believe the council's response to the unlawful activity is inadequate, you can make a complaint to the general manager. This provides an opportunity for the council to consider a review of the investigation into the unlawful activity or look at how your complaint was handled.

You may also decide to take legal action over the matter. Anyone has the right to go to the Land and Environment Court (LEC) and ask the court to remedy or restrain a breach of planning or building laws. This

includes unlawful activities like work carried out without consent or activities carried out in breach of conditions of consent.

## Can the Ombudsman help me?

The Ombudsman has high interest in complaints about unlawful activity. The Ombudsman expects councils to:

- systematically audit compliance with development consents
- have complaint-handling systems that provide for logging reports of unlawful activity, investigation and reporting back
- investigate these reports in a timely fashion
- decide on further action taking account of the circumstances of the case and having regard to previous practice
- develop policies on investigation and enforcement, setting out the criteria they will consider when deciding on what action to take.

If you believe your council has not met these expectations, you should consider making a complaint to the Ombudsman.

If we believe the council's response to a report of unlawful activity is unsatisfactory, we can ask for further action to be taken. We give high priority to cases that suggest that a council's systems and procedures for handling reports of unlawful activity are deficient.

If you believe a private certifier has wrongly certified that a development complies with all requirements, you can complain about the accredited certifier to [Fair Trading](#). It can investigate and take certain actions arising from complaints about the professional conduct of the private certifier.

## Other assistance

The [Office of Local Government](#) (OLG) can handle certain complaints about councils, councillors and council staff:

Chief Executive, Local Government  
Office of Local Government  
Locked Bag 3015  
Nowra NSW 2541

**Phone** 02 4428 4100

**Email** [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Complaints about alleged corrupt conduct of councillors or council staff can be made to the Independent Commission Against Corruption (ICAC):

Chief Commissioner  
Independent Commission Against Corruption  
Level 7, 255 Elizabeth Street  
Sydney NSW 2000

GPO Box 500  
Sydney NSW 2001

**Phone** 02 8281 5999

**Email** [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)



Scan the QR code  
to find out more  
on our website.

## Contact us

✉ [info@ombo.nsw.gov.au](mailto:info@ombo.nsw.gov.au)

☎ 1800 451 524

🌐 [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)