

**LOCAL GOVERNMENT (BUILDING CERTIFICATES)
AMENDMENT ACT 1986 No. 157**

NEW SOUTH WALES



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**LOCAL GOVERNMENT (BUILDING CERTIFICATES)
AMENDMENT ACT 1986 No. 157**

NEW SOUTH WALES



Act No. 157, 1986

An Act to amend the Local Government Act 1919 with respect to building certificates. [Assented to 17 December 1986]

See also Land and Environment Court (Building Certificates) Amendment Act 1986.

Local Government (Building Certificates) Amendment 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Local Government (Building Certificates) Amendment Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 41, 1919

3. The Local Government Act 1919 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE LOCAL GOVERNMENT ACT 1919

(1) Section 317A (**Certificate of compliance**)—

Omit the section.

(2) Section 317B (**Repair or demolition of existing buildings**)—

Section 317B (1A)—

Omit "This subsection shall not apply to or in respect of any building in respect of which the council has issued a certificate under section 317A except as regards any alteration or addition thereto or any rebuilding thereof effected without the approval of the council after the issue of such certificate."

Local Government (Building Certificates) Amendment 1986

SCHEDULE 1—*continued*

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(3) Part XI, Division 4D—

After Division 4C, insert:

DIVISION 4D—*Building certificates*

Interpretation

317AA. In this Division—

“building certificate” means a building certificate issued by the council under section 317AE;

“public authority” means a public authority constituted by or under an Act, a government department or a statutory body representing the Crown, and includes a person exercising or performing any power, authority, duty or function on behalf of the authority, department or body.

Application for building certificate

317AB. (1) An application for a building certificate in relation to the whole or a part of a building may be made to the council by—

- (a) the owner of the building or part or the owner’s solicitor, architect or agent;
- (b) the purchaser under a contract for the sale of property, which comprises or includes the building or part, or the purchaser’s solicitor or agent; or
- (c) any person, with the consent in writing of the owner of the building or part or the owner’s solicitor or agent.

(2) An application shall—

- (a) be in writing;
- (b) state the name and address of the applicant;
- (c) state particulars of the building or part to which the application relates; and
- (d) be accompanied by the prescribed fee.

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(3) Notwithstanding subsection (1) (c), the consent in writing of the owner of the building or part is not required if the applicant is a public authority and the public authority has, before making the application, served a copy of the application on the owner.

(4) Notwithstanding subsection (1) (c), an application may be made by a lawful occupier of Crown lands within the meaning of the Crown Lands Consolidation Act 1913 in relation to a building or part on any such lands lawfully contracted to be sold to the occupier without the consent in writing or otherwise of—

- (a) where the lands are not within an irrigation area within the meaning of that Act—the Minister for Lands; or
- (b) where the lands are within such an irrigation area—the Minister for the time being administering the Irrigation Act 1912.

Additional information

317AC. (1) On receipt of an application, the council may, by notice in writing, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may be reasonably necessary to enable it to determine the application.

(2) If the applicant is able to provide evidence that no material change has occurred in relation to the building or part since the date of a survey certificate which, or a copy of which, is supplied to the council by the applicant, the council is not entitled to require the applicant to supply it with a more recent survey certificate.

Inspection of building

317AD. As soon as practicable after an application is received by it, the council shall undertake an inspection of the building or part, as the case requires.

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*continued***Determination of application**

317AE. (1) The council shall determine an application for a building certificate by issuing or by refusing to issue a building certificate to the applicant.

(2) The council shall issue a building certificate if, following an inspection under section 317AD, it appears that at the date of the inspection—

(a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council—

(i) to make an order under section 317B in relation to the building or part;

(ii) to take proceedings for an order or injunction requiring the demolition, alteration, addition or rebuilding of or to the building or part; or

(iii) to take proceedings in relation to any encroachment by the building or part 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 do any of the things referred to in paragraph (a) (i), (ii) or (iii).

(3) If the council refuses to issue a building certificate, it shall inform the applicant, by notice in writing, of its decision and of the reasons for it.

(4) The reasons shall be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.

(5) The council shall not refuse to issue or delay the issue of a building certificate by virtue of the existence of a matter which would not entitle the council to do any of the things referred to in subsection (2) (a) (i), (ii) or (iii).

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(6) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.

Contents of building certificates

317AF. (1) A building certificate shall—

- (a) identify the building or part to which it relates;
- (b) state the relevant date of inspection under section 317AD;
- (c) reproduce or include a summary of the provisions of section 317AG;
- (d) specify the prescribed classification of the building or part under any ordinance made pursuant to section 319 (1) (e); and
- (e) identify all written information (including building inspection reports, building plans, specifications, survey reports and certificates) used by the council in deciding to issue the certificate.

(2) If an application is made in relation to—

- (a) the whole of a building—the building certificate shall relate to the whole of the building; or
- (b) part of a building—the building certificate shall relate only to that part of the building to which the application relates.

Effect of building certificate

317AG. (1) If a building certificate has been issued in relation to a building or part, a council—

- (a) by virtue of anything existing or occurring before the date of inspection stated in the certificate; or
- (b) within 7 years after that date by virtue of the deterioration of the building or part solely by fair wear and tear,

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shall not—

- (c) make an order under section 317B in relation to the building or part;
- (d) take proceedings for an order or injunction requiring the demolition, alteration, addition or rebuilding of or to the building or part; or
- (e) take proceedings in relation to any encroachment by the building or part onto land vested in or under the control of the council.

(2) An order made or proceedings taken in contravention of this section shall be of no effect.

(3) The issue of a building certificate does not prevent—

- (a) the taking of proceedings against any person under section 306, 310, 311 or 317; or
- (b) the making of an order under section 317D.

Appeals

317AH. (1) An applicant—

- (a) who is aggrieved by the refusal of the council to issue a building certificate;
- (b) who is aggrieved by the failure of the council to issue a building certificate within a period of 40 days after—

(i) the date of application for the certificate; or

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(ii) if the applicant receives a notice under section 317AC to supply information, the date on which the information is supplied,

whichever is the later; or

(c) who receives a notice under section 317AC to supply information,

may appeal to the Land and Environment Court within 12 months after the date on which the refusal is communicated to the person, the date on which the 40-day period expires or the date of the notice under section 317AC, as the case may be, or such longer period as the Court may in special circumstances allow.

(2) On an appeal, the Court may—

(a) direct the council to issue a building certificate in such terms and on such conditions as the Court thinks fit;

(b) revoke, alter or confirm a notice under section 317AC; or

(c) make any other order that it considers appropriate.

Register of certificates

317A1. (1) The council shall keep a register of building certificates issued by it in such form as it thinks fit.

(2) A person may inspect the register at any time during the ordinary office hours of the council.

(3) A person may obtain a copy of a building certificate from the register with the consent of the owner of the building and on payment of the prescribed fee.

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SCHEDULE 1—*continued*

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Validity of existing certificates

317AJ. (1) A certificate issued under section 317A, as in force before the commencement of the Local Government (Building Certificates) Amendment Act 1986, shall have full force and effect and shall continue in force after that commencement as if the Local Government (Building Certificates) Amendment Act 1986 had not been enacted.

(2) The provisions of this Act and the Land and Environment Court Act 1979, as in force immediately before the commencement of the Local Government (Building Certificates) Amendment Act 1986, shall continue to apply to a certificate referred to in subsection (1) as if the Local Government (Building Certificates) Amendment Act 1986 and the Land and Environment Court (Building Certificates) Amendment Act 1986 had not been enacted.

(4) Section 318 (Ordinances)—

Section 318 (36)—

After section 318 (35), insert:

(36) the form and contents of building certificates under Division 4D, the making of applications for those certificates and the fees (including fees for inspections or re-inspections) to be paid in relation to those certificates, being fees that—

(a) may apply generally or be limited in their application by reference to specified exceptions or factors;

(b) may apply differently according to different factors of a specified kind; or

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(c) may be fixed or varied by reference to the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician or by reference to other matters,

or that may do any combination of those things.
