

NSW Legislative Council Public Accountability Committee

Inquiry into the regulation of building standards, building quality and building disputes

DUNGOG SHIRE COUNCIL

OPENING STATEMENT

Thank you for providing the opportunity to participate in this inquiry I (Nicholas Greenhalgh) am attending this Hearing representing Dungog Shire Council where I am currently employed as the sole Accredited Certifier for the Council. When on leave Council engages a consultant Building Surveyor to undertake certification services

Dungog Shire Council is part of the Hunter Region and the Lower Hunter Sub-Region located at the footings of the Barrington Tops National Park with an area of 2248 sq Kilometres and has a population of 8,500. The Shire consists of rugged to undulating country with a proportion of river flats. The major activities undertaken within the Shire are agriculturally based.

DEVELOPMENT

The following is a statistical snapshot of Development Applications/Complying Development Certificates/Construction Certificate and Occupation Certificates issued for development in the Dungog Shire, over the past 2 years period.

2019			
Development Applications			198
Construction Certificates	Council	68	121
	Private	53	
Complying Development Certificates	Council	1	9
	Private	8	
Occupation Certificate			20
Value of work			\$30,856,879
Number of Dwellings			56

2018			
Development Applications			207
Construction Certificates	Council	87	145
	Private	58	
Complying Development Certificates	Council	0	16
	Private	16	
Occupation Certificate			72
Value of work			\$30,002,022
Number of dwellings			67

Terms of Reference

With regard to the terms of reference for this inquiry, Dungog Council would like to make a submission to item f) this being *any other related matter*. The matter of concern relates to the premature occupation of developments prior to obtaining the required occupation certificate as specified by the provisions of the Environmental Planning and Assessment Act, 1979 (as amended).

SUBMISSION

Unlawful occupation of buildings without full compliance with conditions of development consent and/or the issuing of Occupation Certificates

The matter/s raised is the risks associated with buildings being occupied without full compliance with conditions of development consent. Further the lack of legislative responsibility and accountability for Certifying Authorities to monitor compliance with such consents and ensure developments are not occupied without the issuing of the required Occupation Certificate/s.

There are two elements to this matter noting recently amended legislation which allows for Occupation Certificates to be issued for part of a building and includes a condition for the remainder of the works to be completed within 5 years. Secondly the situation where no Occupation Certificate is obtained and development is occupied. Both matters are discussed concurrently as the core concerns exist for each. In this regard the need for better regulations to ensure development is not occupied without compliance with development consent conditions and the Building Code of Australia requirements.

Further the need for appropriate allocation of a regulatory function requiring a nominated party to "follow up" on development where no final inspections are requested.

It is believed that the current system is not fit for purpose with the primary purpose being the lawful occupation of development in a manner which does not potentially result in risks to life or property due to noncompliance with legislative controls. The current system relies on self regulation where the property owners request inspections.

Situation

In 2018 Dungog Council issued 207 Development Consents. There were one hundred & forty five (145) Construction Certificates and sixteen (16) Complying Development Certificates. Seventy two (72) Occupation Certificates were issued for the same period constituting less than 50% of the total Construction Certificates issued. Of the consents issued in 2018, Sixty seven (67) were for dwellings constituting a significant portion of the total consents. Of the sixty seven (67) dwellings approved only twenty seven (27) Occupation Certificates have been issued.

It is an offence to occupy a building without the owner of the land obtaining an Occupation Certificate where an Occupation Certificate is legislatively required. A final inspection is a listed mandatory inspection for all development types which must be completed prior to the issue of the relevant Occupation Certificate. Recent legislative changes which have become operational on December 1, 2019 has seen the removal of Interim Occupation Certificates however these have been effectively replaced by virtue of Occupation Certificates now being able to be issued for specific parts or aspects of the development. Occupation Certificates issued for part of a building are required to have a condition that an Occupation Certificate must be issued for the whole building within 5 years.

The issue for consideration is the number of developments which do not have final inspections undertaken to confirm compliance with conditions of consent. Nor are there Occupation Certificates (part or whole of building) issued for those development that have had no final inspection.

The consequence of premature and unlawful occupation or use of developments prior to full compliance with the conditions of development consent and the issue of the occupation certificate is that it can present a potential risk to life and property. Matters such a bushfire protection measures, no static water supply for fire fighting, emergency services vehicular access construction not to minimum standards, waste water treatment system not being installed correctly, pool safety fencing not installed compliant with the relevant standards, essential fire safety measures and the like present a serious risk to life and property.

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Resolved to publish Yes / No

It is considered there is a gap in the legislation which allows development to occur and to be occupied without final inspections or Occupation Certificates being issued. Also where occupation certificated are issued for part of a building there is a period of 5 years before the Occupation Certificate for the whole of the building must be issued. Both situations have the potential to have the building occupied without compliance of all requirements of the development consent and/or the Building Code of Australia.

There is no statutory obligation on the Certifier to monitor the potential unlawful occupation or to follow up on the Occupation Certificates issued for part of a building which is subject to a condition requiring completion within the 5 years this situation potentially leads to the building and its occupants being at risk.

There are provisions within the legislation which makes it an offence to occupy a building without an occupation certificate which is binding on the owner/s of the property. However the unauthorised occupation of buildings do not become apparent unless the owner/s subsequently approach the Certifier for an Occupation Certificate which may be never or several years or decades after the unauthorised occupation.

Recommendations

- 1) The Environmental Planning and Assessment Act 1979 and the associated Regulations be amended to mandate that the Certifying Authority acting as the Principal Certifying Authority undertake regular inspections, bi annually following the date of the first mandatory inspection having been undertaken to monitor the occupation or use of the building so as to ensure the development is not being occupied without the necessary certification.
- 2) The Environmental Planning and Assessment Act 1979 and the associated Regulations be amended to mandate that the Certifying Authority acting as the Principal Certifying Authority responsible for the issuing of Occupation Certificate for part of a building which has a condition requiring an Occupation Certificate be obtain for the entire building within 5 year, that the responsible Certifier undertake a follow-up inspection at the end of the 5 year period. This is only necessary where no Occupation Certificate has been issued in the interim period.

Document tendered by
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