Submission No 119

INQUIRY INTO REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES

Organisation: Byles Creek Valley Union Inc

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PARLIAMENTARY INQUIRY INTO BUILDING STANDARDS IN NSW
Submission from Byles Creek Valley Union Inc

Role of Council with applications

Councils must have a fully inclusive checklist for DAs and should not accept any application unless ALL required documentation is submitted and has been checked off by Council officers.

If information submitted by an applicant is found to be deficient, erroneous, conflicting etc the clock must be reset to completely restart. This would ensure applicants wanting a speedy approval will learn to submit correct information at the first instance.

If an application is found to be erroneous during the process of assessment, not only must the clock stop, the application must not be allowed to progress until the issue is rectified eg numerous Arboricultural reports are submitted which are incomplete, tree surveys are incomplete etc. resulting in approvals where trees are impacted that according to the Arborist's report don't appear to actually exist. The impact or loss is then "unfortunate" as it was not picked up during the application process. Similarly with Bushfire reports being non compliant with Planning for Bushfire Protection, Vegetation types for APZs are wrongly assessed, Shadow diagrams being inaccurate etc

The time frame for assessing DAs should be reconsidered to allow Council time to properly assess applications especially when Integrated or a large development involving numerous areas eg heritage, Arboricultural, ecological etc.

All Councils MUST make all documents listed in the E P and A Act and GIPA Act open access during the assessment process. All reports from all departments within Council MUST be made publicly and openly available immediately including any info prior to the notification period
Hornsby Council for example will not do so with numerous important documents eg RFS reports, until AFTER the application has been determined at which point it is too late for any related Community concerns. This has been noted as unacceptable by the IPC but Council still refuse to supply these documents during the deliberative process. This has resulted in approvals which do not comply with residents not having an opportunity to give informed comment on same.

Final decisions by Council on DAs should be made in a situation where all departments MUST agree that the proposal is compliant - i.e. Planners must not be able to over-rule any department where there is non compliance with that department's regulations e.g. known and documented info re incomplete tree survey maps cannot be ignored by planners. This would also mean that the recommendations from other departments made to comply with regulations and Council policies MUST be adhered to by Planners.

Certification

All Certifiers including Private Certifiers MUST have to have an onsite inspection before any approval

Certification made on incorrect, misleading, incomplete information supplied by the developer / applicant must be overturned at any point if found to be erroneous despite any implications of works having to be stopped / demolished etc. There must be legislation to allow the Private Certification to be overturned if erroneous. Applicants presently appear to be able to sit on such certification until the three month window has almost expired giving Council no time to overturn.

Inconsistencies between reports MUST be picked up by Council and / or a certifier eg when the ecologist notes there must be offset planting and a landscape plan is created to reflect this for a subdivision but then the APZs cannot be achieved for a later DA so the essential ecological and landscape plans are discarded and watered down to allow the development to proceed.

The Land and Environment Court system is a major problem where the above occurs and the Commissioners sign off on new plans for dwellings to ensure a development goes ahead despite it flying in the face of the original approved subdivision plans which were only approved due to eg offsets being provided being like for like and onsite.

The Land and Environment Court should not be able to accept revisions – or totally new plans - that are presented during the course of a hearing as it removes any ability of other parties to evaluate the impact of the new plans on the local community – and of Council to assess whether the new plans are compliant.

Plans that have been rejected by Local Planning Panels are then appealed in the LEC; the developer then seeks permission to change the plans that he is appealing on – and then changes them again several times, without any further full and proper assessment being possible by either LPP or Council. The LEC is being used as a tool by developers to circumvent proper assessment.

The Land and Environment system whereby an Appeal on a refusal means approval of completely different plans. It therefore does not matter at all what plans are put before Council in an application nor how inappropriate or non compliant. Once there is an Appeal, the plans are changed, they are then changed again and again and again before, during and after the Court Hearing. The final approved plans barely resemble what was original ruled upon by Council or the Local Planning Panel. Neighbours have no idea what is finally approved having never seen any of the changes made during the LEC process. This makes a mockery of the whole system of Council approvals and it makes the professional work of the Local Planning Panels irrelevant.

Developers know of the above and suggest they are willing to take Council to the LEC if there is a refusal. Due to the hefty ongoing and escalating Court costs to Councils, planners appear to try to approve whatever they can to avoid these costs.

Private Certifiers:
Companies who allow / encourage their workers to sign off on “dodgy” non compliant work must be responsible for incorrect approvals.

If work is found to be non compliant with Conditions of Consent, there MUST be a stop work ordered for the site until the non compliance is resolved. If this means demolition then so be it. The cost is to be born by whoever approved the non compliant works, the applicant if found to have submitted erroneous, incomplete or conflicting information or if unapproved, by the developer / owner builder.

Individuals who sign off on non compliant work must be degregistered and the company for which they work must be held responsible.

Individuals who refuse to sign off on non compliant work must have an outlet to apply to if there is undue pressure put on them by their employer to certify such “dodgy” work

Private Certification carried out privately means the Private certifier is unlikely to be paid for a refusal

Private Certifiers must not be allowed to approve something Council has already refused

If Council approves a DA, Council must be therefore the body who signs off on the Construction Certificate

If there are to be Private Certifiers, Council should allocate these from a list of registered PCs. Those used should be chosen by Council but on a rotation basis whereby developers get a different certifier for each development to ensure there is no

Private Certifiers are quite often trained only as Town Planners. They often appear to be single or two certifiers working together. They often therefore do not have the knowledge to be able to sign off on engineering, bushfire, Arboricultural, ecological, heritage etc issues and yet they are doing so. This has to stop.

Private certifiers as well as bushfire consultants etc appear to have to be registered. As such to ensure transparency, they must therefore have to register all reports including refusals on a publicly available website to stop developers shopping around for the report they want.

We are aware of situations where Bushfire Reports have stated clearly non compliance but these have never surfaced and another “compliant” report has been submitted with the DA with no record anywhere that there had been an earlier refusal.

Simply fining Private Certifiers has not worked. When the list of fines is perused, there are often numerous fines issued to the same Certifier or even just a warning yet the mess they have approved remains and it appears the payment they receive from the Applicants is well worth the fines incurred. There must be a deregistration for serious malpractice and at the very least, deregistration after a set number of small repeated breaches eg three.

Incorrect certification cannot be allowed to over ride already approved conditions of consent

Councils' DCPs must have clout - there is no point having these as being "just a suggestion". Speed limits are set for vehicles - so should standards for buildings be set

Australian Standards must be enforced on every work site for every construction and in all Conditions of Consent – there can be no grey areas. The same MUST apply to Planning for Bushfire Protection regulations.

If the RFS is to sign off or give GTAs for a DA, they MUST note areas of a DA which do not comply instead of just handing out GTAs saying what is to occur. The plans approved are often approved when compliance with the GTAs has not been met but RFS do not specifically say this in their reports stating only the conditions to be followed. These Conditions are clearly noted in Planning for Bushfire Protection and therefore should no need to be reiterated BUT if non compliance is seen, this MUST be noted by the RFS when the plans are referred to them.

Compliance Officers

Compliance officers MUST not arrange a meeting onsite with a developer at a given time when there is an issue reported of non-compliance with works

on site - this obviously gives the developer time to stop the non compliance prior to meeting onsite with compliance officers

Compliance officers must understand that MUST in a condition means MUST - it does not mean 'oh well they haven't polluted yet so it doesn't really mater that there are no sediment barriers and that they are already working - you have to give some leeway to the developers" or "they weren't working out of hours - it was just men in orange vests on a worksite doing household chores" - despite there being only a frame and the workers were nail gunning gyprock at 6.30 on a Sunday morning.

Compliance officers should not be the ones who check compliance re Arboricultural issues – this should be done by Council's arborists who understand what is required by AS4970 – Protection of Trees on Development Sites. It appears presently any unauthorised tree works at an address where there is work taking place becomes a compliance issue even when the tree/s in question are no where near the construction.

All trees to be removed on a site must be clearly specified – if they are not, they should not be removed despite that these unmarked trees may be inside the building envelope. If they are not noted / approved for removal they cannot be removed.

Council if the Certifiers, should have to sign off on certification of important aspects of construction not just rely on the certification provided by the applicant. Any certification from an applicant is paid for by the applicant and is therefore potentially completed to ensure payment.

The culture that exists in the suburbs at present is of great concern. It appears to be a "development must go ahead" despite the non compliance issues. There is too much reliance on self assessment or assessment by certification from those willing to turn a blind eye to non compliance. The submitting of erroneous, misleading, incomplete and conflicting information has become a major problem and Private Certification has further brought these issues into the limelight with substandard and non compliant certifications. Please look into rectifying all of these issues to stop what is looking like a future glut of dangerous, short lived developments putting lives, communities and our environment at risk.

We thank you for this inquiry.