Getting Keys in Doors

Addressing local government and statutory authority barriers and cost pressures to building new homes in NSW

Contents

Introduction

With a target of building 377,000 new homes in NSW over the next 5 years, there has been a lot of commentary on addressing land shortages, increasing density in existing urban areas and reducing DA timeframes to improve housing supply. Whilst these are key issues, other barriers and regulatory controls are also impacting on housing affordability and the delivery of new housing. To provide a foundation for achieving these ambitious housing targets it is critical that opportunities to remove unnecessary regulation, encourage efficiencies and simplify the process are actioned.

The 2024 report *"Review of housing supply challenges and policy options for New South Wales"* produced by the NSW Productivity and Equality Commission[1] identified the need to create a more pro-housing regulatory environment to support homebuilding in NSW. This is a principle that needs to be embraced by all levels of government. When it comes to new housing, local government requirements go beyond just assessing the DA and can have impacts throughout the building approval and construction process. This includes the need for multiple separate approvals under different legislative frameworks and slow processes. In its report, the Productivity Commission identified the need to streamline and harmonise local government construction-related controls with a focus on feasibility.

This report outlines various local government and statutory authority barriers or requirements that are making the building of new homes in NSW more complex, increasing timeframes and adding cost. We have provided recommendations to address these barriers, make regulatory systems more efficient and help achieve a pro-housing regulatory environment.

It is estimated that if implemented, the initiatives suggested in this report could reduce the cost of housing construction in NSW by $165M annually and reduce overall construction timeframes by 180 days for projects.

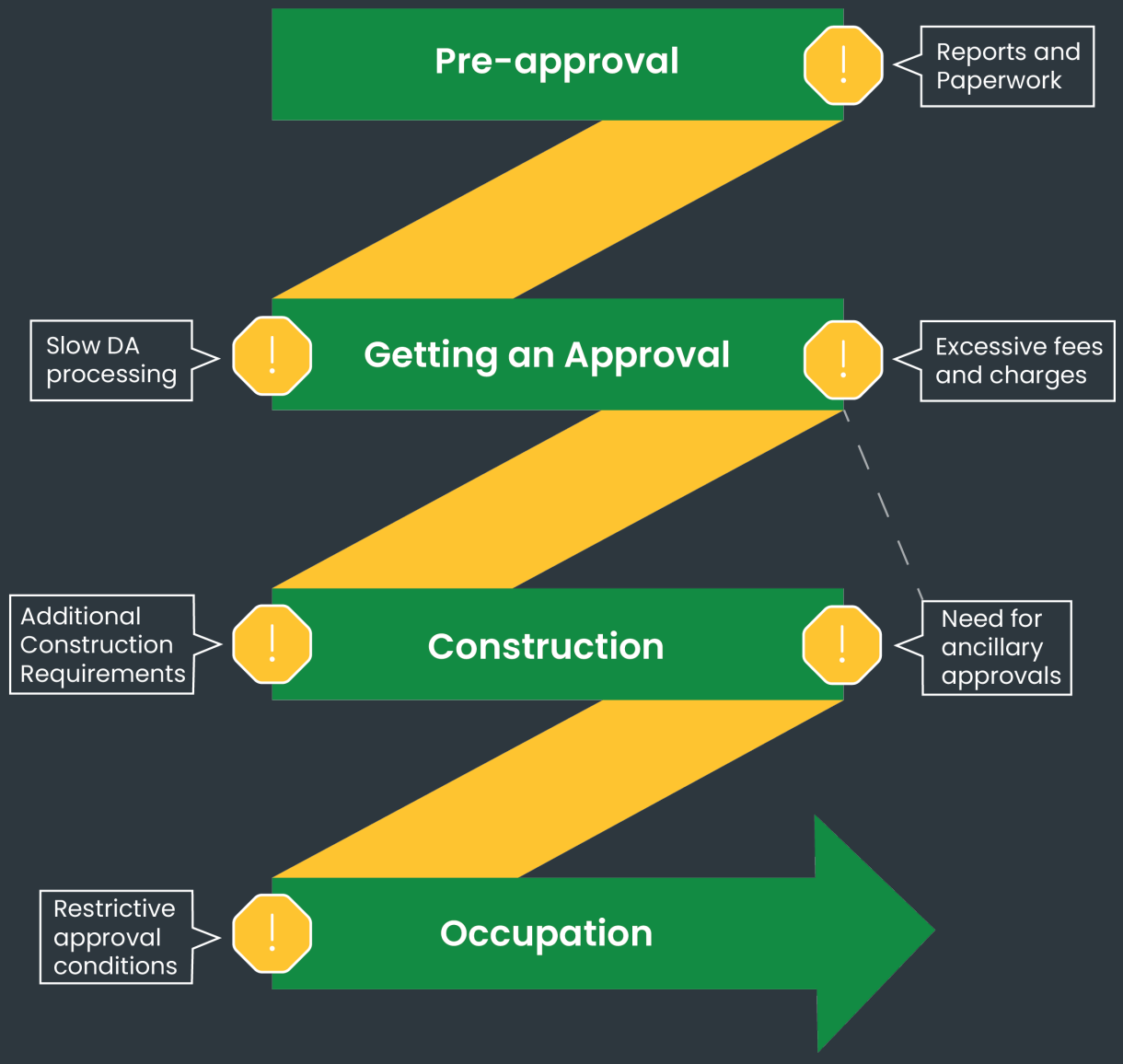
The time to act is now so we can get on with the job of getting more 'keys in doors'.

[1] NSW Productivity and Equality Commission, 2024, *Review of housing supply challenges and policy options for New South Wales Final report* August 2024

Where are the barriers?

Barriers exist throughout the construction process from quote to completion. These barriers add multiple layers of red tape which in turn slows down construction and adds cost.

Figure 1 – Delays in the Construction Process



How can it be improved

The current NSW Planning System is slow, complex and difficult to navigate. Various organisations including HIA have advocated for broader reform aimed at simplifying the system and making it more efficient.

Reforms of this nature will take time and so this paper focuses on changes that can be implemented today to address some of the barriers that are common to most projects.

Implementing these simple changes would remove unnecessary red tape, reduce costs and deliver significant improvements throughout the construction process.

Table 1 contains a list of potential opportunities that HIA has identified to address some of the barriers within the current system. In most cases these changes are easy to deliver and can be achieved with no or only minor legislative amendments.

Table 1 - Summary of Recommendations

Rec no	Recommendation	Page
Reduce unnecessary costs associated with DAs		
1	Remove council fees associated with the notification of a proposed low rise residential development to adjoining properties.	7
2	Builders must be accepted as having the skills to confirm the estimated cost of development for projects valued at $3 million or less.	7
Speed up the processing of DAs		
3, 4, 5	The time taken by councils to accept DAs for lodgement needs to be reduced.	9
6, 7	Clearer guidelines are needed for councils to accept DAs submitted for new housing on land in the process of being subdivided.	11
8, 9, 10	An independent DA Arbitrator should be appointed as part of a simpler and less costly development appeals process for low rise residential developments.	12
Building codes and standards are not planning controls		
11	Councils should not be able to set higher building standards than the NCC.	15
Statutory requirements of NSW Government agencies are too conservative		
12	The future use of adjoining properties needs to be considered in assessing bushfire hazard.	17
13	Qualified electricians must be permitted to install safety covers on overhead power lines on behalf of network operators.	18
Making stormwater management easier		
14, 15, 16, 17	More practical and consistent options for managing stormwater in new developments must be adopted.	19
Why do we need more approvals		
18, 19	Driveways and other works in the footpath shouldn't need separate council approval.	22
Being able to move in shouldn't be that difficult		
20, 21	Landscaping and ancillary works shouldn't need to be completed before a new house can be occupied.	24

How soon can it be done

For each of the recommendations in this report, we have proposed an implementation timeframe as listed in Table 2. Most of the recommendations can be implemented within a short timeframe and deliver substantial improvements.

These timeframes have been suggested taking into consideration the significance of the recommendation and the level of complexity involved in implementation. Recommendations that can be delivered through Circulars and Guidance Notes generally have shorter timeframes, whilst those recommendations that require legislative changes have longer timeframes.

Table 2 – Implementation Timeframe Guide

Recommendation	Suggested Timeframe
Immediate	Within 3 months
Short term	3 - 6 months
Medium term	6 -12 months
Long term	Within 24 months

Abbreviations

Table 3 – List of Abbreviations

Acronym	Term
ABCB	Australian Building Codes Board
ASP	Accredited Service Provider
AS/NZS 3500.3	AS/NZS 3500.3 Plumbing and drainage — Stormwater drainage
BASIX	Building Sustainability Index
BCA	Building Code of Australia
BCNSW	Building Commission NSW
CC	Construction Certificate
CDC	Complying Development Certificate
Codes SEPP	State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
DA	Development Application
DCP	Development Control Plan
DCCEEW	NSW Department of Climate Change, Energy, the Environment and Water
DPHI	NSW Department of Planning, Housing and Infrastructure
EDC	Estimated Development Cost
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
EPI	Environmental Planning Instrument
HIA	Housing Industry Association

Acronym	Term
IGA	Intergovernmental Agreement
IPART	Independent Pricing and Regulatory Tribunal
LEC	Land and Environment Court of NSW
LGA	Local Government Area
LG Act	Local Government Act 1993
LG Regulation	Local Government (General) Regulation 2021
LGNSW	Local Government NSW
Low rise residential development	Single or secondary dwellings, dual occupancies and associated ancillary development
NCC	National Construction Code
OC	Occupation Certificate
OSD	On-Site Detention
PBP2019	Planning for Bush Fire Protection 2019
PCA	Plumbing Code of Australia
P&D Regulation	Plumbing and Drainage Regulation 2017
Roads Act	Roads Act 1993
SEPP	State Environmental Planning Policy
Sustainable Buildings SEPP	State Environmental Planning Policy (Sustainable Buildings) 2022
TMP	Traffic Management Plan

Reduce unnecessary costs associated with DAs

There should be no fees associated with publicly exhibiting a DA

Recommendation 1

The NSW Government amend Schedule 4 of the EP&A Regulation to remove the ability for councils to charge notification fees for low rise residential development.

Timeframe – Immediate

What is the problem

Under Community Participation Plans developed by councils, the public exhibition of a proposed development is generally required as part of the DA assessment. This includes low rise residential development. Public exhibition generally involves notification on the council's website and written correspondence to adjoining properties that share a boundary with the site. The cost to councils associated with this process for routine development is minimal.

Some councils, however, impose a fee for a DA that is publicly exhibited. These fees are additional to the DA fee and can vary across councils. For low rise residential developments, Hawkesbury City Council charges $223.20[2], in the City of Newcastle $320.00[3], whilst in Willoughby City Council the fee is $866.00[4]. These charges seem disproportionate to the actual costs that would be incurred by a Council to notify adjoining landowners and occupants.

As notification is a part of the DA assessment process, it is appropriate that any costs to councils are considered to be already included in the existing DA fees. The ability for councils to charge notification fees for low rise residential developments should therefore be removed.

What is the Impact

It is estimated that notification fees for low rise residential developments could cost industry and the community more than $5 million per year.

Verifying the Estimated Development Cost

Recommendation 2

DPHI amends Planning Circular PS 24-002 to specify that for developments with an EDC of $3 million or less, a council must accept the methodology submitted with the DA where it has been prepared by a suitability qualified person as specified in the Circular.

Timeframe – Immediate

What is the problem

In March 2024, changes to how development costs are calculated for planning purposes were introduced. This included the adoption of a single estimated development cost (EDC) methodology. To support the changes, guidance on who should provide cost estimates and how consent authorities can verify those estimates was published by DPHI.

[2] https://www.hawkesbury.nsw.gov.au/__data/assets/pdf_file/0007/154888/Operational-Plan-2024-2025-v6.pdf
[3] https://newcastle.nsw.gov.au/getmedia/84a1d6bd-1d12-4217-8c88-5cac33917c48/Delivering-Newcastle-2040-2024-25.pdf
[4] https://www.willoughby.nsw.gov.au/files/assets/public/v/1/documents/publications-reports-master-plans-strategies-action-plans/ecm_7031224_v1_2024-2025-adopted-fees-and-charges-24062024.pdf

This guidance states that:[5]:

- for development costed up to $100,000, the EDC should be estimated by the applicant or a suitably qualified person, and the methodology used to do this submitted with the application
- for development costed between $100,000 and $3 million, the EDC should be estimated by a suitably qualified person, and the methodology used to do this submitted with the application.

As stated in the Planning Circular issued by DPHI, a suitably qualified person can be a builder who is licensed to undertake the proposed works, a registered architect, a qualified and accredited building designer, a quantity surveyor or a person who is licensed and has the relevant qualifications and proven experience in costing of development works at least to a similar scale and type as is proposed.

Some councils however currently restrict who can verify the EDC. Waverley Council specifies in its *Development Application Guide*[6] that for development costs ≥ $500,000, a Registered Quantity Surveyor's detailed cost report is required. Randwick City Council, Willoughby City Council and the City of Canterbury Bankstown are just some of the other councils that have similar requirements which are inconsistent with the Planning Circular.

Noting the guidance published by DPHI, councils should be accepting an EDC prepared by a licensed builder for developments under $3 million in value.

What is the impact

The fee associated with engaging a registered quantity surveyor to calculate the EDC is over $1,000 per project. The time taken to obtain the quantity surveyors assessment also adds on average 3 weeks to the process.

Estimating is an essential part of preparing a tender or building contract price so a builder has the necessary skills to estimate the cost of the works. It is often the case that the quantity surveyor simply confirms the cost estimate developed by the builder within the tender or contract. The additional costs associated with a quantity surveyors report is unnecessary and can be avoided.

[5] https://www.planning.nsw.gov.au/sites/default/files/2024-02/planning-circular-ps-24-002.pdf
[6] https://www.waverley.nsw.gov.au/__data/assets/pdf_file/0008/230939/Waverley_Development_Application_Guide.pdf

Speed up the processing of DAs

Delays between DA Submission and DA Lodgement

Recommendation 3

DPHI updates advice through a Planning Circular or similar:

1. Requiring the consent authority notify the applicant of the DA fees within 2 days of the application being submitted on the NSW Planning Portal,
2. Specifying that any requests for further information for residential development must be made by the consent authority within 7 days of submission and that only 1 request may be made per application, and
3. Specifying that the consent authority cannot request information unless the council could reject the application under section 39 of the EP&A Act without the requested information being provided.

Timeframe – Immediate

Recommendation 4

The NSW Government amend Section 92 of the EP&A Regulation to commence the statutory assessment period for a DA on the day on which the application is submitted on the NSW Planning Portal.

Timeframe – Short Term

Recommendation 5

The NSW Government updates the NSW Planning Portal to enable DA fees to be paid at the time of submission of the application.

Timeframe – Long Term

What is the Problem

Since July 2021 it has been a requirement that all DAs be 'submitted' electronically via the NSW Planning Portal. However, under the EP&A Regulation (section 24(3)), the DA is not 'lodged' until the day on which the application fees are paid[7]. This usually does not occur until the fees have been calculated by the consent authority. Under the Regulation (section 256(2))[8] councils have 14 days after a DA has been submitted to advise the applicant of the applicable fees. Noting that the DA fees are prescribed in the Regulation, councils should be in position to advise the applicant of the required fees much sooner than 14 days. The Portal should also be able to provide DA fee information and facilitate payment at the time of lodgement.

Critically, until the fees are paid and the DA is lodged, the timeframes specified in the Regulation for councils to assess and determine the DA do not commence.

[7] https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0759#sec.24
[8] https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0759#sec.256

The minimum standard outlined in the *Environmental Planning and Assessment (Statement of Expectations)* Order 2024 issued on 1 July 2024 is that councils should lodge applications within 14 days on average reducing to an average of 7 days from 1 July 2025[9]. However, according to the NSW Government's 'Council League table' the average lodgement days (that is the total calendar days between submission and lodgement) for more than 50 councils exceeds 14 days this financial year as at the end of December 2024. Some councils are still in excess of 50 days[10].

What is the Impact

The period between submission and lodgement is used by some councils to undertake a preliminary assessment of the DA against the relevant planning controls and other requirements. HIA is aware of examples where councils have made multiple requests for different information during this period. As the assessment clock does not start until lodgement, this in effect extends the statutory assessment timeframes. It also delays access to the appeal rights (deemed refusal) which would be available to the applicant.

Section 39 of the EP&A Regulation sets out the circumstances where a council can reject an application prior to lodgement. These circumstances relate to whether the application is clear about the development consent being sought and whether the required level of detail has been provided. A high proportion of the requests by councils for information in the pre-lodgement phase is for other matters not listed in the EP&A Regulation. Requests for further information during the pre-lodgement phase should only be for information or documents to be submitted with the application as required by the EP&A Regulation (section 24(1)(b))[11].

Whilst the Statement of Expectations Order seeks to reduce the lodgement timeframes, there is still an opportunity to improve the pre-lodgement process and further reduce timeframes. This will seek to provide greater consistency, ensure procedures are fair and transparent and shift the process towards a presumption of lodgement. This could potentially drive efficiencies within councils and speed up the processing by of DAs by up to 2 weeks.

[9] https://www.planning.nsw.gov.au/sites/default/files/2024-07/epaa-statement-of-expectations-order-2024.pdf
[10] https://app.powerbi.com/
[11] https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0759#sec.24

Enabling the approval of development on unregistered land

Recommendation 6

DPHI publish a Planning Circular directing councils to accept a DA made on unregistered land where:

1. Consent of the developer/landowner is obtained to submit the DA,
2. Relevant roads within the subdivision have been constructed up to the base pavement level, and
3. The DA includes a lot disclosure plan which outlines the location of any relevant services or infrastructure.

Timeframe – Immediate.

Recommendation 7

The NSW Government establish a working group consisting of relevant stakeholders including DPHI, LGNSW and industry bodies to further investigate opportunities to enable the lodgement and assessment of CDC applications on unregistered land.

Timeframe – Short Term.

What is the Problem

As a result of the high demand and shortage of greenfield land, most new allotments in NSW are purchased 'off the plan'. Contracts are exchanged and the deposit paid for the purchase of the land months before the subdivision is completed. It is also not uncommon for contracts to be exchanged before the subdivision work has commenced.

Even after the subdivision work has been completed, the processes associated with obtaining relevant clearances and the granting of the Subdivision Certificate takes time. This means it could be weeks to months before the new land subdivision is formally registered.

Well before the land subdivision has been registered, it is often the case that the future owner of the land has selected a new house design and signed a contract with the builder. However, the lodgement of the DA for the construction of the new house does not occur until after the new allotment of land has been registered. This is because most councils will not accept the DA prior to the registration of the land. As a result, construction can be delayed as it could be some months before the development consent for the new house has been granted.

Earlier lodgement of the DA would allow the land registration and the DA processes to run in parallel and gain substantial productivity benefits. HIA understands that there are no specific provisions within the EP&A Act or associated Regulations that would exclude a DA being submitted on unregistered land.

Where councils do currently accept the lodgement of a DA prior to registration, it is only under certain circumstances and conditions which exclude the majority of new dwelling applications. These conditions which vary amongst councils include:

- That the land developer also undertakes the construction of the dwellings,
- New roads associated with the subdivision have been constructed,
- Lot drainage has been installed,
- Earthworks have been completed and,
- The new lots have been pegged out by a registered surveyor.

HIA considers that these conditions are overly conservative and restrictive. The inconsistent approach and narrow circumstances prescribed by councils is delaying the potential early assessment and approval of a significant number of new dwellings within greenfield areas. Facilitating the lodgement of applications on land that is yet to be registered would allow much of the planning approval and associated administrative tasks to be completed prior to land registration. This enables the onsite construction works to commence earlier, reducing costs for both the builder and the homebuyer.

Enabling early lodgement will also benefit councils as the applications for larger subdivisions would be lodged progressively allowing for a more balanced workload for councils.

As legislative change is not required, clarity could be provided to councils and industry through a planning circular or similar issued by DPHI. Such a circular would direct councils to accept a DA made on unregistered land where:

1. Consent of the developer/landowner is obtained to submit the DA,
2. Relevant roads within the subdivision have been constructed up to the base pavement level, and
3. The DA includes a lot disclosure plan which outlines the location of any relevant services or infrastructure.

This would ensure the relevant provisions of the EP&A Act are met and provide sufficient information about the site for the council to assess the development. Any development consent could be issued as deferred commencement or with conditions requiring the subdivision plan to be registered with NSW Land Registry Services for the consent to become active or before any relevant CC is issued.

Not all new dwellings require a DA and rather can be assessed as complying development by councils or registered certifiers. In assessing an application for a CDC, the certifier will often rely on a Section 10.7 Certificate issued by the council. This certificate provides planning information about the property and can only be issued once the new subdivision is registered. This may prevent the assessment of CDC applications prior to registration. However, as a high proportion of new housing in greenfield areas is assessed as complying development, opportunities to facilitate the lodgement of CDC applications on unregistered land should be further explored. Section 4.28 of the EP&A Act already provides for a deferred commencement CDC to be issued.

What is the Impact
Delays in obtaining development consent risks additional costs for the home buyer as construction costs may increase over that time. The owner may also need to pay rent, mortgage repayments and other costs for an extended duration whilst waiting for the new house to be completed.

Facilitating the early lodgement of a DA could reduce overall construction timeframes by an average of 10 weeks. Allowing for any construction cost increases, this could save the homeowner upwards of $40,000 over the life of the mortgage.

Establish an Independent DA Arbitrator for low rise residential developments

Recommendation 8

The NSW Government establish an independent DA Arbitrator to consider appeals under the EP&A Act related to low rise residential developments.

Timeframe – Medium Term

Recommendation 9

The NSW Government develop guidance information for applicants and homeowners outlining the appeal rights provided under the EP&A Act. This advice is to be given to applicants on submission of a DA on the NSW Planning Portal.

Timeframe – Immediate

Recommendation 10

The NSW Planning Portal be configured to notify applicants when the statutory assessment timeframes for a DA are exceeded.

Timeframe – Short Term

What is the problem
Under the EP&A Act, an applicant can appeal the decision made by a council in relation to a DA. Appeals can relate to the decision itself or the conditions of the development consent. An appeal can also be made where the DA has not been determined within the statutory assessment time period. This is referred to as a deemed refusal.

All appeals whether it be an addition to an existing dwelling or a major project are heard by the LEC of NSW. In 2022, environmental planning and protection appeals accounted for 61% of the LEC's finalised caseload. Appeals under s8.7 of the EP&A Act relating to DAs accounted for 69% of these cases. More than half of these related to deemed refusals.

While the appeal rights are the same, appeals for smaller scale development such as single residential dwellings only account for a small proportion of the appeals heard by the court. The reasons for the lower appeal rate include the high costs associated with an appeal, need for legal representation and lack of understanding of appeal rights in general.

For low-rise residential development (being single dwellings and dual occupancies), the Court has adopted a streamlined conciliation/hearing process. This seeks to simplify and speed up the appeal process for these types of developments. Even so, the court cost alone for an appeal is $5,528 (based on a $500,000 dwelling) and can take around 9 weeks.

The limited use of appeals has contributed to the blow-out in approval timeframes by councils. Whilst a DA that has not been

determined within 40 days can be appealed (deemed refusal[12]), councils know that the likelihood of an applicant lodging an appeal is low. Therefore, there are no real consequences for councils where the DA assessment timeframes exceed the statutory period. This undermines the basic checks and balances within the EP&A Act that are designed to ensure a DA is processed in a timely way.

Within Greater Sydney alone, the average timeframe taken by councils in the six months to the end of December 2024 to assess a DA for a single or secondary dwelling ranged between 29 days and 213 days depending on the council. The combined overall average was 91 days. Only 1 council had an average assessment timeframe of 40 days or less. Whilst some applications may be more complex or need further information, the time taken to assess similar types of development should not vary to such a degree between councils.

Applicants need to be better informed and have access to easier, more cost-effective appeals to restore the balance. It will also serve to encourage councils to improve processes and be more efficient in the way applications are processed. More streamlined processes are already being implemented by some councils including Newcastle City Council[13]. This has delivered a substantial reduction in assessment timeframes for minor and routine development.

A more practical approach to LEC appeals could be achieved through the establishment of an independent DA Arbitrator for low rise residential development. The Arbitrator could adopt a process similar to that used by the LEC for these developments which is further streamlined. The aim should be to determine the majority of appeals within 14 days with a maximum timeframe of 28 days. An indicative appeals process is given in Figure 2 below:

Figure 2 – Indicative appeals process under a DA arbitrator

[12]https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0759#sec.91
[13]https://newcastle.nsw.gov.au/development/development-applications/accelerated-development-applications

There is a strong potential that an independent DA Arbitrator would receive a high number of applications particularly in the early stages of operation. It is critical that it is suitably resourced to process cases in an efficient and timely way. Processes and procedures including application forms or documentation requirements that are easy to understand and in plain-English must be adopted to support both the Arbitrator and the parties involved.

The costs for an appeal should reflect the lower level of jurisdiction and be proportionate to the costs of the development. Court fees should be capped at 25% of the relevant DA fee for the project.

To further minimise costs, there should be a preference for the Arbitrator to consider matters without the need for either party to engage legal representation.

This model is similar to the approach adopted in Queensland. The Queensland Development Tribunal can consider building, plumbing and planning decisions made by local government and private certifiers. These Tribunals are intended to be low cost and accessible. Hearings are conducted informally and parties to an appeal are not allowed legal representation at tribunal hearings[14]. The appeal fee for a dwelling is $447.00 (or $743.00 if a site inspection is required).

For the benefits of an independent DA Arbitrator to be fully realised it is important that applicants are aware of the availability of the Arbitrator and understand their rights under the legislation. Guidance information for applicants and homeowners must be developed and provided upon submission of the DA on the NSW Planning Portal. A notification from the NSW Planning Portal should also be provided to applicants when the statutory assessment timeframes are exceeded.

What is the impact

The costs, timeframes and complexity for individual homeowners can be a disincentive to making an appeal. To lodge an appeal, the applicant must complete the application form on the LEC website[15]. Completion of the form would be difficult for anyone without legal training due to the extent of information needed to be provided.

Introducing an independent DA Arbitrator would enable appeals to be assessed more efficiently and at a lower cost. It would put downward pressure on DA timeframes and mean DAs are determined on average at least 3 – 4 weeks faster.

It would also assist in reducing the current backlog of cases in the LEC and allow the court to focus on the more complex developments.

[14] https://www.qld.gov.au/housing/building-home/building-complaints/appealing-development-tribunals/development-tribunals

[15] https://lec.nsw.gov.au/content/dam/dcj/ctsd/lec/documents/forms/application_form_1_classes_1_2_3.doc

Building Codes and Standards are not planning controls

Address local government interventions that conflict with technical building and plumbing regulation

Recommendation 11

Amend the EP&A Regulation and P&D Regulation to specify that any provision in an EPI (other than a SEPP), DCP, local policy or similar document prepared by a council, or a planning condition that imposes a higher minimum standard than the NCC has no effect.

Timeframe – Immediate

What is the Problem
Council controls that impose higher requirements than the NCC

The NCC sets the minimum necessary technical standards for the design and construction of buildings and plumbing systems across Australia. It is published by the ABCB and consists of the BCA and PCA.

When determining the content of the NCC, the ABCB undertakes extensive regulatory impact assessments and detailed public consultations to ensure requirements —

- have a rigorously tested rationale; and
- effectively and proportionally address applicable issues; and
- create benefits to society that outweigh costs; and
- consider non-regulatory alternatives; and
- consider the competitive effects of regulation; and
- are not unnecessarily restrictive.

It is increasingly common practice for local councils to include planning controls in DCPs and local policies that address matters regulated by the NCC. Often these controls impose higher standards than are required by the NCC.

Some examples of these controls include:

- **Ceilings heights** – requiring a minimum ceiling height of 2.7 metres to habitable rooms,
- **Natural lighting** – requiring habitable rooms have windows that are at least 15% of the floor area of the room,
- **Livable (accessible) housing** – requiring new residential developments incorporate livable housing features including in some cases gold or platinum level features,
- **Exterior colour restrictions to reduce urban heat** – despite colour being a significant factor for building thermal performance.

These controls are adopted by councils without any form of regulatory impact assessment and can impose significant costs on new building work.

Conflicts with the Building Sustainability Index (BASIX)
In NSW, the Sustainable Buildings SEPP regulates the water, energy efficiency and thermal performance of new buildings. It does this though BASIX. The SEPP contains a provision (Section 2.2) that states any competing provision of

an EPI or DCP has no effect if it aims to reduce potable water consumption or greenhouse gas emissions[16].

BASIX currently allows the selection of gas appliances for heating, cooking and hot water supply. Bans on gas appliances imposed by councils through DCPs would have no effect if they were based on sustainability objectives because they would be overridden by the Sustainable Buildings SEPP. To circumvent this planning control, some NSW councils are actively imposing restrictions on gas appliances on the grounds of improving indoor air quality. This approach is also being actively encouraged by certain advocacy groups[17]. Indoor air quality within buildings is regulated by the NCC and relevant standards for the installation of gas appliances including *AS/NZS 5601.1:2022 Gas installations, Part 1: General installations*. Councils that have imposed bans on the installation of new gas appliances include Waverley Council, Parramatta City Council and Lane Cove Council. Further regulation through planning controls creates regulatory duplication and is unnecessary.

BASIX also seeks to reduce greenhouse gas emissions through lowering heating and cooling demand, by ensuring good building thermal performance relative to the local climate. External roof and wall colour have a significant impact on building thermal performance. Light colours can provide benefit in hotter (cooling dominant) climates; however, in other locations where heating dominates due to cold winters, darker colours are beneficial. Further, in these colder climates dark colours are less susceptible to condensation risk.

Planning interventions to limit colour selection, or to mandate light colours can have a direct conflict with meeting the thermal requirements under BASIX. This can result in higher energy consumption and increased greenhouse gas emissions; and increased risk of condensation leading to negative outcomes for building durability and occupant health and amenity. These issues are not adequately considered in developing planning controls.

Commitments under the ABCB Intergovernmental Agreement

The NSW Government is a signatory to the ABCB IGA[18] which seeks to provide nationally consistent technical building standards. To achieve this objective the IGA includes a commitment from the States and Territories (Section 19.3d) to reducing, restricting or validating local government interventions (variations) to the NCC.

In Queensland, Section 31 of the *Building Act 1975*[19] prohibits a local law, local planning instrument or local government resolution including provisions about building work, to the extent a building assessment provision, which includes the NCC, applies to the building work. If a building assessment provision is included, the local law, local planning instrument or local government resolution is of no effect.

There is currently no restriction on NSW councils imposing requirements that exceed the NCC's standards. Regulatory changes are required in NSW to give effect to the commitment under the ABCB IGA and prevent local governments from setting requirements through planning controls that impose higher standards than the NCC.

What is the Impact

A report prepared for IPART NSW in 2014 by the Centre for International Economics conservatively estimated that local government variations to the NCC was costing NSW $36 million per year[20].

Noting the rapid increase in the number of local government variations and increases in construction costs since 2014, HIA estimates that the costs associated with local government interventions in NSW has increased to over $65 million per year.

[16] https://legislation.nsw.gov.au/view/html/inforce/current/epi-2022-0521#sec.2.2
[17] https://350.org.au/detailed-policy-guide-to-all-electric-gas-free-new-homes-and-businesses
[18] https://www.abcb.gov.au/sites/default/files/resources/2022/ABCB-IGA-2020.pdf
[19] https://www.legislation.qld.gov.au/view/html/inforce/current/act-1975-011#sec.31
[20] The Centre for International Economics, 2014, *Local Government Compliance and Enforcement Final Report, October 2014, page 72.*

Statutory Requirements of NSW Government agencies are too conservative

Bush fire prone land controls need to consider future development

Recommendation 12

Amend PBP2019 to allow bush fire hazard assessments to consider the future use of the land where surrounding land has been rezoned for residential purposes.

Timeframe – Medium Term

What is the Problem

It is not uncommon for the development of a greenfield subdivision to occur on land with areas of vegetation that in the undeveloped state is 'bushfire prone' land. As the land is developed and the level of vegetation reduced, this risk decreases.

Where land is developed in stages or as parcels of land may be subdivided at different times, a new subdivision may adjoin land that has not yet been developed. Where this occurs, the subdivision will need to consider the bushfire risk posed by the remnant vegetation on the adjoining allotment. Dwellings constructed within the subdivision before the adjoining site is developed will generally need to incorporate bushfire protection measures.

Although there is a risk of a bushfire occurring before the adjoining land is developed which could pose a threat, this risk is low particularly in greenfield development areas. Bushfire prone land hazard assessments should therefore take into consideration the future use of the land in determining the risk and associated controls that apply to a development.

Consideration of the future use of land is an accepted principle in other NCC Referenced Standards. *AS 4055:2021 Wind loads for housing*, for example states that in determining the terrain category, a reasonable assessment of the infill development in the next 5 years should be made. This allows the assessment to be more reflective of the conditions the subject building is likely to be exposed to over its life.

What is the Impact

The need to consider bushfire risk adds to the costs for the subdivision. For any future dwellings the cost associated with bushfire protection measures can be between $13,000 and $30,000 depending on the determined bushfire attack level for the dwelling. This is adding unnecessary cost as once the adjoining land is developed, the bushfire risk would be low and additional construction standards would not apply. In essence it acts as a penalty to 'first-movers' into new developments.

Make Tiger Tail Installations a Contestable Service

Recommendation 13

Amend the ASP Scheme Rules to include as a contestable service, the installation of temporary line covers on an electricity network operators' assets.

Timeframe – Immediate

What is the Problem

Temporary line covers (tiger tails) to overhead power lines are used as part of safety management controls to identify the presence of overhead power lines which are in proximity to construction sites to minimise the risk of accidental contact.

Under the current NSW ASP Scheme Rules, the installation of tiger tails and temporary line covers on electricity network operator assets is not a contestable service. This means that these installations cannot be undertaken by ASPs, unless directly associated with contestable connection works or contestable asset relocations being carried out by the ASP.

As it is not a contestable service, the installation of tiger tails for most construction projects can only be undertaken by the relevant electricity network operator (Ausgrid, Endeavor Energy, Essential Energy). A builder must make a request to the relevant network operator for the installation and pay the required fee.

A 2022 review of the ASP Scheme Rules identified the need to expand the list of contestable works currently listed in the ASP Scheme Rules (Recommendation 9)[21]. DCCEEW which administers the Scheme Rules has confirmed it supports an amendment to the Rules, however the amendment has not yet been progressed.

What is the Impact

Tiger tails (power line covers) can take up to 16 - 18 weeks to organise through the network operator. This is causing unnecessary delays to projects which can be avoided if ASPs were permitted to undertake tiger tail installations. These delays have been further exacerbated in recent times by the industrial action taken by the Electrical Trades Union.

[21] https://www.energy.nsw.gov.au/sites/default/files/2023-03/ASP-Scheme-Review-Final-Report.PDF

Making stormwater management easier

Stormwater management requirements cause confusion and impact project feasibility

Recommendation 14

The NSW Government amend the LG Regulation to exempt stormwater drainage serving low rise residential development from the need for any separate approvals, if it:

1. satisfies the requirements of *AS/NZS 3500.3,* and
2. can be achieved to a street kerb or existing inter-allotment drainage system.

Timeframe – Immediate

Recommendation 15

For low rise residential development on properties that drain to the rear without access to an inter-allotment drainage easement, the NSW Government permit the use of suitability sized rainwater tanks in combination with infiltration and absorption trenches for overflow and surface water management without the need for separate approvals.

Timeframe – Immediate

Recommendation 16

For low rise residential development on properties that are subject to OSD, the NSW Government provides for the installation of a rainwater tank in lieu of an OSD system without the need for separate approvals where the rainwater tank meets specified standards.

Timeframe – Short Term

Recommendation 17

The NSW Government amend Schedule 2 of the EP&A Regulation to require that Section 10.7 Planning Certificates identify if OSD requirements apply to the property when undertaking development.

Timeframe – Short Term

What is the Problem

Inconsistent Stormwater Drainage Requirements across Councils

As part of a new development, adequate provision must be made for the collection and disposal of rain and stormwater runoff from building roofs and hard surfaces. The methods for stormwater management and disposal will vary depending on the type of development and can include:

- Drainage to the street gutter via gravity or charged systems,
- Piped via interallotment drainage easements,
- On-site disposal such as absorption trenches, and
- On-site detention (OSD) systems.

Stormwater disposal must be in accordance with the relevant council specifications. These specifications can vary considerably across council areas. This can include restrictions on the use of charged stormwater systems[22] or

[22] https://www.wollongong.nsw.gov.au/plan-and-build/development-planning-rules/flooding-stormwater-and-development/domestic-stormwater-drainage-systems

absorption trenches, the need for and sizing of OSD systems, minimum requirements for rainwater tanks and obligations to create inter-allotment drainage systems.

Furthermore, the Codes SEPP requires all stormwater drainage systems and connections to public drainage systems or inter-allotment drainage systems to be either approved under Section 68 of the LG Act, or comply with the requirements for the disposal of stormwater contained in the DCP applicable to the land. There are inconsistencies across councils in the application of Section 68 of the LG Act. A stormwater drainage system may require approval in one LGA but not in another which creates further challenges for those seeking to demonstrate compliance. A simplified approach to stormwater management which is consistent across council areas is needed.

Stormwater drainage from a residential dwelling that satisfies the requirements of AS/NZS 3500.3 and can be achieved to a street kerb or existing inter-allotment drainage system will not have any impact on downstream properties. It is also unlikely to significantly increase the risk of flooding. If it can reasonably be expected that drainage to the street or easement was anticipated when the allotment was created, no further approvals associated with stormwater management should be required for these properties.

Infiltration/Absorption Trenches

In older areas access to inter-allotment drainage easements is less common. For properties which drain to the rear, this can create difficulties as stormwater management options are more limited.

Infiltration and absorption trenches are designed to hold rainwater which is then dispersed over time through evaporation and infiltration into the surrounding soils. Whilst they can be very effective, these systems are usually not preferred due to capacity concerns, mainly in periods of heavy or prolonged rain. The effectiveness of infiltration and absorption trenches in certain soil types such as loose sands or heavy clays can restrict their use. Adequate space on the site is also needed for infiltration and to prevent any impacts on adjoining properties.

It is common therefore for councils to require the creation of a drainage easement over a downstream property as part of a development in lieu of infiltration and absorption trenches. The creation of an easement is not simple as it requires the consent of the downstream property owner. It can be time consuming and the construction and registration of the easement can come with significant costs. Compensation for the use of the land will also need to be negotiated with the downstream owner.

The capacity of rainwater tanks, which are generally required to meet the requirements of BASIX, to contribute to stormwater management needs to be recognised more broadly. Suitably sized rainwater tanks in combination with infiltration or absorption trenches for overflow and surface water management is sufficient to manage average rainfall and is accepted by some councils[23]. These systems should be adopted across all areas for low rise residential development where drainage to the street cannot be achieved and there is no existing inter-allotment drainage easement.

Suggested system requirements could include:

- A rainwater tank that:
  - has a minimum volume of 2,000 litres per 100m^2 of roof area,
  - is connected to all toilets, the cold water tap for the washing machine, and all outdoor taps,
- Overflow from the rainwater tank and any surface water drainage is connected to a infiltration pit or absorption trench that has a minimum capacity of 2m^3 per 100m^2 of roof and hardstand area,
- Infiltration pit and absorption trenches are a minimum of 600mm wide by 600mm deep,
- The ground where the infiltration pit or absorption trench is located shall have a minimum depth of soil to any shale or rock of 1.2 metres,
- Any infiltration pit or absorption trench shall be a minimum of 3 metres from any building or property boundary and not beneath any hard surface area.

Where the above conditions are met, no further approvals should be required.

[23] https://www.blacktown.nsw.gov.au/files/assets/public/v/4/building-and-planning/dcps-amp-lap/part-c-development-in-the-residential-areas_waste.pdf

On-site Detention Systems
To control the rate of water release into the public stormwater system, the installation of on-site detention (OSD) systems may be required when undertaking development. In some areas even the construction of a single residential dwelling triggers the need for OSD. These systems usually need to be designed by a hydraulic engineer. Whilst the need to manage flood risk is recognised, OSD requirements for low rise residential developments can be excessive and disproportionate to the risk created by the development being undertaken.

As with infiltration and absorption trenches, rainwater tanks have the capacity to store water for reuse that would otherwise need to be disposed of. Whilst in some areas, rainwater tanks can be used as part of an OSD system, this is not the case in all LGAs. This further highlights the inconsistent approach to stormwater management across council areas.

For low density residential development, the installation of a rainwater tank could be used in lieu of the need for an OSD system where the rainwater tank:

- Has a minimum volume which is the greater of:
  - (a) 2,000 litres per 100m^2 of roof area, or
  - (b) the volume required by BASIX plus an additional 2,500 litres,
- Is connected to all toilets, the cold water tap for the washing machine, and all outdoor taps,
- Overflow is discharged to the street gutter or inter-allotment drainage system,
- Is configured so that 50% of the tank volume or where (b) above applies 2,500 litres, is capable of being drained via an orifice plate:
  - Within 24 hours, and
  - That has a maximum flowrate of 10 litres per second.

As it can be difficult to determine when a development is required to incorporate OSD, affected properties should be identified on the Section 10.7 certificate. This will provide greater clarity for property owners, builders, certifiers and other practitioners.

What is the Impact
The inconsistent stormwater management requirements and application of Section 68 of the LG Act creates significant issues for contractors and certifiers seeking to navigate the differing regimes across council areas. This is especially problematic when undertaking complying development. As a result, projects can be delayed and additional costs incurred in the form of fees for stormwater design consultants.

For properties that drain to the rear, the requirement to create an inter-allotment drainage easement can add significant costs to a project. Obtaining consent of the downstream property owner can take time and add further to costs in the form of compensation. In cases where the downstream owners consent cannot be negotiated, the development may ultimately not proceed impacting the delivery of new housing.

The feasibility of projects can also be impacted by the requirement to install an OSD system. The cost of installing OSD systems can be in the vicinity of $70,000 to $100,000 depending on the capacity. They also require ongoing maintenance which further adds to costs.

Why do we need more approvals

Simplify approvals for driveways and minor works within footways

Recommendation 18

The NSW Government provide for the automatic approval of driveway crossings, stormwater drainage connections and excavations within a footway/road reserve, where the work:

1. Meets prescribed design standards, and
2. Is not undertaken on a road where Transport for NSW is the relevant road authority.

Timeframe – Short Term

Recommendation 19

The NSW Government develop standardised Traffic Management Plans (TMPs) for works within the footway/road reserve.

Timeframe – Immediate

What is the problem

New developments, including the construction of a dwelling will involve works within the road reserve otherwise referred to as the council nature strip. Under the Roads Act, the approval of the relevant roads authority (local council or Transport for NSW) is required to undertake works within the road reserve.

The types of works undertaken within the road reserve that require approval typically include:

- the construction of a driveway,
- the installation of a stormwater drainage pipe connection to the kerb, and
- excavations for the connection of services.

In some areas this can require multiple approvals for the same activity particularly when it relates to a CDC application. Section 1.18 of the Codes SEPP requires that before a CDC is issued, the written consent from the relevant roads authority be obtained for the building of any kerb, crossover or driveway (vehicle crossing). This is usually in the form of an approval under Section 138 of the Roads Act. In most cases, councils request details of the relevant driveway contractor be provided as part of the Section 138 application. As these details may not be known at the time of the CDC application, an additional Section 138 application for 'design approval' is required prior to the CDC being issued. The standard vehicle crossing approval is then obtained before commencing the construction of the driveway. The fee for each application can be in the vicinity of $500. The vehicle crossing approvals given by some councils may also be time limited to as short as 7 days.

The separate approval for the construction of a vehicle crossing across a footway is not required in some interstate local government areas. In these areas approval may be given automatically where the driveway is shown on the plans submitted with the DA. In some cases a vehicle crossing may not require any approval at all where the driveway meets certain criteria. Sunshine Coast Council for example provides automatic approval for 'standard crossovers'[24]. Proponents are required to complete a checklist to determine if the conditions for a standard crossing are met. For non-standard crossings, an application is required. Automatic approval is also

[24] https://www.sunshinecoast.qld.gov.au/development/building/construction-of-vehicle-crossovers

granted in the City of Moreton Bay for residential driveways that meet specified standards[25]. Brisbane City Council has implemented a self-assessable pathway for crossover permits. The permit is available immediately if the self-assessment criteria is met[26].

In NSW, as part of the Section 138 application, a TMP, certified by an accredited/licensed Traffic Controller is commonly required to be provided. Costs associated with the preparation and implementation of these plans vary considerably depending on the extent of the works. Even for minor or short-term works, the cost of TMP can be a minimum of $1,300. This adds further to the cost of new housing.

On roads where traffic volumes and pedestrian activity is low, the risk associated with work on the road reserve is minimal. These risks can be managed without the need for a detailed TMP through the implementation of suitable work, health and safety practices, warning signs and barricades. Generic TMPs such as those within the *Driveway access to property - Design specification*[27] published by Tweed Shire Council could be developed.

In addition to the vehicle crossing approvals, excavations associated with the placement of a stormwater pipe across the footway to allow drainage to the street kerb requires a Road Opening Permit. This routine work is of a low impact and often required as part of a development consent. It should not need separate approval where the work meets specified standards such as the stormwater line being a 100mm diameter sewer grade PVC pipe and does not involve the removal of any pavement or footpath.

Similarly, excavations within the footway for the purposes of connecting electricity, gas, water, or other utility service should not need separate approval.

What is the Impact

Application fees for vehicle crossings and Section 138 applications can vary across councils. It is estimated that these fees could be up to $1,500 per project. Removing the need for the separate approval of driveways and other works within the road reserve has the potential to reduce overall costs to NSW by more than $25M per year. Reducing the number of applications that need to be processed will also have positive resource implications for councils by allowing them to distribute resources associated with this function elsewhere.

[25] https://www.moretonbay.qld.gov.au/Services/Building-Development/Building/Residential-Driveway
[26] https://www.brisbane.qld.gov.au/laws-and-permits/laws-and-permits-for-residents/footpaths-and-driveways/driveway-permits/residential-driveway-permits
[27] https://www.tweed.nsw.gov.au/files/assets/public/v/2/documents/council/council-policies/driveway-access-to-property-design-specification.pdf

Being able to move in shouldn't be that difficult

Clarify the purpose of an Occupation Certificate

Recommendation 20

DPHI and BCNSW publish guidance to councils to advise that preconditions to the issue of an OC cannot be imposed where the matter addressed by the condition does not relate to whether the building is fit to occupy or use.

Timeframe – Immediate

Recommendation 21

The NSW Government introduces as part of the building regulatory reforms currently under consideration a revised completion of works framework that:

1. Clarifies that the purpose of an OC is solely about whether the building is fit for occupation, and
2. Provides an alternative means of verifying that ancillary aspects of a development have been completed and relevant conditions of consent satisfied.

Timeframe – Long Term

What is the Problem

Before a new building can be occupied, the EP&A Act requires that an OC is issued. Under the EP&A Act, the OC verifies that the new building (or change of building use) is suitable for occupation or use in accordance with its classification under the BCA. It's intended purpose is focused solely on the building and whether it is fit for occupation to ensure the building is not a hazard to the health or safety of the occupants.

Although an OC is specific to a 'building', the consent on the other hand relates to a development and may include aspects ancillary to the building work. In the absence of any other mechanism within the EP&A Act, consent authorities are broadening the role of the OC to also certify these ancillary aspects of a development or associated conditions. It is common for development consents to have conditions that must be met prior to the issue of the OC. This can include requiring aspects such as fencing, landscaping and driveways be completed or that waste collection services be

commenced. These aspects have no relevance to the building being fit for occupation under the BCA.

A Planning Circular[28] issued by the former NSW Department of Infrastructure, Planning and Natural Resources in 2005, states that consent authorities should avoid unnecessarily requiring a condition be met before an OC can be issued if that condition could reasonably be met later. The Circular also states that the construction of a paved driveway or provision of landscaping are matters that can be completed after the OC has been issued.

The original intent and purpose of an OC, being whether a building is fit for occupation, needs to be restored. To achieve this, the completion of works certification framework should be amended to consist of the:

(a) Occupation Certificate – Required for all buildings (except Class 10b) and is solely concerned with whether the building or part is fit for occupation based on existing tests, and

(b) Completion of Works Certificate – Required for any consent where any building work is undertaken. Intended to confirm that all works associated with a development consent have been completed and relevant planning conditions have been satisfied.

Under this approach an Occupation Certificate could be issued to enable the building to be occupied whilst minor ancillary works are undertaken. Once all works are complete the Completion of Works Certificate can be issued. The OC and Completion of Works Certificate could also be issued concurrently if the development has been fully completed.

What is the Impact

The need for the completion of these ancillary works delays the issue of the OC. This was further exacerbated by the removal of the 'interim' OC provisions in December 2019.

The 2013 Planning Review White Paper (pg 196) stated

"Delays in issuing the OC can result from consent authorities imposing conditions of development consent that must be satisfied before the issue of an occupation certificate, which do not relate to whether the building is fit to occupy or use".

Financial institutions will often not release the final payment until the OC is issued. However, the drafting of consent conditions is such that the OC cannot be issued prior to the completion of ancillary works, even though those works are not within the scope of the building contract. This has financial implications for the builder due to final payments being withheld. It is a common cause of dispute between clients and builders as obtaining the OC is not the responsibility of the builder under most contracts. It can delay the homebuyer getting the keys to their new home by months, particularly if they have limited funds to complete the landscaping. This potentially extends the time a new home buyer is paying two mortgages, or rent plus a mortgage while they await approval to move into their new home.

[28] https://www.planning.nsw.gov.au/sites/default/files/2023-03/planning-circular-ps-05-001-occupation-certificates-and-conditions-of-development-consent.pdf

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