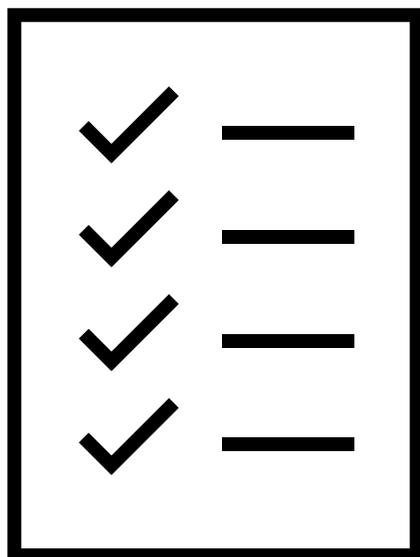


# NSW Fair Trading Certification Audit:

## What to Expect



Presenter:

Neil Diamond, Director and Registered Certifier



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# Leading up to our audit

- In August 2022 NSW Fair Trading conducted a blitz on residential construction sites in the Central West.
- Their key focus was on licensing and on quality of construction on sites.
- They also handed out warnings to builders for not having signs (both Builder's and PC signs), site fences, sign on sheets etc



# What triggered our audit?

- We are the only Registered Body Corporate certification company based in the Central West.
- Being a registered body corporate we were the most efficient way for them to carry out an audit.
- They were not auditing any Councils at that time.



## How we were notified...

- At first through the construction industry grapevine...
- On the 7<sup>th</sup> September we received an email with a formal letter from NSW Fair Trading notifying us of the commencement of an audit.
- The letter attached to the email was a direction to furnish information and records.



# How we were notified...



Fair Trading

Mr Neil Diamond  
Pro Cert Group Pty Ltd

Via email: [neil@procert.com.au](mailto:neil@procert.com.au)

Dear Neil

**Notification of commencement of audit (No. 11015278) and direction to furnish information and records**

I am writing to advise that NSW Fair Trading will conduct an audit into the work and activities as a registered certifier (Pro Cert Group Pty Ltd-RBC00011) under section 106(3) of the *Building and Development Certifiers Act 2018* (B&DCA).

The audit will firstly be facilitated through this written notice directing you to furnish records and information under section 91 of the B&DCA. The information and records you are required to furnish will be information from the records you are required to keep under clauses 49 and 50 of the Building and Development Certifiers Regulation 2020 (B&DCR).



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# First Steps in the Audit Process

- After the email I also received a phone call from the NSW Fair Trading Investigator who would run the audit.
- He advised that it would be an “audit” and not just a “review”...
- Regardless of how good a certifier you are...let the angst begin...



# The Audit Notification Letter

- Very formal and quotes the relevant pieces of legislation and applicable clauses...
  - Section 106(3) of the B&DC Act 2018.
  - Section 91 of the B&DC Act 2018.
  - Clauses 49 & 50 of the B&DC Regulation 2020
- Who exactly is being audited.
- How we had to provide the information.
- How long we had to furnish the information they wanted.

**Notice to furnish information and records under section 91 of the B&DCA within 7 days**

As an authorised officer under section 87 of the B&DCA, I direct you under section 91 of the B&DCA to furnish to me the following information and records, before 5:00 pm Wednesday, 14 September 2022, by email sent to [certifieraudits@customerservice.nsw.gov.au](mailto:certifieraudits@customerservice.nsw.gov.au) :



# What did they request?

- In our case it was a numbered list of all developments for which we had issued either a CC, OC, Compliance Certificate or CDC for since 1 January 2021.
  - at that point in time that was 18 Months of jobs to report on...
- For each of those developments listed were required to provide:
  - The type of certificate issued;
  - The building classification;
  - The name of the local government area that it is located in;
  - The address of the land or premises including lot & DP.



# Responding to the First Letter

- From running our job report our spreadsheet contained 1,430 rows of data across 25 pages.

Street Address	Suburb	Lot	DP	Local Government Area	Building Classification	Certificate Type	Certificate Number
5875 Canowindra Road	CUDAL	6	1089115	Cabonne Council	10b	OC	411.2/2021
962 Lake Canobolas Road	ORANGE	2	610003	Cabonne Council	1a; 10a; 10b	OC	657.2/2020
128 Tilga Street	CANOWINDRA	3	1204093	Cabonne Council	10a	CC	213.1/2021
8 Strom Lane	EUGOWRA	27	16181	Cabonne Council	1a; 10a	CC	216.1/2021
5875 Canowindra Road	CUDAL	6	1089115	Cabonne Council	10b	CDC	411.1/2021
5 Pinot Street	COWRA	164	1162233	Cowra Council	1a; 10a; 10b	OC	383.2/2020
3 Pinot Street	COWRA	165	1162233	Cowra Council	1a; 10a; 10b	OC	384.3/2020
16 Loch Lomond Way	DUBBO	920	1146094	Dubbo Regional Council	1a; 10a	OC	10.2/2012
9 Capital Drive	DUBBO	606	1283919	Dubbo Regional Council	7b	CC	102.1/2022
72 Brisbane Street	DUBBO	2	580341	Dubbo Regional Council	10b; 5	CC	106.1/2021
72 Brisbane Street	DUBBO	2	580341	Dubbo Regional Council	10b; 5	CC Mod	106.2/2021
72 Brisbane Street	DUBBO	2	580341	Dubbo Regional Council	10b; 5	CC	106.3/2021
64 Magnolia Boulevard	DUBBO	901	1260055	Dubbo Regional Council	1a; 10a	OC	120.2/2021
31 Nicholii Street	MONTEFIORES	2	1252692	Dubbo Regional Council	1a; 10a	OC	149.2/2021
35 Boyd Avenue	DUBBO	57	1257541	Dubbo Regional Council	1a; 10a	OC	164.2/2020
3 Fjord Court	DUBBO	3101	1259778	Dubbo Regional Council	1a; 10a	OC	170.2/2021
37 Boyd Avenue	DUBBO	56	1257541	Dubbo Regional Council	1a; 10a	OC	178.2/2020
37 East Street	DUBBO	2	122962	Dubbo Regional Council	10a; 9b	OC	179.3/2020
36 Peel Place	DUBBO	13	1252034	Dubbo Regional Council	1a; 10a	OC	189.2/2020



# What Came Next

- The next day...We received a second direction to furnish information and records for their audit.
  - Out of the list of 1430 certificates issued they selected 5.
  - For those projects they requested all documents that are on our files that we are required to keep under B&DCR.
  - The projects weren't what we expected
- Similar to first letter it is very detailed and sets out what is required, how they can request it and summarises the process so far and what the next steps are.



# The Second Request



Fair Trading

Mr Neil Diamond  
Pro Cert Group Pty Ltd

*Delivered via email to: [neil@procert.com.au](mailto:neil@procert.com.au)*

**Notice of direction to furnish information and records under s.91 of the Building and Development Certifiers Act 2018 (B&DCA)**

**Our Ref: Audit-11015278**

I refer to my previous letter dated 7 September 2022 advising you about the commencement of an audit by NSW Fair Trading and directing you to furnish information and records. I acknowledge you have complied with my direction, and you have furnished the information and records I required on 13 September 2022.

I am now giving you notice of this second direction to furnish information and records which are required so we can carry out the audit.



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# The Second Request

- What information is required under Cl. 49 & 50 of B&DCR? Records of...
  - (a) all applications,
  - (b) component certificates,
  - (c) plans/specifications certifications relied upon,
  - (d) contracts,
  - (e) critical stage inspection records,
  - (f) fire engineering reports,
  - (g) fire safety schedules,
  - (h) fire safety certificates,
  - (i) NSWFR reports,
  - (j) principal certifier appointment forms,
  - (k) documents relied upon to demonstrate compliance with the development consent, State Environment Planning Policy and the Building Code of Australia.
- **12 days given to respond with this information.**



# Responding to the Second Request

- Gather the information for each project into separate electronic files
- The certifier for that project was then tasked to review that information to try and ensure nothing had been missed...



- After that process and a double check to ensure there were no glaring holes our response was submitted via a dropbox link to NSW Fair Trading on the due date of 26<sup>th</sup> September.



# Investigator Follow Ups...

- On the 28<sup>th</sup> September I received a phone call from the Investigator who wished to discuss more details regarding our operations as a Registered Body Corporate.
- On the 5<sup>th</sup> October we received a formal email request for more information on one of the projects from another Investigator who was assisting the original one. Our response to this request was required by 12<sup>th</sup> October.
- Due to the relevant staff member for that project being on leave we were able to request an extension of time to respond to the enquiry which we were able to complete by the 14<sup>th</sup> October.
- From our response an email was received on 19<sup>th</sup> October and contained some comments that they wanted us to take on board for future projects which we have.



# Draft Findings

- After 6 weeks pass by the draft findings are issued.
- Required to acknowledge receipt of the Draft Audit Report & Findings.
- Your submission and comments on the matters contained in the Draft Audit Findings Report are requested to be provided within 14 days.
- We were able to review the Draft Audit Findings Report and provide a submission on those items by the 6<sup>th</sup> December which was acknowledged by NSW Fair Trading.



# Final Audit Report

- The Final Audit Report was issued on the 20 January 2023.
- Due to the submissions we made to the Draft Audit Findings Report and the open dialogue we maintained with the Investigators throughout the audit process we received an Education Practice Advice Letter.
- Essentially a warning and advice that they may audit us in the future to make sure we've done what we said we'd do and that we aren't continuing to do the same things they found fault with.



# The Findings

- There were, for us, essentially two sets of findings.
- The first set was in the comments provided to us as feedback after their request for more information on one particular project in October.
- The second set was in the Draft Audit Findings Report which then flowed into the Final Audit Findings Report.
- Next we'll go through a brief overview of the findings of our audit.



# Receiving Inspection Records

- Inspection records undertaken on behalf of another PC must be provided within 2 days of the inspection being carried out.
  - A Council undertaking an inspection on our behalf did not provide an inspection result to us, as the PC, within 2 days of the inspection.
  - The audit revealed that we did not have the actual inspection record within 2 days even though the inspection record was dated correctly.
  - It is an obligation for the PC to review the inspection report provided.
  - It is up to the PC to chase the inspection report if not received within the 2 day period.



# Recording Inspection results

- Inspection records are required to be:
  - Clear and unambiguous;
  - Uncluttered by notes;
  - Clearly state the inspection outcome ie Satisfactory, Unsatisfactory etc;
  - Where defects are noted it needs to be clearly stated how those were closed out, ie reinspection or other verification.
  - Reinspection reports are recommended to be on a separate record.



# Contract Wording

- Contracts for certification wording reviewed in detail.
- Our contract did not contain wording that allowed for the use of alternative certifiers.
  - This needs to be reflected in the wording of the contract.
  - This is to ensure that the applicant cannot come back at you about using someone else who is not mentioned in the contract.
  - As specific details of an alternative certifier are not likely to be known that far in advance we have put general wording into our contract
- If you don't have contracts for certification services then this is a non-compliance with legislation and will be identified by an audit.



# Registration Category

- Certification services, which includes inspections, can no longer be completed under the supervision of a higher category certifier.
- This was removed from the legislation when it changed to B&DC Act & Regulations.
- Ensure that you have the correct registration category for the development that you will be undertaking inspections on.



# Documentation of Decision Making

- Ensure that you have documented the decision making process such as an assessment report for an approval.
  - The days of an A4 page with a handwritten note saying it complies with the NCC are finished in the eyes of NSW Fair Trading.
- This is a big part of the Practice Standard which is a condition of our registration as certifiers and as such is a mandatory requirement.
- They will call into question how you arrived at a particular determination if they think it is questionable and will ask for documentation demonstrating how you arrived at your decision.



# Fire Safety Schedules for Early Works

- Part CC's that may be just for earthworks or to slab stage are still required to have Fire Safety Schedules if the development is a 1b or 2 - 9.
  - Even though there may be no fire safety measures associated with that stage.
  - Subsequent CC's for other stages which have FSS will supersede the previous one.



# Takeaways & Tips

- Don't let the angst get the better of you and always communicate in a professional and courteous manner.
- If you don't think you can meet one of their deadlines then have an open discussion with them about this and request an extension.
- Push back when you believe you are in the right however be willing to learn from the experience, i.e. be prepared to cop some things on the chin.



## Notes from the Investigators...

- Be familiar with and implement the Vol 2 Practice Standard!
- Standalone Building Commission and Building Act.
- We may see a return to registration/accreditation going to professional bodies in a co-regulation model.
- Expect audits of Class 1 developments soon as they are the biggest construction sector across NSW.
- Potential demerits based points system for builders, trades and certifiers administered by NSW Fair Trading.



# How can our experience help you?

- Hopefully this presentation has given you a taste for what an audit is like.
- We can provide services such as:
  - Review of document and assessment templates;
  - Review of procedures around applications & inspections;
- Informed by our experience and constant review of legislation.





**Environmental Development  
And Allied Professionals**

# Any questions?



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