

PUBLIC ACCOUNTABILITY COMMITTEE

Parliamentary inquiry into the regulation of building standards, building quality and building disputes

Friday 16 August 2019

Cr Linda Scott

Response to questions on notice

**Question 1**

The Hon. ROBERT BORSAK: Ms Scott, you talked about the soil contamination on that site and the certifier certified it. Do you know, as it is not clear to me, how that knowledge did come to the public notice then?

Ms SCOTT: As the Deputy Lord Mayor, I read about it in The Sydney Morning Herald. I do not know how it came to public notice.

The Hon. ROBERT BORSAK: Sorry. Not how you found out about it, I read about it in the paper too. How it got from the certifier certifying it, to the public domain. That it was not a proper process. That the soil was, in fact, contaminated. Do you know that?

Ms SCOTT: I have no knowledge of that.

The CHAIR: Do you want to take it on notice, though, and make some enquiries of council?

Ms SCOTT: Sure.

**ANSWER:**

LGNSW understands that the City of Sydney council is not aware of how the information about non-compliance with the consent provisions for the Sugarcube Apartments and Honeycomb Terraces came to public notice. From 2018 the council began to receive calls from future owners with questions about council delays in providing the necessary sign offs so that an occupation certificate could be issued, and the property purchases finalised.

As there has been significant public interest in the soil contamination issues associated with the development, council has prepared an update on its status and this is available on the website.

**Question 2**

The Hon. JOHN GRAHAM: Can I just be clear on the position you are putting to the Committee? Is it that you believe that (certification) should be returned, or that if it is returned these are the circumstances? Is the position that it should be returned or you have drawn attention to the conflict that you think many councils have expressed a view about—

The CHAIR: Or is the position that some councils have some view and some councils have another and you are trying to represent that diversity of views in local government?

The Hon. JOHN GRAHAM: Once again the diversity of views in local government.

Ms SCOTT: We love diversity. Councils, of course, were opposed to private certification when it was proposed for all the reasons we have discussed. One of the complications of taking a one size fits all approach is that at the moment councils may not support that. Should the Government consider a proposal to return certification to councils, we would call for more time for consultation with them first to better establish their views on this. At the moment I would characterise that there are different views across the State on this issue.

The CHAIR: Councillor Scott, if you want, we are happy for you to give us some further detail about that on notice, but also to address quite specifically Mr Lambert's proposal about that improved statutory obligation to have a direct communication and working relationship between councils and private certifiers if they remain on the record books.

Ms SCOTT: We know, for example, that councils like the Central Coast and Kyogle would consider having certification returned to them or would be happy to take on an expanded role in relation to the certification process. Other councils have mentioned in their submission that they would support this kind of role. For example, Willoughby and Moree Plains. Other councils would have reservations about taking on the risk and would be very interested in some of the details around the timeframe and funding.

The Hon. JOHN GRAHAM: We would definitely appreciate some of those details on notice.

**ANSWER:**

To the question of phasing out private certification and returning certification to councils, there are a diversity of views across the State. Any plan for private certification to be returned to councils would need to be carefully considered and include the following elements to allow for a gradual and well-planned transition:

- adequate consultation with local government; and
- sufficient time and resources.

In terms of the Chair's reference to Mr Lambert's proposal about "direct communication and a working relationship between councils and private certifiers", it is understood that this is a reference to recommendation no. 5 on page 19 of Mr Lambert's final report which states: *"Establish a partnership model between the state and local government in the areas of planning and building regulation:*

- *This will also require full consultation between the two levels of government together with the involvement with industry, to oversight an effective working relationship on building regulation, with two key priorities:*
  - *develop, implement and monitor a protocol governing the relation between private certifiers and councils, including roles and responsibilities with respect to compliance and enforcement. It would be advisable, in the light of the work already undertaken by BPB and local government representatives in developing a framework in this area, to progress this in conjunction with the Practice Guide.*
  - *develop and implement the Information Strategy for building regulation."*

We note the details of this proposal are discussed in chapter 13 (pages 207-209) of the report and they also include reference to the development of a practice guide for certifiers (which forms part of Recommendation 4 of Mr Lambert's report.)

LGNSW and councils support this proposal in concept, however any communication protocol cannot be implemented in isolation of other key elements of Lambert's proposals here ie the

establishment and maintenance of the practice guide and the involvement of the Building Professionals Board in executing a memorandum of understanding between LGNSW and certifiers' professional associations (ACC and AIBS).

LGNSW is aware that two reference groups were established in 2014 to i) develop a practice guide for certifiers, and ii) create a framework and approach for better cooperation between certifiers and councils. LGNSW and selected councils were involved in the latter. The reference groups enabled some degree of council and industry input to these drafts, but they would need to be tested amongst a wider audience. LGNSW would support a proposal to consult more widely with industry and local government, and it will be important during this consultation to clearly outline where these documents sit within the wider context of building reform proposals.

### **Question 3**

Ms SCOTT: We know that councils have, at one point in time, had three separate State agencies giving lists in our areas of the potential cladding that was flammable.

The Hon. JOHN GRAHAM: Do those lists correlate?

Ms SCOTT: No, they do not correlate.

The CHAIR: Who are the three agencies—Fire and Rescue?

Ms SCOTT: Fire and Rescue were doing some work on this. I might have to take that on notice.

#### **ANSWER:**

The three agencies that have provided lists of buildings with cladding that may be flammable are:

1. Department of Fair Trading;
2. Department of Planning, Industry and Environment; and
3. Fire and Rescue NSW.

### **Question 4**

The CHAIR: We have heard from a number of witnesses and stakeholders, not least of which was the Insurance Council Australia, that one of the key difficulties about knowing what is built and being able to, in the case of insurers, price risk is that there is no obligation for developers to actually keep records of what is built. Indeed on key issues such as performance-based solutions to difficult engineering issues and the certification of fire safety, the documents can sometimes be handed to insurers once a building is finished in a shoebox of different receipts, reports and records. The building industry would have to be one of the last bastions for a paper-based twentieth century, at best, record keeping system. What is local government's experience of that?

Ms SCOTT: I would probably have to take that on notice.

#### **ANSWER:**

One of the problems with building regulation today – especially the complex multistorey buildings seen over the last 10-15 years – is that changes during construction are not well-

documented; the as-built product does not necessarily align with the approved plans, and records of the variations are poor or non-existent. For this reason, councils supported Mr Lambert's proposal for a building manual and also support the Government's recent proposals for builders to declare the constructed work is consistent with the designers' plans and any variations are signed off/declared along the way.

Councils are increasingly moving to electronic record keeping in order to manage the significant volume of information, data and plans they receive. Local government supports e-lodgement for development and construction and many councils are going down this path. A centralised electronic system such as e-planning, done well, would mean that key players in the building process can access the relevant documents for a development /property. LGNSW therefore supports advancements in technology that will make processes, information and forms clearer and more accessible for everyone, and could help resolve some of the problems identified with the building/construction phase, such as access to full, relevant, reliable and up-to-date information. LGNSW supports such a system subject to there being full cost recovery for councils.