

**Better Planning Network (NSW BPN) response to
Inquiry into the regulation of building standards, building quality and building disputes,**

Firstly, we agree with all the recommendations made in the committee's interim report.

Using the Terms of Reference as headings

- 1. That the Public Accountability Committee inquire into and report on the regulation of building standards, building quality and building disputes by government agencies in New South Wales, including:**

- (a) the role of private certification in protecting building standards, including:
(i) conflicts of interest**

BPN: This is a huge issue in building defects and goes to the heart of what's wrong. That's deregulation of the building industry. Private certifiers are employed by the developer or owner/builder. Their interest commercially is entirely with pleasing the entity that employs them. Many private certifiers have had multiple complaints found against them involving repeated fines and sometimes suspension. Yet most if not all are still practising, and councils are often unable to take action against their failures.

- (ii) effectiveness of inspections**

BPN Recommendation

For complex constructions, critical stage inspection requirements should require that all works and materials used are to a satisfactory standard and meet all requirements set out in design specifications to allow the next stage to proceed.

- (iii) accountability of private certifiers**

BPN: Double accountabilities, to owner and public good, are incompatible

- (iv) alternatives to private certifiers,**

BPN Recommendation

Return Certification to public control

The clear alternative to private certifiers is to place certifiers under the direct employ of a government agency, which could mean a direct return to councils as the consent authority as happened in New Zealand where it continues to function, or through a building commission similar to the model proposed by the Campbell Inquiry.

- (b) the adequacy of consumer protections for owners and purchasers of new apartments/dwellings, and limitations on building insurance and compensation schemes, including: (i) the extent of insurance coverage and limitations of existing statutory protections
(ii) the effectiveness and integrity of insurance provisions under the *Home Building Act 1989*
(iii) liability for defects in apartment buildings,**

BPN believes Homeowners in multi-storey complexes should have at least the same rights to protection against construction defects as any other homeowner.

(c) the role of strata committees in responding to building defects discovered in common property, including the protections offered for all strata owners in disputes that impact on only a minority of strata owners,

(d) case studies related to flammable cladding on NSW buildings and the defects discovered in Mascot Towers and the Opal Tower,

BPN Recommendation

The Better Planning Network believes that builders should be obliged to follow approved design plans to the letter. The current practice where builders can in effect override designs and specifications should be outlawed. The plans should be certified and the build process should be a straightforward execution of the plans with little guesswork remaining.

The design process in a Design & Construct should be a collaborative exercise where the builder has input into how they want to build and their requirements form part of the brief for the designers to create a holistic solution, not the current situation of builders dictating and overriding the expertise of designers. Builders would then need to answer to the designs at the end of their work with documented evidence.

The authors of the Opal Towers Investigation Report have come up with excellent recommendations to remedy the current malpractices associated with “design and build”.

(e) the current status and degree of implementation of recommendations of reports into the building industry including the Lambert report 2016, the Shergold/Weir report 2018 and the Opal Tower investigation final report 2019, and

The Better Planning Network particularly commends **recommendations 13, 14, 15, 16 and 17 of the *Opal Tower Investigation Report*:**

13. The creation of a government Registered Engineers database developed in partnership with an appropriate professional body.

14. Independent third party checking and certification of engineering designs and subsequent changes to the design of critical elements by a Registered Engineer, including confirmation of what are the critical elements for all major construction projects.

15. Critical stage, on-site checking and certification by a Registered Engineer that construction is as per the design for all major construction projects. All changes to identified critical structural elements that are proposed and made during construction should also be certified by an independent Registered Engineer.

16. An online database be created, where all certifications may be viewed by a broad range of stakeholders including owners and prospective owners; before, during and after construction.

The aim is to increase transparency of the approval and certification process.

17. A Building Structure Review Board be formed, with the major purpose being to establish and publish the facts relating to structural damage of buildings arising from design and construction, investigate their causes and to recommend changes to Codes and Regulations where appropriate.¹

The same recommendations are more comprehensively outlined at the end of the Report

¹ Opal Tower Investigation Final Report, February 2019 p.2

(p.15) to give a fuller context to what the authors clearly see as necessary “mechanisms to raise the overall standards of building design and construction and community confidence” .²

(f) any other related matter.

The BPN considers the following steps to be the minimum required to begin the process of restoring public faith in the building industry:

1. Improved training and education for all those involved in building construction work; including in the areas of compliance standards in all trades.
 2. Comprehensive training and education for all construction-related disciplines through fully accredited TAFE course and apprenticeships.
 3. A mechanism that ensures all Principal Certifying Authorities are fully accredited and have a comprehensive understanding of the complex requirements of large-scale building where relevant.
 4. Any nexus of dependence between certifiers and developers be removed, preferably by returning the certification process to public/government bodies or instrumentalities.
 5. Strengthening the powers of the Building Professionals Board and/or of Councils to take quick action against failures of certifiers to achieve timely rectification.
 6. The enactment of legislation that effectively prevents the practice of developers being allowed to effectively rid themselves of liability for faulty construction by folding up their companies.
 7. The enactment of legislation that protects the rights of all owners to fully rectify faults caused by shoddy construction methods to a high standard
 8. The restoration of full Home Building Compensation cover to all high-rise buildings and that such cover extend to 10 years.
 9. A system whereby architects and engineers, when required, continue to be engaged throughout the construction phase instead of the current "design and construct" model.
 10. Significantly improved inspection and compliance enforcement, as strengthened and improved regulation is insufficient in itself unless also implemented.
2. That the committee table an interim report as soon as practical and its final report by 14 May 2020.¹

Two (of many) examples of regulation failure in Newcastle

1. Merewether An owner/builder of a property in Merewether, and other properties in the Newcastle LGA, flouted development conditions with respect to stormwater drainage and other matters. The private certifier (Principal Certifying Authority) refused to communicate at all with neighbouring residents about how compliance with a development approval was to be ensured. Neighbours could find no remedy through Newcastle Council, Building Professionals Board or the Department of Fair Trading. The matter featured on Channel 9's "A Current Affair" under the title "The battle for Janet Street" on Wednesday 25 June 2014. The affected neighbours had to leave because the development went ahead despite clear evidence that the stormwater pipes and other infrastructure were shoddily installed and causing damage to their property. The worst the PCA had to endure was a \$1000 fine from the Building Professionals Board, despite having record of breaches found by the Building Professionals Board.
2. 4 storey apartment development at 29-31 Laman St Cooks Hill with City of Newcastle (CoN. ie Newcastle City Council) being the consent authority. The approved Council DA is DA2015/0876.01. This site is located within the Cooks Hill Heritage Conservation Area.
Relevant facts:
 - Residents identify that the developer has breached the consent and built outside approved DA (see CoN DA2015/0876.01) after the scaffolding is removed. Breaches include the building exceeding approved height by >0.5m; unauthorised extra floor space; unauthorised extra balconies;

² Opal Tower Investigation Final Report, February 2019 p.15

unauthorised windows overlooking neighbour; unauthorised openings to basement carpark facing neighbour; air conditioner placement et al. This unauthorised construction is in no way minor and has significant impacts on surrounding neighbours privacy, noise impacts and visual impacts on the surrounding Heritage Conservation Area. The breaches also contradict the reason for the approved DA which was clearly stated to be "improving the privacy of neighbours".

- Residents contact Council who confirm that they have not received any notification of the breaches of consent by the Principal Certifying Authority (PCA). Council deny any responsibility in taking action and refer residents to the PCA.

- CHCG contacts Building Professionals Board who say council should be enforcing consent conditions.

- PCA agrees to meet with affected neighbours and CHCG. PCA inspects the site and agrees with residents regarding breaches. PCA provides in writing how breaches will be rectified and to what extent.

- Subsequently, no action is taken to rectify breaches as agreed and then the original PCA advises CHCG that the role of PCA has recently been taken over another PCA (located on the Central Coast, not Newcastle). Developer then submits amended plans which will effectively approve all DA breaches retrospectively (still under consideration by CoN. See DA2015/0876.02).

- New PCA then advises he is issuing an Interim Occupation Certificate for the majority of building despite areas still subject to the DA process and written consent condition for the approved DA2015/0876.01 not being met.

In summary, this case highlights issues around the current development application and building regulation process and the role of private certifiers. In particular the option for developers to "shop around" for a PCA mid-process, the lack of any action by the consent authority (ie. council) and the lack of response by the Building Professionals Board. The community struggles to have any confidence in a system where processes such as detailed here are allowed to occur and where the negative impacts on residents amenity and the broader community are ignored.

Thank you for your attention to our submission,

Therese Doyle

On behalf of the NSW Better Planning Network, and
Newcastle Hunter Urban Planning and Transport Alliance

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