

Public Accountability Committee

Regulation of Building Standards, Building Quality and Building Disputes – **Questions on Notice**

Ms Rose Webb (Deputy Secretary) and Mr John Tansey (Executive Director) and Mr David Chandler (Building Commissioner) – Better Regulation Division – Department of Customer Service

Question 1

The Hon. DAVID SHOEBRIDGE (Chair): We were in Newcastle on Thursday and there had been some 45 buildings identified as having flammable cladding in Newcastle—10 of them high-risk, I think. The council had not written a letter to them, issued an order or visited any of the buildings. In their defence, one of the reasons they relied upon was the failure of the New South Wales Government to tell them even the basis upon which buildings had been included as high-risk. They did not even know the criteria under which buildings had been included as high-risk. That meant that they were starting from a standing start in working out how to respond. Was Newcastle city council wrong? **Has the New South Wales Government informed councils why it is and on what criteria buildings were identified as high-risk?**

Mr TANSEY: Yes, we have. We have stated that in evidence here before about the essential criteria following inspections by Fire and Rescue NSW and when they determine that the configuration, the amount and the location of the cladding on a building gives them concern it might increase the fire risk—either for the spread of fire or firefighting evacuation—that is when we put it on the potential high-risk list. That has been communicated in all of our correspondence as well, I believe, out to councils. It has been communicated to councils through our Cladding Support Unit and through the town hall meetings or roundtables we have had with councils. I can seek to double-check that it is on the website, but I believe it is there. We have made the grounds of that assessment clear since I would say December 2017 when the first formal referrals were made to councils.

The Hon. NATALIE WARD: Mr Tansey, you might want to take this one on notice, but has Newcastle council contacted you to follow up on specifics?

Mr TANSEY: I will have to take it on notice. Dealing with those, case managing them and working with each of the councils that have high-risk buildings in their area is the Cladding Support Unit's day-to-day tasks. I am happy to check and see what engagement we have had specifically with Newcastle.

Answer:

The NSW Cladding Taskforce has consistently communicated to councils that multi-storey residential buildings with potentially combustible cladding pose a particularly significant fire safety risk. In addition to this, each letter sent from the Commissioner for Fire + Rescue NSW to councils since December 2017 that referred to councils buildings of concern in relation to potentially combustible cladding identifies the addresses of relevant properties as well as the reasons the Commissioner considers the property to potentially pose fire safety concerns. The template referral letter contains the following information (emphasis added):

“ FRNSW concerns relate to the type, amount, arrangement and location of cladding material provided to the façade of the above listed premises, and how this cladding could permit the spread of fire. FRNSW is also concerned with the risk that this fire spread potentially poses to the safety of persons in the event of fire.

Council is requested to inspect the above listed premises in accordance with the provisions of Section 119T (6) of the Environmental *Planning and Assessment Act 1979* (EP&A Act).

The purpose of the inspection is to determine whether or not the provisions for fire safety has been made in or in connection with each of the premises, are adequate. Provision for fire safety is defined in Section 4 of the EP&A Act as:

“provision for fire safety means provision for any or all of the following:

- (a) the safety of persons in the event of fire,*
- (b) the prevention of fire,*
- (c) the detection of fire,*
- (d) the suppression of fire,*
- (e) the prevention of the spread of fire.”*

Council is requested to forward a report of the inspection for each premises listed above to the Commissioner of FRNSW by no later than [date].”

Newcastle City Council first received such a letter in the referrals made in December 2017.

Refer to the answer to Question II regarding other interaction with the City of Newcastle Council.

Information related to these criteria has been published in Taskforce materials and in website information of the Taskforce since this time.

Question II

Mr CHANDLER: I do not believe that those buildings are out there undiscovered and under addressed. My informal advice from Fire and Rescue NSW is that all of these projects have been assessed. I am aware there are photographs of all of these projects that exist, because those photographs of all of these projects have helped inform some of the work that I have done. I understand that the local brigades in each of those locations are actually fully briefed on which are the riskier and which are the less risky. I do not believe that anybody is out there in a situation where nobody knows where cladding is or what the issues are.

The Hon. DAVID SHOEBRIDGE (Chair): But if none of them have been visited, there has not even been a letter to council, let alone an order issued, we are more than 2½ years post Grenfell. Is that good enough?

Mr CHANDLER: Every project has been visited.

Mr TANSEY: What I would happily do, if I may, is take that on notice. I would be happy to give you specific details back of our own records of engagement with Newcastle. I have already said we would contest the number of transactions, but my understanding is that their progress against identification of high-risk buildings is better than that. Obviously it was not webcast on Thursday so we could not look in, as we have tried to do with some of the other hearings. I did skim read the transcripts this morning. My observation in that is that there may in fact have been—underlying some of the question around numbers—some level of confusion about the origins of different numbers between the Department of Planning, Industry and Environment [DPIE] cladding register and referrals from Fire and Rescue NSW and council's own.

I think we have covered some of the territory in previous hearings of this group and acknowledged that people have taken some time to come to understanding the source of all numbers. My observation was that perhaps that was part of the confusion on the part of Newcastle different numbers. I would be happy to take it on notice and give you advice back on at the task force's record of clearance of numbers, which, as I said, I think is actually better than you might have got the sense of from the testimony last week.

Answer:

Between its establishment in September 2019 and 25 February 2020 the Cladding Support Unit had recorded at least 19 interactions with the City of Newcastle Council. The Cladding Support Unit understands that the City of Newcastle has developed a structured program for inspecting and assessing affected buildings and is currently implementing this program.

Question III

The Hon. DAVID SHOEBRIDGE (Chair): To follow on from that, the power to call in documents is not contained in the bill that is before the Parliament. Where are you going to get that power from?

Mr CHANDLER: I have the power to call in relevant designs and drawings related to the building in the new bill.

The Hon. DAVID SHOEBRIDGE (Chair): What about the power to issue stop work orders?

Mr CHANDLER: I have the power to stop work where work is being performed that is not satisfactory.

The Hon. DAVID SHOEBRIDGE (Chair): Where do you say that power comes from?

Mr CHANDLER: I will bring you back a summary of that. I did not bring the bill with me.

Answer:

The Design and Building Practitioners Bill 2019 (the Bill) provides the Secretary of the Department with comprehensive powers of investigation, enforcement and compliance. Under clause 99, the Secretary is able to delegate any of their powers provided by the Bill to any other person employed by the Department, including the NSW Building Commissioner. Upon commencement, it is intended that the Building Commissioner and,

where appropriate, other officers will be delegated these powers to ensure compliance is enforced.

Pursuant to clause 82, the Secretary (and by way of delegation, the Building Commissioner) may issue stop work order to a building practitioner or owner of land on which work is being carried out if the Secretary is of the opinion that building work is being carried out, or is likely to be carried out in contravention of the Act, or in circumstances where the contravention of the Act could result in significant harm to the public.

The Bill provides clear powers to enable authorised officers, as appointed by the Secretary, to do anything that is necessary to be done for an authorised purpose. An authorised purpose includes investigating, monitoring and enforcing compliance with the requirements imposed by the Bill, and obtaining information or records connected with administering the Bill. Without limitation, this includes the power to inspect anything, the power to direct a person to produce records of inspection, the power to examine and inspect any records and the power to make copies of those records. As regulated designs and compliance declarations are a critical component of the new scheme, the Secretary and its authorised officers would have a broad ability to call in these documents to ensure that compliance is achieved with the requirements set out under this Bill.

The legislation will also enable the regulations to require that regulated designs and supporting compliance declarations be lodged electronically through an online portal to ensure that the NSW Government can monitor and assess plans and specifications to ensure that they are compliant with the *Building Code of Australia*.

In addition, the NSW Government is expediting the development of complementary legislation that will empower the Building Commissioner to undertake intensive and risk-based inspections of building work before an occupation certificate is issued, and at any time within six years of the building's completion. This scheme will be supported through robust compliance, enforcement and investigation powers to enable the Building Commissioner to identify and rectify any potentially serious defects. Importantly, the legislation has been designed to commence without the need for supporting regulations, providing immediate protections for consumers upon proclamation.

Question IV

The Hon. NATALIE WARD: Taking on board the questions around councils, is there a communication plan for councils?

MR TANSEY: As part of the cladding support unit there is literally daily and weekly contact with councils. Councils contact us proactively and we also reach out to councils if there is any lack of progress in their numbers. Updating literally happens with two or three officers every week.

The Hon. NATALIE WARD: Presumably including Newcastle council.

MR TANSEY: I am sure including Newcastle, but I will double-check the number of interactions there. We have also had a number of—I keep referring to them as roundtable meetings with councils. There will be another one of those this week, because we keep trying to create that direct engagement with councils. That is an important part of the communication strategy. It is iterative and we know that the interested parties in the affected buildings might change over time, so we make sure that there is a bit of a cycle of continuing to push out that information

Answer:

The Cladding Support Unit has been engaging extensively with local councils and has been communicating with councils on an ongoing basis based on feedback and information gathered through this engagement, which has included onsite meetings, email and phone enquiries and two 'roundtable' council forums. The Cladding Support Unit has communicated information to councils in response to direct enquiries as well as via the Department of Customer Service website, email updates, an online collaboration tool, and the two 'roundtable' forums.

Refer to the answer to Question II above regarding interaction with the City of Newcastle Council.

Question V

The Hon. NATALIE WARD: Again, you may wish to take this one on notice, but it is probably not the case that no buildings in Newcastle have been visited. It is more likely the case that they have?

Mr TANSEY: It is absolutely the case that any of the buildings that have been identified through the task force have been inspected by Fire and Rescue NSW.

The Hon. DAVID SHOEBRIDGE (Chair): My proposition was for council, which was the relevant authority for all but the Crown Buildings. What I put to you was not that the buildings had not been visited by any State agency, it was the council that has the job to see it through has not visited, has not issued an order, has not issued a letter. It was their unambiguous evidence –

Mr TANSEY: I have taken on notice that I would happily provide to the Committee our own taskforce records of what those interactions have been for the high-risk buildings.

Answer:

Refer to the answer to Question II regarding interaction with the City of Newcastle Council.

Question VI

The Hon. DAVID SHOEBRIDGE (Chair): Let us be clear. Their concern was that the sheeting gets tested using AS 5113 and the sheeting may be non-flammable. What is not being tested is the system – the sheeting and the adhesive together. I have to say, Mr Tansey, your answer does not satisfy me that that is being done because the exact problem that that identified will not be picked up by the proposition you are putting.

Mr TANSEY: Chair, again, I would be very happy to take on notice what they may have told you in specific terms and give you a response on notice in specific terms about what they have said and what we know.

The Hon. DAVID SHOEBRIDGE (Chair): To be entirely clear: It was not about the flammability of the adhesive. It was the fact that it ceased to function as an adhesive once it got to 80 degrees Celsius and that it falls.

The Hon. JOHN GRAHAM: It passes your test but it does not pass the question.

The Hon. TREVOR KHAN: It is not his test.

The Hon JOHN GRAHAM: It passes the test Mr Tansey set out.

The Hon. DAVID SHOEBRIDGE (Chair): If you are going to take it on notice, on of their other suggestions was that the criteria in Building Regulation 135 which is one of the United Kingdom standards that has been applied, should be called up as a matter of urgency.

Answer:

AS 5113 requires a full scale façade test. This test takes into consideration all relevant aspects of the façade system, including the façade material itself, the specific method of fixing and/or attachment of that material to the building – which includes whether it is attached with adhesive or other means - and the quantity of debris produced during the test by any and all of the components.

Further information has been sought in relation to the fixing and attachment of cladding materials and Building Regulation 135 in the United Kingdom.

Question VII

The Hon. DAVID SHOEBRIDGE (Chair): I do not think we are going to advance much beyond that. The Building Confidence report of Shergold and Weir was finalised in February 2018. It had 24 recommendations in it. We are now two years on. How many of those recommendations have been fully implemented in New South Wales? How many of them have not been started? And, for the balance, when can we expect them to be completed? I accept that is probably best taken on notice, but if you want to tell me the highlighted ones that have been completed, let me know.

MS WEBB: Sure. I think we may have answered it on notice before but we will update. I think some of them are contained within the building and design build that is coming through.

The Hon. DAVID SHOEBRIDGE (Chair): I think we have heard previously that was 15 per cent.

MS WEBB: That is probably right. Some are ones that are being dealt with nationally through the Building Ministers Forum and the ABCC, some have happened and some are certifiers legislation. There is arrange of ways that they are being implemented. We will give you an update on where we are up to.

The Hon. DAVID SHOEBRIDGE (Chair): You will give us a detailed health check on notice.

Ms WEBB: Absolutely. We will update the one we have you before.

Answer:

NSW has completed or is progressing 20 of the recommendations of the Shergold Weir report, with the remaining four recommendations under active consideration. Specifically, NSW has implemented 9 recommendations in part or in full through the progression of the *Design and Building Practitioners Bill 2019*. A further 7 recommendations are being addressed in part or in full through the *new Building and Development Certifiers Act 2018* and supporting regulations, which are scheduled to commence on 1 July 2020.

NSW is also supporting the progression of the Shergold Weir Report on a national scale through its participation in the Building Ministers' Forum, which is supporting the development of a national response to the Report. As part of this, in July 2019, Building Ministers across Australia agreed to the establishment of an Implementation Team to develop and publicly report on a National Framework for the consistent implementation of the recommendations of the Shergold Weir report, as well as the design, construction and certification of complex buildings.

Work on the recommendations is underway, and a number of responses are well advanced, including action on education and training, model continuing professional development requirements, support for performance solutions, and definition of complex buildings. The Team has been tasked with finalising all responses by August 2021, and responses will be delivered progressively through this period, as each body of work is finalised. An overview of the national implementation plan is available here – www.abcb.gov.au/Resources/Publications/Corporate/Building-Confidence-National-Framework

In addition a jurisdictional *Building Confidence Report Implementation Plan* has been published on the Department of Industry, Science, Energy and Resources' website here: <https://www.industry.gov.au/data-and-publications/building-confidence-report-implementation-plan>.

Question VIII

The Hon. MATHEW MASON-COX: This might be subject to some confidences so what you can put on notice would be useful, could you give some more information to the Committee on block chain and where you are heading with that, particularly using electronic means. The everyone that touches –

Mr CHANDLER: The one-touch pad.

The Hon. MATTHEW MASON-COX: The one-touch pad.

Mr CHANDLER: That is what I offered to provide a briefing on.

The Hon. MATTHEW MASON-COX: That would be excellent to understand that in more detail.

Answer:

The reform strategy seeks to create an environment where the quality of a building is able to be rated and priced by the market, broadening the sector's view of risks away from the traditional focus on individual players and inputs into a holistic assurance landscape where buildings are observed as an aggregate product.

Digital tools will be developed to enable the deepest possible gathering of all project inputs and the differentiation of each building's trustworthiness. Systems such as 'blockchain' will permit the development of a complete record of all of the global compliance certifications from manufacture through to installation and maintenance. This will include where a product was made, who made it, to what standards it was made, who installed it, when it was installed, when it was last maintained and so on. This new digital environment will help to demonstrate that there is a value proposition which aligns the interests of certifiers, builders, developers and consumers.

The Touchpoint application is a software solution for inspection data for Class 2 Development sites that have been DA approved and commenced, but not completed. The application will:

- enable inspectors to collect and share information on the building they are inspecting
- provide a single view of each development site, that will be drawn from multiple data sources from across regulatory agencies to support compliance activity
- build a risk analytics model that will be used to identify patterns of 'at-risk' construction practices by the developers and sub/contractors, that will inform compliance and enforcement activities.

Digitisation will completely redefine how buildings, practitioners and products are insured. For the first time there will be clarity over the relative riskiness of each input, and this visibility will enable far more rational and proportionate pricing throughout the supply chain.

Through such changes it is envisaged that the NSW will establish conditions that will enable insurers to offer a first resort insurance solution for high-quality class 2 buildings from 2024.

Question IX

The Hon. MATHEW MASON-COX: Also the rating system because obviously that contemplates that and in the insurance arrangements moving forward. **What is the best practise suite and opportunities you see in the front –**

Mr CHANDLER: what the headland objectives are.

The Hon. MATHEW MASON-COX: **And the detail that might flow from the conversations you might have had.**

Answer:

The Building Commissioner will work with insurers, financiers, risk rating agencies and building industry practitioners to help develop an industry-led framework that evaluates the riskiness of building inputs (products, practitioners, certificates) and their final product (buildings). The ratings industry will develop private ratings tools for this purpose. The objective of the ratings information is to be able to ensure that high quality (low risk) is adequately rewarded in financial, insurance and consumer markets. Regulators will also be likely to acquire ratings information to enhance their market intelligence capabilities.

Providing insurers with a ratings score for individual buildings will allow them be able to identify low-risk/high-quality buildings that they are comfortable offering a 'decennial liability' insurance product (10 year first resort policy). If such products could be established for class 2 buildings it would allow those consumers to have warranty insurance for the first time since the market collapsed in 2001.