

Supplementary  
Submission  
No 29a

**INQUIRY INTO INQUIRY INTO THE OPERATIONS OF  
THE HOME BUILDING SERVICE**

**Name:** Ms Diane Condie

**Date received:** 7/11/2007

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NSW

7<sup>th</sup> November 2007

The Director  
General Purpose Standing Committee No. 2  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Attention: General Purpose Standing Committee No. 2  
Home Building Inquiry

Dear Sir/Madam

I am forwarding you my supplementary submission regarding the Home Building Inquiry.

Since my initial submission in November 2006 I have continued to endeavour to resolve this dispute unfortunately to no avail. During the past year there has been further correspondence between the Council, the Department of Planning Building Professionals Board, the Builder and myself. My son has also corresponded with the builder.

The damage to my property has not been repaired. The builder has not supplied me with an engineer's report detailing the actual work undertaken on my property. The work undertaken on my property by the builder remains unauthorised. Both the Private Certifier and Council are aware of this.

I have kept phone transcripts, a photographic record and copies of all correspondence throughout this dispute. If you require further information please do not hesitate to contact me on the numbers listed below.

I appreciate your acceptance and consideration of my supplementary submission.

I ask that my address and details be kept confidential.

Yours sincerely

Diane Condie

Attached: Terms of Reference

## Supplementary Submission

- The builder takes control of the adjoining property. As the owner of an adjoining property I have ended up with trespass, damage, unapproved work, almost four years of stress and intimidation.
- I believe my rights as a property owner were infringed when a large, well-known building company performed unauthorised work on my property as a result of non compliant excavation in association with a development site adjoining my property.
- I believe the Certification system has let me down. I am a small person against a big company. I should have been protected by the Council and the Certification system. I have no rights as I don't have a contract.
- I have been let down by the Certification system and the Council, and now it appears my only recourse is through the legal system. This is both tedious and costly.
- The System has let me down. I wrote to Council bringing to their attention my concerns before the DA was approved and contacted them again after. I placed my/had faith in Council and the certifier. But no good came of it.
- This company excavated past the boundary. Then removed earth from under my property.
- The certifier has issued an occupation certificate knowing illegal work has been undertaken on my property as a result of and in association with this property development.

- When I asked Council to help me gain authorisation of the work I was told I was ‘opening a can of worms’.
- All I wanted was a retaining wall built to ensure the structural integrity of my property and repair of the damage. Now I have unauthorised work on my property.

### **The Building Licensing System**

- I am aware this building company has many complaints against it although I believe this is not general knowledge to the public. When will something be done about this company?
- This company is licensed by the Office of Fair Trading. I can’t complain – I don’t have a contract. I am not heard.
- This building company practises intimidation.
  - Phone
  - Face to Face
  - Written.
- This company wears you down until you give up.
- When confronted with trespass and unauthorised work, this company practises intimidation, it lies and changes documents.

- This company works on adjoining property without the owner's prior knowledge or consent.
- Non compliant excavation was taken to the boundary between the two properties and further. My garage and the brick boundary fence were undermined as a result of the non compliant excavation. There was further undermining when the builder dug out sections of earth from under my garage and the boundary fence which is on my property.
- In my case, the builder feels they have control over the development property and the adjoining property.
- I requested the workmen cease work on my property and bring the engineer to the site. The construction manager arrived. He refused to contact the engineer and said he was doing as instructed and I could look at the work when it was finished. He instructed the workers to continue.
- It amazes me that a company can just do this. Over excavate, undermine property, perform work without the consent of the owner, damage property and inflict unnecessary stress and nothing is done about it. They just continue on and just deny everything that is there for all to see. We have to just accept it or pay out huge legal fees to have it fixed.
- Work practice - the engineer enters ones property without permission, on the direction of the builder. The engineer stated the builder wanted the report. I do it (trespass) all the time.
- Documentation – records lost. I believe conveniently so.

Although the engineer's reports state a dilapidation report was taken on a date which is post excavation and the engineer himself confirmed the date of the dilapidation report, when I

presented my dated photographs the engineer changed his story.

Now he states he can't find an entry for the undertaking of the dilapidation report in his diary.

Could this be because he never did visit the site until well after the excavation had been performed. He also loses all the undated hard copy photographs, not only what was on the computer when it crashed. When I produce my dated photographs which do not agree with the engineer's dates the engineer changes his story.

- This company undertook non compliant excavation. Told Council this was at the owner's request. This is a company with over 45 years experience.
- Do they already know they can get away with it, with only a \$600 fine if caught out? It took from March 04 til May 05 for them to be fined for something that was actually known in March 04.
- I have requested the builder authorise the engineer to provide me with a report detailing in full the work undertaken on my property. The builder continues to refuse to do this. I question the reason for their refusal to supply me with documentation on the work. The builder will not acknowledge in writing that work was undertaken on my property. The builder's refusal to provide me with the requested engineer's report confirms my lack of confidence in their ability to ensure the structural integrity of my property.

### **The Home Warranty Insurance Scheme**

- The Home Warranty Insurance Scheme can't help me as I don't have a contract.

- I am told the builder has insurance (Public Liability) to cover the cost of damage to adjoining properties. However, if the builder has been fined by Council for a breach the insurer will not cover the damage.
- Regarding the builder. Council is reluctant/won't go against them. The company is undertaking a lot of building in the area. This brings money to the Council. Council won't bite the hand that feeds it. The same with the Certifier who I do not believe is independent. It has been brought to my attention that this certifying company does all of the builder's certifying. The head of the certifying company has been in the media recently regarding his certifying practices – disciplinary matters.

### **Complaints Resolution and Disciplinary Powers**

- There should be something within the conditions etc that hold the developer responsible for what they cause to happen to adjoining property. The Determination does state not to enter neighbouring property. But nothing is upheld. Council should have some responsibility regarding this. It should be part of the DA approval and conditions. Council approves the DA it should be responsible for what happens as a result of that approval.
- Council has stated it does not have any regulatory powers regarding the unauthorised work. I believe this to be incorrect. Council should incorporate all building development and what is associated with it. If non compliance is found, which causes unauthorised work on an adjoining property, then Council should have the regulatory power that enables it to act on the unauthorised work, such as in my case. Council should have the regulatory powers to order the

builder to rectify the unauthorised work so as to make it approved thus ensuring adjoining property owners are not left with unlawful work on their property. (EP&A Act 80A???)

- There should be a responsibility to the adjoining property owner.
- I feel that Council is in part responsible for the problems I have today and should be held accountable. If a Council representative had addressed my concerns, which I expressed in a submission in 2003 when I received notice of the proposed development and again in April 2004 these problems would not have arisen.
- There are pivotal points where had council stepped in this dispute would never have gone on this long.
- Council did not want to be involved. Said there was no evidence of breach.
- I believe Council's reluctance to act condones this builders bad work practices.  
I believe my rights as adjoining property owner have been abused by the builder. I believe Council allowed the builder to do this by not acting appropriately/not following due process and stepping in sooner and also by only issuing a PIN and not using its regulatory powers.
- Other Councils advised they get on top of this before it escalates. Is this because their constituents are litigious, when constituents of my council generally are not?
- I have asked for Council's help in addressing the unauthorised work on my property. I do not believe Council has addressed this issue.



- I am told this builder ‘holds a lot of clout’. Is this why Council is reluctant to do anything for me? Why I was told that Council doesn’t look at all the DAs even after I had lodged a submission regarding my concerns. Why this builder was eventually served ‘notice’ but only fined a pitiful \$600. No retaining wall was enforced because the builder had been given ample time to perform remedial work. Work for which the builder refuses to give me an engineer’s report of.
- Office of Fair Trading could not help me as I did not have a contract with the builder.
- Council can use its discretionary powers. This means it can do as much or as little as it likes.
- Council is unwilling to help – no financial gain. They served a PIN of \$600 what kind of a deterrent is this? I believe \$600 is already allocated in the building costs/contingency plan.
- The Private Certifier – the Certification system has let me down. This Private Certifier does all the certification for this building company under the guise of being chosen by the owner. He is not going to bite the hand that feeds him until he has no choice. Then the fine is a PIN of only \$600.
- It has been brought to my attention that when things go wrong Council step in with no financial gain for helping me only the headache. There is no financial incentive for Council to act. I have found in my case Council has very much had its nose out of joint with the introduction of the PCA.
- Complaints regarding the Council of which I am a constituent are made to the General Manager. He then defers to relevant departments. That is the department who failed to act in the first

place. To my knowledge there is no check on the complaints procedures or the compliance officers. I believe each Council should have an ombudsman.

- Council did not act in my interest. Council did not use its regulatory powers. As it is not the Certifier when it acts on complaints there is no financial gain only the headache. So why bother. As regards to the relevant legislation Council has discretionary powers. In other words they read the legislation as they wish. Hence we have an EP&P Act stating one thing. Council reads it as being the Private Certifier's job. Dept Planning Building Professionals Board read it as being Councils responsibility. How can the ordinary person win?
- I have corresponded with the Dept Planning, Building Professionals Board regarding the enforcement and compliance powers of Councils and Private Certifiers. The Dept have replied in writing stating parts of the EP&A Act which shows clearly what Council's responsibility to me is (Section 121H(5), 121B etc). Council states the very same EP&A Act sections and says it's the Private Certifier's responsibility. I believe by using/hiding behind its discretionary powers Council can do as much or as little as its likes for its constituents.
- Although it has been brought to Council attention on numerous occasions, both verbally and in written communication that we believe the Structural Report is flawed (that there are many discrepancies in the engineer's reports) Council is willing to accept these reports. I believe as long as Council has something in writing from the engineer, regardless of whether the contents are correct or not Council is happy. This was confirmed when on two occasions the engineer has amended subsequent reports after being provided substantiated differing facts by me. A council representative was present at a meeting held on 4-7-06 when one of the issues was raised with both the builder and the engineer.

## **The Home Building Advocacy Service**

- Again this is only for people with a contract. This does not include adjoining property owners – we don't have a contract with the builder. This needs to be changed.
- Unfortunately there is no liaison between government departments, organisations eg Dept Planning, Council, Office of Fair Trading.
- It would be a great help to home builders, and adjoining property owners if the Home Building Advocacy Service could be a 'one stop shop' for all relevant general information.