

Submission

No 29

INQUIRY INTO THE OPERATIONS OF THE HOME BUILDING SERVICE

Organisation:

Name: Ms Diane Condie

Telephone:

Date Received: 17/11/2006

Subject:

Summary

This submission has been kept partially confidential by resolution of the Committee.

Diane Condie

16th November 2006

Hon Jenny Gardiner MLC
Chair
General Purpose Standing Committee No. 4
Parliament House
Macquarie Street
SYDNEY NSW 2000

Attention: Rebecca Main
General Purpose Standing Committee No. 4
Home Building Inquiry

I am forwarding you my initial submission regarding the Home Building Inquiry. Please note a supplementary submission is to follow.

I own and live in a property which adjoins a development site. I wish to bring to your attention what I have experienced at the hands of (Building Company), (Private Certifier,), (Engineer,) and Randwick City Council.

I am probably a little hesitant at what I should include in the submission, as I can now see, when , or are shown facts (that have been verbally shown or otherwise) they change their story.

This dispute has probably been ongoing since June 2003 and as yet is still unresolved. I believe my issues are the result of non compliant excavation undertaken by in March 2004 at the development site adjoining my property. The non compliant excavation caused undermining of my property and I believe damage to my property. I was informed by the private certifier that a retaining wall was necessary. undertook remedial work underneath my garage and brick boundary fence without my permission. I was informed by the private certifier that a retaining wall was still necessary and that the remedial work was an interim measure only. Now over two and a half years later there is still no retaining wall. I have requested provide me with an Engineer's Report detailing the actual work undertaken on my property as opposed to the work undertaken on the development site and that the work complies with the BCA. I have also requested acknowledge and repair the damage to my property.

As stated the non compliant excavation took place in March 2004 throughout this time I have liaised with Randwick Council, the Private Certifier, and the Department of Planning (formerly DIPNR) to endeavour to resolve this dispute. From information supplied to me by the Building Professionals Board I am now of the understanding that the remedial work undertaken on my property is unauthorised and as there is no Development Application neither Council nor the Private Certifier can approve the work. I find there is no alternative but to take this to court because there is no other means of help for adjoining property owners. We can not obtain help from the Office of Fair Trading or Home Building Service as we do not have a contract with the builder.

I have done my utmost to resolve this dispute. All I am asking is to be treated fairly.

If I can be instrumental in bringing this to your attention and hopefully stopping this from happening to someone else I will feel that at least some good has come from my years of needless stress. This has not only impacted on my property but on my life.

I appreciate your acceptance and consideration of my submission as I do not believe that anyone should in the future be put in a similar situation as I find myself, which has come about by no fault of my own. If you require further information please do not hesitate to contact me on the numbers listed below.

I ask that my address be kept confidential. Please use your discretion regarding the use of the attached letters. Also please note this dispute is still ongoing.

Yours sincerely

Diane Condie

Attached: Terms of Reference
 Additional Information

a) **Builder licensing system**

- When a license is given or renewed, company attitude etc should be taken into account.

I wish to bring to your attention a licensed building company, _____, who I believe has trespassed my property and performed work without permission.

- I believe _____ uses various forms of intimidation:

While endeavouring to resolve this dispute with _____ I have encountered both by phone and face to face intimidation from _____ employees.

Re phone – on a number of occasions Mr _____ demeanour was quite loud and aggressive to the extent the conversations were overheard by my work colleagues, causing them to take note and later enquire of my well being.

Re face to face – standing extremely close and pointing a finger to my face with voice raised.

Re damage to my property – States ‘We have a Dilapidation Report’, even though they trespassed to take it and the photos are not dated and when all this is brought to light, they conveniently lose the photos and the engineer’s computer dies. It appears neither the engineer or _____ has either a backup copy or a hard copy of the report.

I have also received a letter which I believe contained threats as to costs. _____ stated they thought I would give up by now.

- I believe _____ is underhanded at the 21/9/06 site meeting an active participant in the meeting was introduced at “_____” a driver for _____ (General Manager, _____). Later, on further inquiry we found “_____” is actually the OH&S Manager for _____. I question why an active participant’s name and position in the company was withheld at the site meeting.
- At this company’s direction the engineer also trespasses property, the engineer in question Mr _____ stated ‘_____ wanted the report, we do it (trespass) all the time’.
- Photographs from the Dilapidation Report are now conveniently missing.

- I can not lodge a complaint with Office of Fair Trading as I do not have a contract with .
How do I (and I am sure) other adjoining land owners let Office of Fair Trading know the treatment we have received from builders in my case ?

- sent me a letter which I have been advised contained threats as to costs. Solicitor deemed action to be very unfair.

- I can take this to the CTTT, but I have already been advised by a solicitor that will use expensive lawyers as it is in their best interest to squash my complaint and if I take it to court will use barristers to ensure they win.

- An engineer who, direction trespasses ones property to take photos and compile a Dilapidation Report. A report which I believe was taken after excavation.

A report which would not provide me a copy of until recently, two and a half years into the dispute. The file which was recently provided to Council and I now have a copy of is of such poor quality it is impossible to use this as a comparison with what is there now.

- This is a building company who after over 2 ½ years and now finally two site meetings (4/7/06 & 21/9/06) have still not provided me with an engineer's report detailing in full the actual work undertaken on my property. I have repeatedly requested both verbally and in writing that authorise the engineer, , provide me with an engineer's report detailing the actual work undertaken on my property (as opposed to work undertaken on the adjoining development site). I have been advised by the Building Professional Board that only the engineer who oversaw the work can give the certification and the detail of the work.

At the site meeting held on 21st September 2006 , on behalf of , verbally acknowledged remedial work had been undertaken on my property and verbally agreed to authorise the engineer to provide me with an engineers report detailing in full the actual work undertaken on my property and certification that the remedial work complies with the BCA. The report would state clearly that the work was undertaken on my property (ie the work was undertaken on my property as opposed to the work undertaken on the adjoining development site).

Discussion took place regarding the fact that the engineer' report would need to be compiled by

, as he is the engineer who oversaw the remedial work. is the engineer who supervised the said remedial work.

The building company, , inability or refusal to provide me with the requested engineer's report causes me to question the quality of the work undertaken and their ability to ensure the structural integrity of my property now and in the future.

- I am advised by Building Professionals Board the builder is responsible for all work and damages. Yet although () verbally acknowledged work was undertaken on my property by the said building company will not take responsibility for the work and in doing so provide me with the engineer' report I request.

c) Resolution of complaints

- Adjoining property owners have no where to go and no one to turn to for help. Our only come back is the legal system. This is both costly and of a long time period – and the big builders know this. Office of Fair Trading can not help me as I have no contract with . Council won't accept responsibility. They state they are not the certifier.
- The Private Certifier won't accept responsibility for work on adjoining properties – his/her job only covers the building on the development site.
- I have numerous issues here:
 - trespass by the builder upon my land
 - work carried out on my land without DA etc(not to mention non compliant excavation has no DA)
- The Office of Fair Trading advised me to contact the builder and claim the damage under their Public Liability Insurance – will not accept the damage (they say they have a Dilapidation Report). The Building Professionals Board advised me to ring HIA (insurer), I had previously phoned HIA and they were not interested in my call. I have been advised will

not admit to anything because of Legal Liability. I believe [redacted] will not provide me with the engineer's report detailing the actual work undertaken on my property or acknowledge the damage to my property because they do not want to admit trespass to my property and in acknowledging the damage their insurer will become aware of the non compliant excavation.

d) The exercise of disciplinary powers

- Randwick Council did not use its Regulatory Powers. It did not ask for an amendment to the DA or Section 96 for the non compliant excavation, yet it appears to be approved. When I have brought the non complaint excavation to [redacted] attention the response has been 'what non compliant excavation Randwick Council has approved everything, an Occupation Certificate has been issued'.
- I have been advised by Building Professionals Board the Development Application approval was for the original excavation. A Section 96 should have been lodged for the over excavation. If this had been done I would have been notified and I could have questioned the need for retaining etc. The Council would have had to condition the approval properly. It would have to be formally approved. I was also advised that an Occupation Certificate should not have been issued without a Section 96 being approved for the non compliant excavation.

e) The enforcement of relevant legislative and regulatory provisions

- I believe Randwick Council have failed to involve themselves irrespective of statutory instruments.
- Randwick Council did not enforce it regulatory powers. After I bought the over excavation to Randwick Council's attention it was months before 'notice' was served. I ask: after reference to the over excavation what did Randwick Council do? Why didn't Randwick Council seek a Section 96? Subsequent to serving 'notice' what action has Randwick Council taken to authorise unauthorised work?

- The remedial work undertaken on my property was necessitated as a result of non compliant excavation undertaken on an adjoining development site. A 'notice' was served on the building company for the non compliance, whose responsibility is it to ensure the work undertaken on my property meets the BCA etc?
- I have formal written replies from both Randwick Council and Building Professionals Board quoting the Act. I asked both Randwick Council and Building Professionals Board the same questions yet I received totally different answers. Both Randwick Council and Building Professionals Board state it is the others' responsibility. Is this a 'grey' area?

Building Professionals Board tell me Randwick Council could have done much more for me.

Building Professional Board tell me the issuing of the Occupation Certificate only approves the building has been built properly and its fire hazards have been met.

Officer from Building Professionals Board stated Randwick Council could still enforce a retaining wall.

Randwick Council tell me the Private Certifier could have enforced the building of a retaining wall by making the building of the retaining wall a requirement for the issuing of the Occupation Certificate.

- Once the problem was identified and Council issued a 'notice' did Council partake in asking for assessment and certification of any rectification work? Council issued a 'notice' but did not issue an 'order'. Council did not ask for assessment or certification of any rectification work undertaken on my property. Council only issued a Penalty Infringement Notice (PIN) for the amount of \$600. reply to Council was that they over excavated to facilitate the building of a retaining wall – there is no retaining wall. Council did not enforce the building of a retaining wall but accepted the engineer's report which does not certify the remedial work undertaken on my property and does not state that the remedial work meets the BCA. Also Randwick Council and would not acknowledge the work undertaken on my property. In April 2004 when dug out sections from under my property I contacted Randwick Council and requested they inspect the site.

Randwick Council refused to do so. If Randwick Council had inspected the site in April 2004 the non compliant excavation would have been noted and they could have enforced the retaining wall.

- Council accepted reasons for non-compliance partly because we apparently did not show Council any damage and the engineer states there is no change. The evidence of damage had not been shown since at the time Randwick Council had stated this did not involve them. I had brought to Council's attention the fact that I believe the Structural Report compiled by the engineer was flawed. The engineer also stated the condition of the walls had not changed from March 2004 to April 2005. I had informed Council in writing that the Report had been taken after excavation. Again in March 2005 I brought this to Council's attention yet they still based their decision in part on a flawed report. Also the engineer's report does not state the work had been undertaken on my property (as opposed to the development site) nor does it certify the work meets the BCA or does it give a detailed description of the actual work undertaken. There is conflicting information between the Private Certifier, the Engineer and even within (,) as to whether metal pins were inserted/not inserted in the remedial work.

- I have photographs which I requested Council look at yet Randwick Council declined to meet with me.

- I believe Randwick Council did not act in my interest.

After 'notice' was issued, Council made the decision to fine , why wasn't an 'order' issued? Why didn't this matter proceed to court? What were Council's reasons for their decision? I asked this question of a Council Officer and did not receive a clear answer. I believe Council did not act fairly on my behalf.

- I was advised by Building Professionals Board a Sect 96 should have been lodged for the over excavation. If this had been done I would have been notified and I could have questioned the need for retaining etc. The Council would have had to condition the approval properly. It would have had to be formally approved.
- I have been advised that because as no Sect 96 had been requested I now have unauthorised work undertaken on my property. That is unauthorised because there was no DA for it and therefore no

approval. It was also unauthorised because did not seek permission to work on my property or let us know they intended to do it. I have also been advised the adjoining development site has unauthorised work as there is no DA for the over excavation.

- It was 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.

f) The establishment of a Home Building Advice and Advocacy Centre

- Consolidate advice: Let the Home Building Advice and Advocacy Centre know the facts and who is responsible for what so people don't have to go from one organisation to another eg Building Professionals Board (DIPNR) - Dept Local Government for advice on who is responsible.

g) Any other relevant matters

- I believe the actions of the engineer are questionable. The Structural Reports compiled by were flawed. I brought this to the attention of the Private Certifier, Randwick Council and . Subsequent Structural Reports were based on the original flawed report. The Dilapidation Report is dated 18/3/04 which is post excavation. The engineer has now made a statement to the effect that he is not sure when the Dilapidation Report was taken but states it was before excavation. I disagree that the report was taken prior to excavation. The engineer's computer crashed a year ago and it appears he had no backup and subsequently has no copies of the photos contained in the Dilapidation Report. Yet only four months ago he had a hard copy of the photos which he presented at a contentious meeting and did not take a copy of the said photos, for his own records, before handing the said originals over to .

At the site meeting (4/7/06) it was noted that:

Dilapidation Report photos were not dated

Dilapidation Report (18/3/06) was taken after excavation. I presented dated photos (15/3/04) showing the excavation.

Engineer was to check photo dates with photos on his computer (if his computer had previously crashed surely he would have known there were no photos on the computer to check against).

- is now undertaking a new report. I assume that has chosen to commission the writing of a new report from a different engineer because of the inaccuracies contained in the previous reports.

Additional Information

At the end of the day what have I got?

I am an adjoining property owner. I have done nothing to change my property.

Yet I now have:

- a) a property with remedial work undertaken without my permission
 - b) a property with unauthorised work undertaken upon it. This work has no Development Application and consequently no approval.
 - c) A property which because there is no DA approval for the non compliant excavation and the resulting remedial work, Randwick Council and the Private Certifier can not approve.
 - d) Work undertaken on my property which the engineer and builder refuse to give me an Engineer's Report detailing the actual work and certifying the work meets the BCA.
 - e) Damage which the builder will not address. I believe the damage was sustained as a result of the non compliant excavation. The non compliant excavation has been taken to the boundary. Large machinery and hammer drilling was used to excavate the rock. This caused extreme vibrations throughout the house. had a Geotechnical Report dated 2003 which outlined the possibility of damage as a result of the excavation.
- This has been an absolute farce.
 - The private certifier stated a retaining wall absolutely necessary and that the remedial work was an interim measure only. I question why he didn't advise and the (the owners) of the need for modification to the consent?
 - Engineer compiles initial flawed report.
Changes things in the next report.
Admits at site meeting (4/7/06) he trespassed my property on direction. He states 'we do it all the time. wanted the report'. A Council Officer was present during this admission.

He emphatically states photos and report was compiled on 18/3/04.

I present my dated photos at the said meeting. Six weeks later the engineer changes his story yet again. Previously an amendment had been made to the first report after a discrepancy had been brought to Randwick Council, the Private Certifier and attention.

Engineer informed Council he will not write a report detailing the work undertaken on my property.

- We now have a company who, once it has been unquestionably shown that the excavation took place prior to the engineer compiling the Dilapidation Report, conveniently loses the photos from the Dilapidation report.
- A licensed builder undertook non compliant excavation, trespassed my property by undertaking unauthorised work on my property.

Builder will not authorise engineer to provide me with an engineers report detailing the actual work undertaken.

Builder will not provide me with certification the works comply with the BCA.

- I have been advised Randwick Council has not used its regulatory power in asking for Section 96.
- Dept Planning Building Professionals Board says it is Council job to follow up on this.
They advised neither Randwick Council nor the Private Certifier can approve or certify unauthorised work.
- Me – if I am to believe Building Professionals Board I am now left with a house that has unauthorised work undertaken upon it because there is no DA.

Incidentally there is no DA for the excavation on adjoining development property.

I have damage as a result of the non compliant excavation. The builder had a Geotechnical Report regarding excavation yet that builder states it undertook the non compliant excavation at the owner's request. This I might add is a building company with over 45 years experience and expertise in the building industry. It is also a company which promotes itself as family minded. It states it prefers to mediate. Yet it took me nearly 2 ½ years and much written and verbal requests to finally get a site meeting – but what happens after that site meeting – I receive a most unfair letter.