

**Submission
No 47**

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

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RE: NSW parliamentary inquiry into building standards, building quality and building disputes

To whom it may concern.

My husband and I were looking forward to having new neighbours when we learnt that someone had bought the block next door. Unfortunately, what we didn't realise at the time was that "having new neighbours" would translate into a non-complying build that bears little resemblance to the approved DA. Nor did we realise that the next six months of our lives would be dominated by tens of emails, many phone calls, a Mediation meeting that turned into an Information meeting with the Council Planning Department and the expense of hiring of our own Town Planner.

In hindsight, we openly admit our belief that "**Developers would build to the plans in an approved DA**" was naive. We had an unsophisticated view of developments, the approval process, and the checks and balances in place to ensure that complying development was built. It seemed logical to us that in a democracy like Australia, neighbours would be notified of a lodged DA, have their opportunity to lodge a submission/ objection, the Council / Councillors would either approve / disapprove the development and if the development was approved the Developer would build to the plans lodged in the approved DA. We had never heard of Private Certifiers and were still under the impression that Council staff would be conducting the inspections to make sure the development complied. How wrong we were!

The development next door was built in 2 Stages. Stage 1 commenced Jan 2018 and was completed by Nov 2018. Upon completion of Stage 1, the two storey building appeared to be taller than the approved DA indicated, and there was now a large aircon/heating unit extremely close to our bedroom. The noise associated with this aircon/heating unit remains of concern, however more importantly the height of Stage 1 resulted in overlooking issues across our entire backyard. Although our house is single storey, the Developers block is significantly lower than us and we believed referring to the approved DA that the difference in height between our block and the Developers should have protected us from overlooking. We both work full time; life get busy and being pragmatic people, we simply dealt with the overlooking issue and moved on.

Stage 2 was commenced in Dec 2018, and we immediately became concerned when we observed the massive foundations that were poured. The height of these foundations effectively eradicated any privacy buffer that the difference in height between our block and the Developers block should have given us. Once again, we foolishly believed the Developer was building to the approved DA and got on with life. In February 2019 as the framework went up it became obvious that the building was now going to have extra first storey windows that were not on the approved DA. These first storey windows in the western wall would overlook our entire backyard. In fact, when we had reviewed the DA prior to the approval process we were relieved to find that there were no windows in the first storey western wall. We were also reassured by the DA documentation submitted by the Developer that stated numerous times, there would be no windows in the first storey that would overlook the

western neighbours. According to the approved DA documentation the Developer had addressed the overlooking criteria in the Councils DCP. Although the approved DA documentation indicated no windows, the framework of the first storey windows in Feb 2019 was suspicious; they were the only framework structure that had lentils with the studs remaining.

We contacted the Council and they informed us that the Developer was using a Private Certifier. The Council contacted the Private Certifier and asked them to explain the situation. We can only assume that the Private Certifier confirmed that additional windows were being included, because the Council Compliance Officer informed us that a stop had been put on the build and the Developer had been asked to put in a **Modification of Consent** to account for the windows. Although the windows were our initial concern, they compelled us to conduct a comprehensive review of all documentation on the Councils Application Tracker. We quickly realised that the windows were only one of the many non-complying aspects of Stage 2, including height, depth and privacy screens.

We found that the Construction Certificate for Stage 2 lodged in Nov 2018, (before the Stage 2 build began) contained 3 D images, stamped and approved by the Private Certifier. These 3D images contained all the non-complying aspects that we had identified (i.e. windows, height, width, privacy screens). This left us wondering if Stage 1 had been built to the approved DA. Reviewing the Construction Certificate for Stage 1, we observed that the height was higher than the approved DA giving us a possible explanation for the unexpected Stage 1 overlooking.

Our dismay at the non-complying windows, height, depth and privacy screens of Stage 2 was compounded when we became aware of the Developers assumption that he could use our land as his drainage system. The Developer had already constructed a retaining wall along our shared boundary (zero lot boundary) without any drainage behind it. When it became apparent to the Developer that we would not be allowing the Developer to use our land as his drainage system, we were then the recipients of a series of disturbing emails and damage to the flashing on our garage. Finally, our dismay evolved into utter disbelief when we became aware of the absence of a firewall.

In summary the Private Certifier approved non complying aspects in both Stage 1 and Stage 2. Given our experience as described above;

- We have no hesitation in questioning the impartiality of a Private Certifier? A Developer pays a Private Certifier. How can this be impartial? The Developer in our instance is involved in the Construction/Building Industry, surely the Developer having a Private Certifier is a conflict of interests
- Any inspection of the site by an independent party would have highlighted the non-complying DA aspects that we brought to the Councils attention. How effective can an inspection be if it is being conducted by the Private Certifier, that is being paid by the Developer, and the Private Certifier is the same person that approved the Construction Certificate that didn't comply with the approved DA?
- We have been told that the Council have contacted the Private Certifier to **“remind them of their responsibility to ensure that any Construction Certificate issued *“is not inconsistent” with any development consent.*”** Where is the accountability of the Private Certifier? The

Private Certifier hasn't been fined, stopped from being a Private Certifier. In fact according to the website <http://bpb.nsw.gov.au/concerns-development/how-complain-about-certifier> **"Most of the complaints received by the board are ultimately dismissed."** This certainly doesn't give us enough faith in the process to lodge a complaint.

- We believe there needs to be impartial alternatives to the Private Certifiers. These people need to be beyond reproach and not paid by the Developer. I am not sure who would be a suitable alternative, however based on our experience, it is obvious that this outsourcing to Private Certifiers doesn't work.

In conclusion, we have made this submission to inform as many people as possible about our experience and how the Developer and Private Certifier relationship can translate into non-complying buildings that adversely affect neighbours and ultimately the wider community.

Sincerely

Julie Garoni and Gerard Lukassen