Submission No 48

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

Name: Mr John Inshaw

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Dr David Shoebridge MP,
Chairman,
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Parliament House,
Sydney.

Subject: Inquiry Into the regulation of building standards, building quality and building disputes.

Thank you for the opportunity to provide input into your investigation.

1. The association believes that the use of private certifiers does not produce the best building outcomes which protect the public interest. The private certifier business model relies on achieving outcomes which satisfy the needs of the developer. The developers employ certifiers who will provide them with the desired outcome for which they are paying. Private certifiers are aware that they must approve developments in order to stay in business. Negative responses from private certifiers is harmful for their business. As a consequence we now find private certified buildings with building faults. The private certifiers responsible seem to be able to continue to operate with impunity. Their certification is not withdrawn.

Suggestion. Ideally there should be no private certification. Development approvals and compliance should be operated and regulated by Councils.
However if the private certification model has to be maintained we believe that

- the costs of certification should be still borne by the developer/builder ,
- Councils should maintain a list of private certifiers who would be allocated to developers/builders on a rotational basis to remove the notion of biased assessments.
- There should be a registration authority which will conduct an ongoing vetting process to maintain standards and should a certifier not maintain the appropriate standards they should be " struck off" the List. This would result in the most competent certifiers able to practise.

2. In recent years this assocciaton has noted that Hornsby Council determines development consent for developments for which private certifiers provide the construction certificate. We have noted cases where construction certificates have been issued where the final development is significantly different to the approved plans. When we complained we were told by Council to take the issue up with the private certifier. This leads us to believe that the private certifiers are accountable only to the developer. Council since that time has not responded to our written concerns regarding the development.

Suggestion: Where Councils provide development consent they should also be responsible for the issuing of the construction certificate.

3. We believe the NSW Government's insistence on short time limits for Councils to process large developments is having a detrimental effect on the quality of development assessments. Councils can receive a multitude of reports associated with each development application- especially large developments. We have observed in some of instances that development related reports have inaccuracies or a number of reports attached to the application are inconsistent. Yet the Council has to either approve or respond to the application within a short time frame. As a result developers resort to "deemed refusals" in Land and Environment Court (L&E) actions against Council. We believe that Councils have budgetary constraints which prevent them from adequately challenging these L&E actions. The financial capability of Council should not be an impediment to good decision making and good development outcomes.

Suggestion: The setting of arbitrary short time limits on processing developments must be reconsidered. The process of developers using "deemed refusal" actions in the L&E Court must be discontinued.

4. As stated above consultants preparing reports in support of developments are never negative even though they are expected and said to be objective. Consultants conveniently leave out information from reports which might be detrimental to the application. As a consequence applications go before Council which are incomplete. Often whole reports, eg bushfire assessment, might be missing from an application or gross inconsistencies are found between various reports. We believe that in such cases the application must not be accepted by Council for assessment. These proposals must not get past a" triage" inspection.

Suggestion: Councils must only assess a development if ALL the documentation required is presented at the time of lodgement. If inconsistencies between application supporting reports are observed the application must also not be accepted.

5. Over the last two years we have noticed a number of instances where unauthorised dumping of soils both VENM and contaminated have been used in otherwise approved developments. In one case repeated truck and dogs deposited excavation materials over acres of approved development site. In answering our complaint the Council said the spreading of the VENM material was consistent with the conditions of consent and the approved plans. When the development was completed the land form from our observations was completely different to the approved plans. Again when we complained we were told to take the matter up with the certifier who signed off on the development.

In another dumping episode one of our members noticed unauthorised dumping of soil material on a seniors living development site. Council's compliance officers responded and prosecuted the "builder" . Council alleges that the Court levied a $30,000 fine. The resident was informed that the soil contained bonded asbestos material. As far as we know the contaminated material was not removed from the site. A local resident alleges that the soil was levelled on the site and dwellings were built on top of the material. We understand that the site is currently the subject of a stop work order. It seems that Council has the power to prosecute those caught dumping but then does not have the will or the authority to ensure that the fill is removed. Clearly there is a lack of scrutiny by the private certifier responsible for the construction to ensure that laws relating to contaminated materials are observed.

It seems to us that the asbestos contaminated soil under the dwellings constructed so far is highly toxic because the bonded asbestos will now be fibrous material. Elderly residents who will live in these dwelling could be highly exposed to asbestos fibres when gardening around their dwelling.

Suggestion:

- Regulations should be put in place to prevent the dumping of excavated material from hi-rise building sites being dumped on development sites on the pretext that it is part of the development consent.
- Excavated material used on development sites must incur the same dumping fee as paid to authorised waste management facilities.
- Where unauthorised dumping occurs on an approved development site, it must be removed from the site entirely before any construction takes place. It is unacceptable that dwellings are built on contaminated sites.

- Council Officers must have the authority to supervise the removal of contaminated materials that have been illegally dumped on development sites and the cost of this supervision be levied on the developer of the site.

6. It has become apparent in our observation of development proposals that Australian Standards are only Guidelines. Developers regard adherence to Australian Standards as optional requirements. This is why so many high rise buildings are clad in inflammable materials.

Suggestion: All Australian Standards must be adhered to at all times. They must be mandatory requirements as the public believes them to be.

Thank you for considering my submission.

Yours sincerely,

John Inshaw