

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

Organisation: Wollongong City Council

Date Received: 5 August 2019

Mr David Shoebridge MLC
Chair
Public Accountability Committee
Email:

Our Ref:
File:
Date:

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Dear Mr Shoebridge

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

Thank you for the opportunity to be able to provide a submission to the abovementioned inquiry. Please find attached Council's formal submission.

Should you require further information and/or detail pertaining to the submission please contact Council's Building Certification Manager, Mr Darren Burke on the number below.

Yours faithfully

Greg Doyle
General Manager
Wollongong City Council

SUBMISSION FROM WOLLONGONG CITY COUNCIL - INQUIRY INTO THE REGULATION OF BUILDING STANDARDS, BUILDING QUALITY AND BUILDING DISPUTES (NSW)

Wollongong City Council provides the following comments in relation to the Terms of Reference by the NSW Legislative Council Public Accountability Committee into the regulation of building standards, building quality and building disputes:

- The current Private Certification system in NSW has been operating for more than 20 years now, introduced in July 1998. Local Government was an opponent to its introduction primarily based on the inherent conflict of interest that the system posed, where developer/builder pays and appoints the certifier to provide certification of the development.
- The system that operated prior to 1998 offered greater consumer protection under robust regulation which included true independent third party regulators such as Local Government Building inspectors, Builder's Licensing Board inspectors (later became the Building Services Corporation) and an onsite Clerk of Works.
- The imposed system was flawed from its introduction as there was no overriding control other than accreditation by professional bodies, no government watch dog no accountability. The establishment of the Building Professionals Board in 2007 was intended to provide an independent statutory body that could combine the functions of the existing accreditation bodies and establish clear and consistent standards for all accredited certifiers and increase awareness of the certification of building and subdivision work in NSW.
- More than 10 years on and after multiple inquiries and changes to legislation we still have a system that is clearly not working. Consumer confidence within the construction industry, in particular multi storey residential, is at its lowest in 20 years. This is evidenced through the Opal Tower and Mascot Tower building identified structural defects and the external combustible cladding issue affecting buildings here in NSW and throughout Australia.
- The exemption provided under the Home Building Compensation Cover for work involved in the construction of new multi-storey buildings with a rise in storeys of more than three and containing two or more separate home units also provides no consumer protection in this space.
- Other contributing factors that have been complicit in the failing of the certification system are the unregulated building practitioners that provide design and certification functions such as Structural Engineers, Electrical/Mechanical Engineers and Essential Fire Safety Measure providers/installers. The Shergold Weir Building Confidence Report identified that, particularly for design practitioners including architects, designers, draftspersons and engineers, there was a systemic failure to expressly legislate "that the duty of the designer is to prepare documentation that demonstrates the proposed building will comply with the National Construction Code".
- It must be observed that in reality the Principal Certifying Authority (PCA) is only present on a construction site at particular hold points under the required Critical Stage inspections identified under the EP&A Regulations. These vary depending on the class of building. The complexities of our modern construction techniques mean that the PCA will be required to rely upon certificates from numerous Trades, Product Providers, Installers and Engineers. The problem is that these certificates are being issued by persons that are not accredited to any regulatory authority and are not required to carry any insurance. This results in the PCA being the last man standing when a defect or dispute arises as he is the only one deemed responsible with onerous professional indemnity requirements, more than most others involved in the building process, they are currently bearing the brunt of the blame for design, manufacturing, installation and building defects arising from the current building regulation system.
- Everyone that supplies a service or a product must accept responsibility, be accountable and carry liability for their work.

- The other issue is the amount and type of alternate solutions being signed off by Certifying Authorities in multi-storey residential buildings in relation to egress, fire separation and fire services. Whilst these alternate solutions provided economic benefits to the Developer/Builder the maintenance costs are transferred to the end user being the strata /owners. These costs are sometimes unquantifiable with purchasers not aware of these costs and there is a question mark over the reliability of the systems over the life cycle of the building.
- It is common for councils to issue Fire Orders on a building 12 months after the Occupation Certificate has been issued, as a result of an essential fire safety measure either not being installed or not installed correctly.
- This particular issue is of concern as the safety of the occupants maybe compromised as the intended Fire Safety Measures may not provide detection in the event of a fire. This scenario was realised in the recent fire at the "Neo 200" apartment building in Melbourne (371 residential apartments) where a forensic review of the buildings fire safety systems after the combustible cladding fire revealed that over 40% of apartments had alarms that could not be activated from either being removed or were inoperable. Over 1000 smoke/detection alarms had to be replaced. Thankfully due to the quick response and intervention from the Metropolitan Fire Brigade no lives were lost. This example is by no means isolated to a Victorian issue; NSW has the same type of buildings with external combustible cladding having similar Fire Safety Measures under alternate solutions as were contained in the "Neo" building.
- As the regulatory authority responsible (Local Government) for the investigation and enforcement of the Combustible Cladding ban, there has been no government advice, guidelines, resources provided to councils to assist in a consistent approach to this issue. It has been left to the individual councils to deal with, contrary to the Victorian Government approach where it was centralised through the Victorian Building Authority properly resourced with appropriately qualified Building Surveyors and Fire Engineers making decisions on identified affected buildings.
- The current system has also been compromised with the failure of the Building Professionals Board (BPB) to weed out a handful of unscrupulous Certifiers. Wollongong City Council has had to report numerous Certifiers carrying out certification functions within the Wollongong Local Government Area to the BPB for breaches of the Environmental Planning & Assessment Act, Environmental Planning & Assessment Regulations, Building Professionals Act and Building Professionals Regulation. An example of this is where a particular Certifier had relinquished his Principal Certifying Role (PCA) prior to the final inspection of a five unit multi storey residential development. The Certifier realised that the restrictions placed on his accreditation prohibited him from being the PCA. Keeping in mind that this is an almost completed development where the Developer/Builder is requesting an Occupation Certificate. Wollongong City Council was being requested to be the replacement PCA and issued the Occupation Certificate. When Wollongong City Council refused and suggested that we would be reporting the PCA to the BPB, the Developer/Builder conveniently found another private PCA. Consequently the new PCA issued an Occupation Certificate almost immediately after being appointed the replacement PCA.
- Wollongong City Council having been familiar with this development and due to the fact that Council issued the Construction Certificate and was aware of the alternate solutions that had not been implemented or completed, consequently reported both the original and replacement PCA to the BPB. The BPB carried out an investigation and provided Wollongong City Council with the findings of such 14 months later for the replacement PCA.

Details of disciplinary matter:

"The PCA issued an interim Occupation Certificate (OC) for an addition of five residential units which he could not reasonably have determined were suitable for occupation and would not constitute a hazard to the occupants. He also accepted an inadequate Fire Safety Certificate and failed to forward to the Council within two days a copy of the OC and its related documents".

Disciplinary decision:

"The PCA was reprimanded and ordered to complete the UTS Advanced Building Regulation course."

Wollongong City Council had to chase the BPB for their determination on the investigation into the original PCA, their determination was provided to Council 20 months from the date of formal complaint!

Disciplinary decision:

"Reference is made to your complaint under the Building Professionals Act 2005 (BP Act) against the abovementioned accreditation holder (certifier) concerning their professional conduct.

In this particular instance, it has been decided under s.22 of the BP Act to take no further action in relation to the complaint."

The publically available BPB register of disciplinary decisions shows that the replacement PCA for the subject development has had eight (8) separate disciplinary decisions, one of which resulted in a \$50,000 fine. The disciplinary decisions recorded on the register for the original PCA number a total of seven (7).

Whilst the Certifiers in this particular circumstance have had a decision made on their conduct, the consequences of the issuing of an Occupation Certificate allowed the issuing of a Strata Subdivision Certificate, resulting in the selling of the individual units to unsuspecting owners. Wollongong City Council was left to issue a Fire Order for the rectification of the non-compliances on the Strata Owners, as the Developer was no longer the owner of the subject building. Had an Occupation Certificate not been issued the Developer/Builder would have been responsible for the rectification of the non-compliances. The Strata owners obviously have the ability to seek relief through civil action against the Developer/Builder/PCA, however this comes at a financial cost with no guarantee of a successful outcome.

The abovementioned example is just one development where the system has failed to provide protection for the consumer. As a result of the recent high profile building defects (Opal & Mascot Towers) many commentators have been calling for the scraping of the Private Certification system and returning it to Local Government. Whilst this move would address the inherent conflict of interest that exists within the current system, Local Government would not currently have the resources to be able to facilitate the amount of certification functions currently required in this economic climate. Irrespective of whether building regulation is returned to Local Government responsibility, accountability and liability across the whole of the building sector must be better regulated.

In summary, to return confidence and provide protection for consumers, the NSW Government needs to:

- Appoint a Building Commissioner ASAP.
- Implement the recommendations contained within the Shergold Weir Building Confidence Report.
- Fast track a regulatory framework for the accreditation of building design practitioners including but not limited to Architects, Designers, Draftspersons, Engineers and Essential Fire Safety Measure providers/installers (competent Fire Safety Practitioners).
- Take ownership of the combustible cladding issue by providing consistent guidelines and resources to Local government, similar to the Victorian Government approach where it was centralised through the Victorian Building Authority, properly resourced with appropriately qualified Building Practitioners and Fire Engineers making decisions on identified affected buildings.
- Reintroduce insurance requirements for new multi-storey buildings with a rise in storeys of more than three and containing two or more separate home units.
- Strengthen regulatory framework for the importation of building products into Australia ensuring that they meet Australian standards and are fit for purpose. Also ensuring that responsibility for the selection and installation of the product is certified throughout the supply chain.
- Remove the inherent conflict of interest in the PCA appointment process where the developer/builder selects the PCA.