

**INQUIRY INTO FURTHER INQUIRY INTO THE
REGULATION OF BUILDING STANDARDS**

Name: Name suppressed

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Partially
Confidential

Regarding Terms of Reference 1.(a)(ii) and 1.(b)

1. Introduction

The shocking reports of structural failures in recently constructed multi-storey residential apartment buildings, mainly within metropolitan Sydney, has had significant impact on Home buyers, Investors, Insurers, Financial Services sector, Local Govt and State Govt Authorities to mention but a few. In short failures such as these cast a very long shadow across the society of NSW.

What is now called into question is the Integrity of the Building Industry and what the Govt can and should do to remedy the situation.

Consumers by now have been rattled to their cores and those directly affected by such disasters have been shabbily treated by a system of redress which has proved to be absolutely ineffectual, immoral and totally powerless to reinstate confidence in an industry which is now regarded to be wantonly guilty of unconscionable conduct.

Confidence in the industry can only be restored when sharp practice is eradicated from the upper echelons of those who are responsible for the initiation of these projects. For the Construction Workforce the most vital element is the restoration of an environment where Pride in Workmanship replaces shoddy, lackadaisical attitudes in the rush to get in and get out as quickly as possible.

2. Recently Reported Building Failures

Evidence of Building Deficiencies:

Many reports of building failures recently reported in the Media have caused great concern within the community. Structural failures within multi -storey residential buildings appear to be the main source of complaints.

Projects which have been identified by the Office of NSW Building Commissioner are:-

- Opal Tower, Sydney Olympic Park, Homebush
- Mascot Tower, Mascot
- Toplace Group Tower Development, Castle Hill
- Goldenic Developments, 16 Storey Apartment Tower, Auburn
- Green Hub apartments, Asquith and Lindfield and Gardners Road, Mascot

The most commonly reported concerns are:-

- Cracking in basement reinforced concrete floors and beams.
- Failure of structural components within tower structures.

Causes of Failure:

The principal cause of failure in buildings could most likely be attributed to movement.

The reasons for this may be:

- Inadequate geotechnical investigation which give rise to inadequate engineering design.
- External influences which undermine the footing designed to support the building.
- Failure of timely and rigorous inspections during construction of reinforced concrete elements – eg- slabs, basement peripheral retaining walls, beams, columns, bracing etc.
- Failure of waterproofing membranes, joint seals, expansion seals, etc.
- Inadequate provision for removal of ground water/seepage beneath the building.
- Failure of Building Contractors and Developers to ensure that all reports and certification required by Local Govt authorities are in fact truthful and complete.

3. Social Consequences of Building Failures

The tragic result of building failure to consumers is clearly evidenced by media reports of financial losses and property loss.

The most disturbing aspect of building failures is the total inability of the industry to provide means of legal redress to consumers. All too often it appears that those responsible melt away behind the dissolution of companies leaving the consumer utterly stranded.

Consumers are faced with the terrible burden of how to repair the damage or to absolve themselves of their responsibilities to mortgagors/ financiers etc.

In the residential house construction market Home Owners Warranty Insurance provides protection to consumers building new houses. Insurance Companies provide warranty to rectify faults occurring within seven years of the completion of the residence.

Consumers have protection from faulty workmanship / defective materials etc.

Purchasers of Residential Units in multi-storey Apartment Buildings have no protection because Builders and Developers can avoid Warranty Insurance. Developer/Builders argued that Homeowners Warranty Insurance was not necessary in multi storey construction because the buildings were generally constructed under the close supervision and management of professional Architects and Engineers.

4. The Way Things Were and What We Have Become

The design of multi-storey buildings was generally the province of professional Architects, Civil & Structural Engineers, Electrical& Mechanical Engineers, Hydraulics Engineers, Quantity Surveyors, and consulting Construction Managers. Their responsibilities to their clients were to provide professional services to design and prepare construction documents. They managed the tendering process and appoint Building Contractors for the project construction. During construction their role was to oversee contract administration and to maintain rigorous inspection of the project.

The NSW Govt introduced a system of certification which could be undertaken by either Local Govt staff or independent certifiers employed directly by Developer/ Builders. Developer/ Builders now had the means of circumventing the need to obtain Govt. inspections and approvals during the course of construction. They are now enabled to validate and to warrant that the works were constructed in accordance with the NBC, Aust Standards and the documentation of Professional consultants. This process enables them to speed up the process of generating approvals through Local Govt Authority.

Professionals have now become the vassals of the Builders and are treated in much the same way as subcontractors. Architects and Engineers are largely disempowered and their services mainly comprise design services only. Developer/ Builders have taken control of the process which is now subjected to the rule of the mighty dollar to achieve the least costly methods required for the construction of the project.

Subcontractors too are subjected to ruthless treatment to reduce their pricing for their work to the absolute minimum with the corresponding increase in risk-taking practices to allow them to carry out their contracts in the quickest time possibly imaginable. It would now appear that in every trade and process of the construction, slipshod workmanship, careless installation of everything and including poor quality workmanship occurs across a broad range of trades.

The exclusion of professional consultants from the construction results in a dearth of their regular and frequent attendance on site to oversee the works and confirm that workmanship is satisfactory. Responsible supervision and management technique is generally hallmark of professional control.

The use of “Self Certification” is widely in use within the construction industry.

Certificates are now called for in many stages of construction.

- Certificates that verify processes have been constructed in accordance with manufactures instructions.
- Certificates that components have been manufactured and installed in accordance with Australian standards.
- Certificates that verify the proper design and installation of plant and equipment.
- Certificates which verify that services have been installed in compliance with the design prepared by specialist consultants.

Many are issued by the installers or subcontractors as self-certifications. Without the inspections by professionals responsible for the veracity of these certificates, the integrity of the system falls into doubt.

The major defect within the system is that private principal certifiers are employed by the Developer/ Builders and as such are not at “arms length” from Developer/ Builders.

The practice of calling in principal certifiers at the stage where most of the work has been completed avoids close scrutiny by the principal certifier to inspect exactly what was installed. As a result no records can be made to confirm the fact that workmanship is satisfactory or more importantly that workmanship and quality control is not satisfactory. In addition they are in the invidious position that if they fail to provide certification when required to, or dispute that work has been competently constructed, they may feel apprehensive that they will be dismissed and never re-engaged again.

A recent article which appeared in The Sydney Morning Herald suggests that a voluntary star rating scheme of Developers, Builders, Building Professionals, Certifiers etc. be implemented to provide for a “Trustworthiness Rating “ of those involved in each new project. What appears to be simple solution is a fallacy when the composition of the players in future projects can be totally different.

The tragic failure of construction companies large and small over previous decades should be a sobering reminder that these collapses do occur and for many and varied reasons. Some of the most respected companies of past eras have collapsed, often with disastrous consequences for subcontractors and suppliers. Very often there has been little or no warning that failure is imminent. What use is a bag of gold stars and a clutch of certificates to those who are left and whose responsibility it is to resurrect the wreckage of a failed building project?

Something of much more substance is required!

5. Government Control and Management of Building Projects

NSW Government has acted to have an oversight of the management of rectification of building failures by appointing a Building Commissioner to be the construction watchdog.

Where construction deficiencies have come to the attention of the Building Commissioner, the Office of Building Commissioner could greatly be assisted by the appointment of a ‘Construction Superintendent’ to take control.

The role of the Construction Superintendent would be the comprehensive administration of the construction process. A Construction Superintendent should have the authority to instruct the principal certifier to appoint a team of professionals to oversee the project. They would be responsible for the scrutiny of contract documents, the calling of regular on site meetings of all parties involved in the construction, to issue instructions and to keep records all matters arising during the construction. This action would empower the principal certifier to confidently issue a certificate of compliance.

6. *Funding Proposal to Support Government Controls*

Funding for more comprehensive control by professionals of construction could be jointly funded by NSW Government and the Insurance Industry.

This funding scheme should be expanded to include Home Owners Warranty insurance and insurance of Consumers who purchase apartments in multi storey buildings.

Prior to the granting of any construction certificate being issued by Local Govt. to allow the commencement of construction, Developer/ Builders could be required to pay a blanket project warranty Insurance premium.

An agreed proportion of premiums collected by the Insurance Industry under the Expanded Home Owners Warranty Insurance should be paid into a Trust under the direct control of the Office of the Building Commissioner (BC). NSW Government could augment the trust fund by matching dollar for dollar the contribution from the Insurance Industry.

On receipt of a request for support from a principal certifier to the construction superintendent, funds could be directly applied to the costs of employing professional consultants.

7. *Remedies*

A number of remedies could be introduced to provide much closer supervision of the construction process in order to minimise future failures of Multi- Storey Apartment Buildings.

Constant control, monitoring of materials and quality control in the construction phase

Where a professional team has not been retained by the Developer/ Builder to oversee the construction process of a multi storey building, the Principal certifier should be free to apply for support from the Building Commissioner who would then appoint appropriate professionals.

Improved performance of Project Managers

Should Project Managers be engaged by the Developer/Builder to oversee the construction process, they must be required to obtain the certification as mentioned in the above clauses. Certification that the work by subcontractors, suppliers etc. is in accordance with the approved documents accepted by Project Managers must then be forwarded for scrutiny by the Construction Superintendent.

Withholding of approvals for occupation

Certificates of Compliance issued by Local Government Authorities must be withheld from the Developer/Builder until all certification is authorised by the Construction Superintendent.

Future Training Programmes

NSW Govt set up training courses through TAFE colleges to train individuals to perform the role of future Construction Superintendents. This qualification would educate candidates with the knowledge of building industry procedure and practice necessary to equip them to act effectively.

8 Conclusion

This submission is an attempt to suggest reforms which may be necessary in order to restore the public faith in the NSW Building Industry. Protection should be available to consumers from the construction of residential projects to the design and construction of multi-storeyed residential projects.

The restoration of confidence in the industry would greatly improve the trust home buyers and investors have in the purchase of property and re-establishing their confidence in the safety of their lifetime investment.

secured loans, there's a 31 per cent difference between the average green personal loan of 6.9 per cent and a non-green borrowing product of 9.07 per cent. The average green

Offering low "green" personal loan rates to existing home loan borrowers can be an effective strategy to make it more difficult for them to switch their mortgage to a cheaper

SolarQuote's Peacock says a typical trick is providers offering interest-free loans then hiking the cost by 25 per cent with exorbitant installation and equipment fees. **21**

Apartment star ratings system to shine a light on dodgy developers

Flat chat



Jimmy Thomson

It has a whiff of narcissism about it – "go on, tell me how great I am" – but NSW is about to introduce a voluntary star rating system for new apartment building projects.

Under the scheme announced by Better Regulation and Innovation Minister Kevin Anderson last week, developers will be able to apply to have their projects rated from one to five stars, based on "thousands of data points" to determine their reliability.

Those who pass muster will be encouraged to advertise their star rating on their marketing material, to give potential buyers, lenders and insurers greater confidence.

The ratings tool, created for NSW Fair Trading by credit check company Equifax, "pulls together key data... to demonstrate the character, capability and capital of each developer", according to a media release.

It will consider credit ratings, the relationships between nominated directors (and their families and "mates"), architects, engineers, builders and certifiers, and the entity's history in corporate dealings.

"Ratings will paint a clearer picture of a developer's trustworthiness and the predictability of whether they are likely to construct a compliant and safe building and have the capacity to fix issues if they [arise]," Anderson says.

While the response from the industry has initially been muted, you can see how the big names with the best reputations might think having a five-star rating could help shift a few more units, especially in a faltering market.

But why would dodgy developers subject themselves to critical analysis that could end up damaging their chances of selling their properties? The answer is that they won't, and Fair Trading is hoping that buyers, lenders and insurers will eventually steer away from the no-star cowboys.

The response from the industry has initially been muted.

It's a slow-burn strategy to eventually freeze the worst players out of the market, but it has been welcomed by owner advocates such as Karen Stiles, executive officer at the Owners Corporation Network, who says the tool will take the guesswork out of buying an apartment in NSW.

"These ratings will also be a powerful weapon in our fight to stamp out phoenixing, exposing risky developers with a history of leaving owners high and dry after they have moved in," says Anderson, who aims to have the first 50 developers voluntarily rated before the end of the year.

"I encourage developers to come

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available in their area and compare prices," Tracie Ellis, Renovators Directory chief executive, says.

Latest borrowing numbers show that demand from upgraders during June rose by more than 4.5 per cent as first home buyers continued to be squeezed out of the market by rising prices.

More than 121,000 Australians had also applied for HomeBuilder, which has since been discontinued, according to the Treasury. The scheme could be used for renovations.

Analysts claim continued demand from upgrading owner-occupiers and investors will continue to drive property price gains, despite lockdowns potentially slowing demand in the short term.

According to research group IBISworld, renovations were expected to increase building industry revenues by 11 per cent in 2020-21 to more than \$65 billion.

A shortage of housing supply is also persuading many to avoid the transaction costs of moving – which can be about 10 per cent of the sale price – to spend this on renovations instead.

Dwyer, from the Builders Collective, advises checking the builder is a registered practitioner for the type of work they will be doing and has a current certificate of domestic building insurance. This should be done before paying a deposit.

Also check home and contents policy cover in case that extra cover is needed, he says.

It's recommended that a building lawyer reviews contracts for major renovations before signing.

Lynda McAlary-Smith, executive dir-

ector of the Victorian Building Authority, says renovators in the state need to use a registered practitioner and complete a domestic building contract for any project that costs more than \$10,000. Other states and territories have similar provisions.

Repayment costs for a \$100,000 loan to be repaid over five years can range from about \$8240 to nearly \$15,000, according to Canstar, which monitors rates and fees.

The cheapest methods of repayment are a home loan redraw or an existing home loan increase. A redraw allows the borrower to withdraw from a home loan where repayments have been made over and above the minimum required amounts. On a \$100,000 loan, total repayments will be \$8240 (or monthly payments of about \$1800) based on an interest rate of 3.16 per cent over five years.

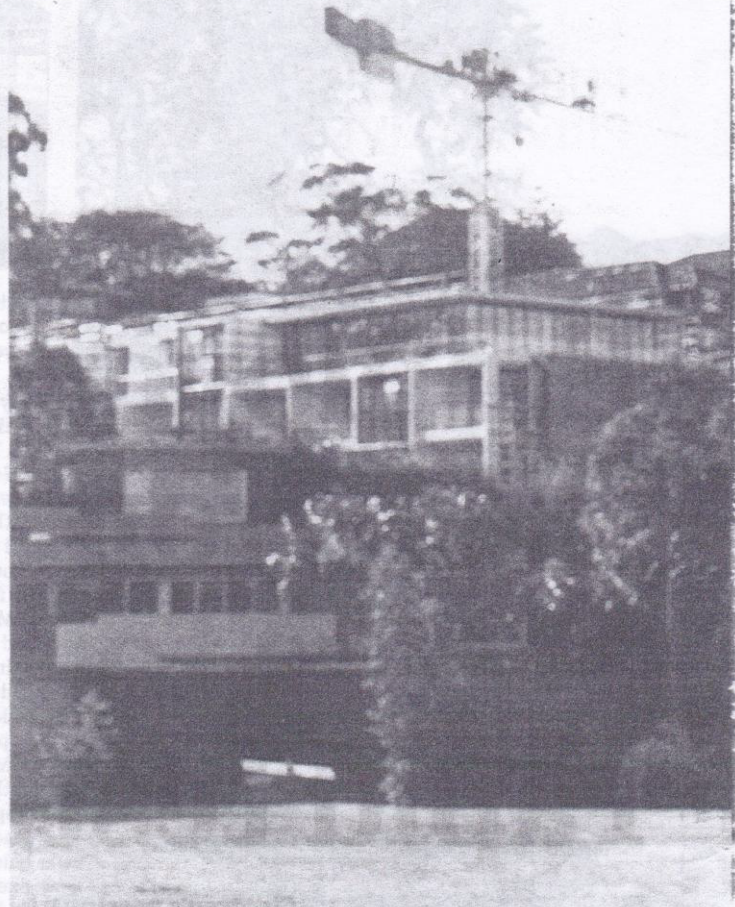
Another option is to borrow extra money against the property. Those with equity and the ability to make extra repayments may be eligible for an increased home loan limit.

Total payments on a principal and interest \$100,000 loan increase will be \$8499 based on monthly repayments of \$1808 and a 3.16 per cent interest rate, Canstar says.

Construction loans will typically have application costs of about \$540 and interest rates ranging from about 3.16 per cent to 3.66 per cent. Total costs for the \$100,000 loan will be about \$9110, or monthly repayments of \$1966 over five years.

Alternatively, Canstar says, with a home loan line of credit the borrower can access funding as needed. Interest is charged as soon as the money is borrowed. In addition to an application cost of about \$500, there can be an annual fee of \$100-plus. Based on an interest rate of 5.03 per cent, costs over five years would total \$14,966, or monthly payments of \$2061. **21**

Defects, obfuscation



Matt O'Sullivan
City editor

More than four years after paying a deposit, Sydney woman Kim Morris has no idea when she can move into an apartment bought off the plan.

"The worst thing is the deafening silence from the developer. It is just the total uncertainty: we just can't get a word out of them," she said.

Ms Morris is among dozens of buyers who have been languishing due to repeated delays to construction of the Bellevue Hill apartment complex known as The Acre in Sydney's east.

Now the discovery of serious defects in the complex overlooking Cooper Park is creating more delays. "There are young couples who have

bought it as their first home and wanted to have children," Ms Morris said. "Everyone is frustrated and angry. It's taken a massive toll."

Since selling her North Bondi home in 2017, Ms Morris has been forced to shift rental properties three times as leases expired. She expected to move into her new apartment by late 2017, and estimates she has incurred over \$100,000 in extra costs from renting, moving and other expenses.

She said many people who bought in the complex did not anticipate they would still be renting. "Because it is Bellevue Hill, people think you are rolling in money," she said.

After ordering a halt to construction last month due to the defects, NSW Building Commissioner David Chandler

Bilbie

make The Acre a heartbreaker



Edwina Considine, left, got her deposit back. Kim Morris can't move in. Photos: Dominic Lorrimer

has singled out The Acre project as demonstrating "almost every systemic failure".

A web of related parties has been involved in the project. Parker Logan Property is listed as the builder and Maryland Developments as the developer.

According to company filings, Sydney developer Joel Redelman and his mother, Deborah Redelman, have a 50 per cent stake each in Maryland and Ms Redelman is its sole director. Mr Redelman, 33, was sole director of Parker Logan when it was put in administration in May.

Mr Chandler questioned the company structures surrounding Parker Logan after it was placed in administration because "it's done as an act of

convenience by the developer". Maryland had reportedly made a \$3.5 million claim on Parker Logan, making it the largest unsecured creditor.

In a statement, Maryland said it "chose to terminate Parker

**Units jump
\$141,000 in
three months**
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Logan Property and appoint another builder to complete the project". It said it became an unsecured creditor of Parker Logan when it went

into voluntary administration.

The company declined to comment on Mr Redelman's involvement, despite Fair Trading confirming it was dealing with him over The Acre.

Resident Edwina Considine considers herself lucky after she got her deposit back on a two-bedroom apartment in The Acre in 2019, due to advice from her

lawyer. "I'm incredibly lucky. I think I'm the only one who got out. It is a miracle," she said.

However, the experience has taken a toll and she will not buy off the plan again. "I had to go and see a psychiatrist due to the impact it was having on me and my family," she said.

Mr Chandler said the project had "fault lines everywhere", citing a lack of documentation and compliance with the building code, and a bank taking its eye off a "poorly governed project".

Mr Chandler said all the bathrooms would have to be ripped out and replaced, and inadequate waterproofing on balconies would also have to be fixed.

And he said the developer would have to set aside security if defects emerged after the complex was deemed fit for residents.

"We're not pulling any punches here. I'm not going to tolerate a situation where this developer gets it to the end, gets the settlements done and goes bankrupt the next day," he said.

Construction of The Acre has also led to storm-water running into a neighbouring property, creating a large hole in a tennis court and rendering it unusable for several years.

Maryland Developments said the Building Commissioner had been "very thorough and when the building is completed, everyone can be very confident with the outcome".

"The new builder is hoping to have the project finished within six months," it said.