

**Submission  
No 21**

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

**Organisation:** Hornsby Shire Council

**Date Received:** 27 August 2021

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Public Accountability Committee

Via email: [Public.Accountability@parliament.nsw.gov.au](mailto:Public.Accountability@parliament.nsw.gov.au)

Dear Sir/Madam

Inquiry into the regulation of building standards

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Thank you for the opportunity to comment on the Public Accountability Committee's parliamentary inquiry into the regulation of building standards.

It is noted that the Terms of Reference seek to inquire into the efficacy and adequacy of the governments' regulation of building standards and specifically, the cost, effectiveness and safety concerns arising from the use of flammable cladding; private certification of, and engineering reports for, construction projects, and any other related matter. The following comments are made with respect to the Terms of Reference for consideration.

### **Fire safety**

Section 129(d) of the Environmental Planning & Assessment Regulation 2000 ("the Regulation") requires a certifier to give written notice to the council of significant fire safety issues relevant to a complying development application.

In practice, this requires a private certifier in receipt of a complying development application to inspect a building before the issuance of a complying development certificate and notify Council if the issue is not being addressed by the proposed development, a fire safety order or by another development consent.

It is however noted that since the introduction of s129 pursuant to the Regulation, no notifications have been received by Hornsby Shire Council from a private certifier concerning an unsafe building. In this regard, it is unclear whether all private certifiers involved in the assessment of complying development applications are acting with due diligence and in the interest of the community, in terms of identifying and reporting significant fire safety issues to local councils.

Further, there is a general lack of compliance in submitting necessary paperwork to local councils as legislatively required of private certifiers, inclusive of Complying Development Certificates, Construction Certificates and Occupation Certificates. This can lead to confusion by local councils as to what has been issued on a building site, particularly where buildings are complete without any paperwork being received. The subsequent consequences of this action leaves local councils unable to commence annual fire safety checks of buildings to ensure the building is safe for affected residents.

Finally, additional education of builders should also be considered as part of the inquiry into the Government's regulation of building standards. In theory, stronger builder education should lead to better

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building outcomes and a more robust certification process. It is noted that the South Australian certification system includes a Construction Industry Training Fund (CITF) levy on all building works above \$40,000, for builder education. A similar levy is recommended to be considered as part of the New South Wales certification system.

### **Private certification of, and engineering reports for, construction projects**

Since the inception of the private building certification scheme in NSW, many councils have annually received hundreds of complaints identifying areas where private certifiers have failed to exercise their duties as a public official. One of the major concerns with the current certification scheme is that property owners and developers are permitted to choose who carries out certification works which does not instil public confidence that a rigorous assessment process has been undertaken throughout the certification process.

Council previously provided comment on the NSW Government's Options Paper titled 'Improving Certifier Independence' in October 2018, and provided support for the establishment of an alternative appointment process for certifiers, being a Cab Rank Scheme which most closely aligned with Council's resolution of 8 August 2018 which resolved the following:

*THAT Local Government NSW write to the NSW State Government requesting that it undertake an urgent review of the building certification system in NSW and consider the following:*

- *Ensure that certifiers who have been banned, be prohibited from being employees, consultants, directors or shareholders of entities providing such services.*
- *Apply more scrutiny when determining the competence of applicants seeking various categories of accreditation under the accreditation scheme adopted under the Building Professionals Act 2005.*
- *Deal more stringently with incompetent private accredited certifiers who assess, approve and certify development that does not comply with planning instruments and development regulations.*
- *Establish a process whereby the local council appoints the building certifier and the principal certifying authority (PCA) through an established local building certifier panel ensuring that there is no connection between the builder and the regulator.*

In this regard, Council continues to support the establishment of an alternative appointment process based on development, monetary and certifier thresholds for private certifiers. Consideration of a Cab Rank Scheme is recommended as it would ensure a developer would be unable to select their own certifier, and rejection of the first available certifier could require the developer to appoint council to perform the role of PCA.

In addition, the reliability of engineers reports must be further considered. There are a number of examples where contradicting information is provided in civil engineer reports submitted to Council relating to the extent of defects identified on a building project. Whilst Council ensures any defects identified are rectified, the ability for a developer to attempt to rely on the provision of a report in which only nominal defects are identified after the initial submission of an engineer's report where substantial defects are noted, needs further consideration. Whilst it is acknowledged that engineers are currently required by legislation to be registered where working on Class 2 buildings, it is recommended that further consideration be given to extending the registration of engineers to other Classes of building work. Finally, consideration should be

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given to the creation of a pro-forma document for Engineers to use when issuing certificates, to ensure there is a level of consistency and accuracy between documents in which certifiers could rely on.

Submitted on behalf of Hornsby Shire Council by

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