

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

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

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At, Hunter Room, Newcastle City Hall, Newcastle on Thursday, 20 February 2020

The Committee met at 11:00 am

PRESENT

Mr David Shoebridge (Chair)

The Hon. John Graham

The Hon. Taylor Martin

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The CHAIR: Welcome to this hearing of the Public Accountability Committee Inquiry into Regulation of Building Standards, Building Quality and Building Disputes. Before I commence I acknowledge the Awabakal and Worimi people, who are the traditional custodians of this land. I pay my respects to the Elders past, present and emerging and extend that respect to other First Nations peoples present. Today's hearing will hear evidence from a number of local councils in the area, including those of Newcastle, Lake Macquarie, Central Coast, Singleton, Dungog and Upper Hunter. We will also hear from the Better Planning Network Inc., the Newcastle Hunter Urban Planning and Transport Alliance and an affected home owner, Mr David Gray.

Before we commence I make some brief comments about the procedure for today's hearing. Today's hearing is open to the public. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation.

The Guidelines for the Broadcast of Proceedings are available from the secretariat. All witnesses have a right to procedural fairness at this inquiry, according to the procedural fairness resolution adopted by the House in 2018. There may be some certain questions a witness could only answer if they had more time or with certain documents to hand. In those circumstances witnesses are advised that they may take a question on notice, in which case they will have 14 days to provide an answer. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members via the Committee staff. To aid the audibility of this hearing I remind Committee members and witnesses to speak into the microphones. Finally, I ask everyone to turn their mobile phones to silent for the duration of the hearing.

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SCOTT RATHGEN, Section Manager, Building Certification, Central Coast Council, affirmed and examined
GEOFF DOUGLASS, Development Projects Coordinator, Newcastle City Council, affirmed and examined
GORDON DRYBURGH, Regulatory Section Manager, Newcastle City Council, affirmed and examined
MICHAEL CORRIGAN, Senior Building Surveyor, Lake Macquarie City Council, affirmed and examined
ELIZABETH LAMBERT, Acting Manager Development Assessment and Certification, Lake Macquarie City Council, affirmed and examined

The CHAIR: Thank you all for attending today. I thank Lake Macquarie City Council for the detailed submission it has provided. Now is an opportunity for each of the councils to make a brief opening statement.

Mr RATHGEN: We did not make a submission, so I suppose I just want to see how the hearing runs and make comments and answer questions as we go.

Mr DOUGLASS: We did not make a submission either. I think a big part of that is because, after 22 years of private certification, council has a very small part of the certification market. We do not tend to receive very many representations in terms of the quality of construction in the type of buildings being considered here generally.

Mr CORRIGAN: Thank you for the opportunity. Staff of Lake Macquarie acknowledge that many of the items raised in our submission are reflected in both the evidence and those further submissions already received by the Committee. We also note that these items have been considered and addressed in the interim report prepared by the Committee. I take this opportunity to emphasise three particular matters of importance. Firstly, we concur with the evidence previously offered that the principal certifying authority [PCA] is present on a construction site only for sample hold points; critical stage inspections identified in the EP and A regulations. Certifiers have not been engaged as superintendents.

The established practice of self-certification made by persons not accredited by any regulatory authority and who do not have an obligation to insure their work cannot continue. Nor can the circumstance where when a defect or dispute arises the PCA is the last remaining entity holding insurance. Staff support the recommendations made in the Committee's interim report chapter 4 with respect to greater insurance protection for consumers and chapter 5 with respect to the introduction of regulation and more building practitioners.

The second point with which we would like to add weight to earlier opinion is that the planning approval and building certification process as established in 1998 has not been simplified but has, in fact, been made more complex, more expensive and less credible and reliable. What incentive might there be for a builder or developer to appoint council as a certifier? It is our experience that council certifiers are regarded as being inflexible or too rigorous. Our view is that this is the strength of the council model, but it is hoped with the delivery of the recommendations of the Committee and the implementation of consistent standards for all accredited certifiers and private certifiers that they might then be relieved of the counter-conclusion that they are in some way less diligent. This, I think, would be an advancement towards restoring public confidence in this industry.

Finally, it is noted that in Australia the use of non-complying cladding is not limited to a few isolated cases. In Lake Macquarie we have four buildings containing aluminium composite cladding on the task force spreadsheet. Although we do not currently possess the same risk as other local government areas [LGAs] we will continue to be an active and contributing member within this space. But that the Government largely relies on councils to manage the problem at a local level without technical and financial support we do see as a problem. The Committee is aware that this approach differs from that in Victoria and Queensland. We would put it that a fully resourced latter model is superior to that which we have in New South Wales.

The CHAIR: Thank you for that summary. Lake Macquarie has four buildings with aluminium composite material cladding. What is the situation in Newcastle or other councils?

Mr DRYBURGH: City of Newcastle has 45 buildings on the cladding register—those ones that have been identified or voluntarily identified by building owners through the Environmental Planning and Assessment Regulation 2000 at the beginning of last year, I think it was. The number is 45.

The CHAIR: What about the Central Coast?

Mr RATHGEN: I am not sure of the exact number. I think it would be up to around about the 12 mark. Some of those are public buildings and the—

The Hon. JOHN GRAHAM: So it was 12, did you say?

The CHAIR: Was it a dozen?

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Mr RATHGEN: Up to about 12. I do not know the exact number. Some of the buildings have been pursued to rectify them and some are public buildings—a hospital, I think, is one of them, which is being addressed by the public authority.

The CHAIR: Is that one of the new hospitals, one of the new buildings?

Mr RATHGEN: I think it is an old one.

The CHAIR: Is it Wyong?

Mr RATHGEN: No, it is in the Gosford area.

The CHAIR: In Gosford?

Mr RATHGEN: In the Gosford area.

The CHAIR: Is that a public hospital or a private hospital?

Mr RATHGEN: I would have to get back to you on that one. I am not sure.

The CHAIR: By all means. Of the 45 buildings in Newcastle with flammable cladding, how many of them have been fixed?

Mr DRYBURGH: One has been voluntarily rectified. We are going through that process at the moment, reviewing the documentation submitted. We are in the process of starting our investigations into the other 44 at the moment. Of those 45, on the whole, seven are Crown buildings or of that persona, so we will be writing to the Crown saying, "These are on the register; can you please take appropriate action?" But we have no jurisdiction in that area.

The CHAIR: You will be writing to the Crown or you have written to the Crown?

Mr DRYBURGH: We will be writing to the Crown. We have not as yet.

The Hon. JOHN GRAHAM: Are you aware of any activity on behalf of the State to fix those seven buildings so far? You will be raising the issue generally, but has anything happened with those?

Mr DRYBURGH: We have not been notified of anything in that space.

The CHAIR: This is not a new issue. It has been some three years since that dreadful Grenfell Tower disaster. Is it because you have not had guidance or resources from the State Government that you are only at the point now of writing to owners, or is there some other reason for that?

Mr DRYBURGH: There is a State government entity called the Cladding Support Unit and they have gone through a methodical process of asking us—various milestones. One of them is to write to owners. We have got the register. We then have to proceed along, do our desktop audit, write to owners and then organise the next step in the process. Resources are an issue in this matter, from council's point of view. We have various other competing projects to work on.

The CHAIR: I accept resources are always an issue for councils. At a State level I think there should be a lot of collective guilt about how many problems are handed to council and cost shifting, but we are talking about flammable cladding and a major public safety issue. Is this something that the council is going to prioritise? Are there buildings that you have identified to prioritise, in the high risk category, that you are prioritising?

Mr DRYBURGH: We are working through that process at the moment. Fire and Rescue NSW have given us a list of, I think, 10 buildings that they consider high risk, so they will be the first ones on the list to address.

The CHAIR: Can I just confirm your evidence? There are 10 buildings that are high risk and you have not yet written to the owners.

Mr DRYBURGH: That is correct.

The CHAIR: I am finding that evidence hard to square, to be honest, that you have got 10 high-risk buildings in your municipality and you have not got to the stage of writing to the owners. What else has been done to ensure that those buildings are safe, or the occupants in those buildings are safe, in the meantime?

Mr DRYBURGH: From City of Newcastle's point of view, we are working through the process. I am not sure we have—following a process, we will be writing to the owners to let them know they are on the register.

The CHAIR: But you have not done that.

Mr DRYBURGH: We have not done that as yet.

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The CHAIR: It is not a loaded question. I am asking you what has been done that you are aware of to ensure the occupants in 10 high-risk buildings with flammable cladding are safe?

Mr DRYBURGH: I am not sure anything has been done. The owners have notified the buildings, so the question may be directed at the owners of the building.

The CHAIR: What about Lake Macquarie?

Mr CORRIGAN: Lake Macquarie has—I said previously, we have got four buildings. Lake Macquarie has written to those buildings but, again, that is the first step and that is as far as it has gone. We have had another building that was—they volunteered that there might have been a problem. We have worked through the issues. That building has been closed off now and we gained some lessons from that one—how we might put together the initial letters, what a proposed order might look like and how we will move it forward.

The Hon. JOHN GRAHAM: Of those buildings, the four or five, are they private buildings or do they include public buildings?

Mr CORRIGAN: They are private buildings.

The CHAIR: Are any of them in the high-risk category?

Mr CORRIGAN: I do not believe so but I will confirm that evidence. I am not sure, Mr Shoebridge.

The CHAIR: Given you have gone further down the process at Lake Macquarie, what are the lessons you learned from your initial steps?

Mr CORRIGAN: Resourcing. The time involved, I think, in that particular building—obviously it was fortunate that they had volunteered it, but also there was a cooperative approach.

The CHAIR: Was that a commercial or a residential? What kind of building was it?

Mr CORRIGAN: It was a commercial building.

The CHAIR: So you did not have people sleeping in it at night. You did not have those direct concerns.

Mr CORRIGAN: No.

The CHAIR: Did you get to the process of issuing orders by council?

Mr CORRIGAN: I am unsure. I will have to come back to how we got to an outcome there—whether we went to an order, or whether we went to an intent to serve an order, or whether we did it with correspondence.

The CHAIR: The overall takeaway from that engagement with that particular owner—if you have got a cooperative owner it can work, would you say? What is the takeaway?

Mr CORRIGAN: Yes. I think where you have the circumstance where the owners are cooperative or even have the means to do anything about it—that is the other big fear. Again, we were fortunate to get through that particular building.

The Hon. JOHN GRAHAM: One of the concerns that has been raised with the Committee in other hearings on flammable cladding is the issue of coordination with the various lists, and just coordination with councils so that there is timely information and that it is not just left with councils. Have you got any reflections on how that coordination process has worked? Have you had the information you need when you need it?

The CHAIR: There are three State players here. We have got Fire and Rescue, we have got Planning, and then we have got wherever Fair Trading now sits. The register has bounced between Planning and Fair Trading. Fire and Rescue has its own list. I suppose that is the coordination we are asking about.

Mr DRYBURGH: The advent of the cladding support unit has been very positive, in that respect, in providing a State level coordination and a process to follow.

The CHAIR: What is that process? I assume some of those 10 high-risk buildings would be residential buildings. Is that right?

Mr DRYBURGH: Correct.

The CHAIR: So what is that process? If we are here in February 2020, we had the Grenfell disaster three years ago. We all saw that tragedy. If there is a process there, what is it?

Mr DRYBURGH: Buildings are identified. We then have to write to the owners. We then have to prepare a notice of intention to issue an order to start the process. What we have done at the City of Newcastle is get our draft orders in place ready to go. So we have done our first desktop audit. We will be then writing to those

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owners this week, as far as I know, to organise to meet with them and to move the process forward. In terms of identifying where the combustible cladding is, that is a fairly involved process. Our suggestion would be to engage a fire safety engineer to progress that matter forward.

The CHAIR: Council's own fire safety engineer?

Mr DRYBURGH: No. The owner's corporation, for example, in a strata block would have to engage a fire safety engineer.

The CHAIR: Are you aware of the collapse of professional indemnity insurance and the scarcity of any kind of fire safety engineer, any kind of expert, who is willing to write that kind of report? Are you aware of that collapse in the market?

Mr DRYBURGH: I am aware there are issues in the industry. But I might just add that my discussions with fire safety engineers probably middle of last year about the issue of that matter, "Have you had trouble getting insurance?", I spoke to three and they all said, "We don't have a problem." This is an accredited fire safety engineer. Three of them said, "No, we don't have an issue in getting professional indemnity insurance." I know there are issues with building certifiers.

The CHAIR: Are you aware of the fact that pretty much every professional indemnity policy has an exclusion for the coverage of cladding? That is almost invariably across industry practice. If your assumption is that people will be able to get a report done by an accredited and insured fire safety expert, that might be an awkward assumption given that pretty much the entire industry has got exclusions for covering of flammable cladding.

Mr DRYBURGH: I did ask that particular question: "With respect to the cladding exclusion, is there a problem with you writing a report to recommend rectifications to a building with combustible cladding?" They said they do not have a problem with getting professional indemnity insurance.

The CHAIR: That was your discussion in June of last year?

Mr DRYBURGH: It was probably a bit later. It was probably August, thinking about it.

The CHAIR: Has this issue arisen at all in Lake Macquarie's work or the Central Coast?

Mr CORRIGAN: It is a very similar circumstance as Mr Dryburgh has described. What I think will be the issue will be at the sign-off of recommended rectification works. I think we can safely assume that the policy exclusions will still allow sufficient consultants that can provide advice with respect to what cladding is in the buildings or otherwise. But it will be that close-off that I think—

The CHAIR: When someone is liable.

Mr CORRIGAN: When somebody is liable. So that would be the problem to conclude it. That is symptomatic of everything, of course, that your Committee is looking at.

The Hon. JOHN GRAHAM: One of the contrasts in ways of tackling this is with Victoria where their system is very much decentralised, that risk assessment and recommended actions. They have got a central panel that provides that advice, which it has been put to us certainly has the benefit of providing consistent advice rather than a sort of piecemeal approach that would have been advised might happen if this is left area by area, assessor by assessor. I just wondered if any of you would like to comment on whether you believe that sort of centralisation might be helpful in the New South Wales context when you are looking to refer these owners on.

Mr CORRIGAN: I think there is an advantage in that that body also has the opportunity to be the adjudicator in the event of conflicting work with respect to the rectification work.

The CHAIR: Otherwise that is left to you and your team, is it not?

Mr CORRIGAN: Our team of certifiers.

The CHAIR: Yes.

Mr CORRIGAN: Not fire safety engineers.

The CHAIR: Yes, and it is next to impossible then to make the call in those circumstances. That is the current process, is it not? The State Government is giving you the baby and asks you to take care of it.

Mr CORRIGAN: I would agree with that.

The Hon. JOHN GRAHAM: Any views from Newcastle on that?

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Mr DRYBURGH: I would agree with what Lake Macquarie said, that a centralised process for investigation and requiring rectification of the cladding would be a positive.

Mr RATHGEN: I think I agree. I think a centralised registered area would be of benefit in terms of consistency and approach to rectifying any problems.

The CHAIR: I am sorry, Mr Rathgen, just for the sake of consistency, so we have a common set of numbers, of the 12 buildings identified with flammable cladding in the Central Coast, how many of those are high risk and how many of those are Crown?

Mr RATHGEN: I would have to take that on notice. I do not know the numbers exactly. I said up to 12 and I think that is about the approximate figure.

The CHAIR: If you could give us those other details?

Mr RATHGEN: I would be happy to do that.

The CHAIR: If you give us the details of how many are residential, how many are Crown, how many are high risk and of those high risk how many are Crown?

Mr RATHGEN: I would be happy to get back with some detailed figures. But just to comment on what you were talking about, we are relying on the registration of the properties by property owners and part of the process is that we write to the property owners at that point when we are advised of the potential for cladding. We have an inspection of the building to ascertain on the face of it if it is a significant risk and if the onus is put back on the owner to provide detail on what sort of cladding might be on the building. In some circumstances my understanding is that different forms of cladding—on the outside they look the same but there is less flammability with some of them and they meet the standards. We have had a couple, in my understanding, that have proven that they are not a significant fire risk and they meet the criteria in terms of flammability. So we put the onus on the owner to provide information to come back to us and in certain circumstances, if necessary, I suppose, we would take that further with the owners if it is not.

The CHAIR: Are you saying you have been onsite, someone from council has been onsite to each of the identified properties?

Mr RATHGEN: I would not say all of them, but many of them, and it might be a desktop analysis of what the actual building is—is it a class 2 building, for example, when it would be a high risk? Some of these are commercial buildings and it is now a single-storey building, and in terms of the risk it is less in terms of the occupancy of the building. So there would be a desktop analysis and, regardless of that, we have written to property owners to get them to clarify what sort of cladding is on the building.

The CHAIR: Has Newcastle done that?

Mr DRYBURGH: What, written to property owners?

The CHAIR: Have they inspected the properties, done the desktop analysis?

Mr DRYBURGH: We have started the desktop analysis and then we will be writing to the owners.

The CHAIR: But have you attended any of the properties like Central Coast Council?

Mr DRYBURGH: Not as yet. We are in the process. We are going through a process doing a desktop audit, writing to owners, then meeting the owners onsite. Looking at a building and trying to identify where combustible cladding is is virtually impossible to some extent. The problem with cladding is the middle portion of the cladding, which is the polyethylene [PE], you cannot see it. So building owners will need to engage a fire safety engineer to probably carry out some destructive testing of the cladding to ascertain whether it meets the less than 30 per cent PE.

The Hon. TAYLOR MARTIN: Do you know if that has been happening in the City of Newcastle area of responsibility so far?

Mr DRYBURGH: Not to my knowledge. The one building that was rectified, I think the owners engaged a fire safety engineer and the cladding replacement was probably minimal that was required; so the owners corporation just went ahead and did that particular one.

The Hon. TAYLOR MARTIN: Can I ask further if you know if that came about because of an identification process through the State Government?

Mr DRYBURGH: To the best of my knowledge it came out through that notification program.

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The CHAIR: Just for the sake of consistency, can Newcastle provide us with the details about the 44 properties, how many of them were Crown buildings?

Mr DRYBURGH: Seven, as far as I know.

The Hon. JOHN GRAHAM: Seven of the 44.

The CHAIR: And were any of those in the high-risk category?

Mr DRYBURGH: I would have to take that on notice and come back to you.

The CHAIR: And again, how many of those were residential and how many of those residential were in the high-risk category.

Mr DRYBURGH: Again, I would have to take those on notice.

The CHAIR: I do not expect you to have those numbers necessarily in your mind.

The Hon. JOHN GRAHAM: I might just move to the broader building defects issue. One of the reasons why the Committee is here is this Committee started driven by the very public incidents in a couple of large apartment blocks in Sydney and the impact that has had on residents. We are here to assess how much of a problem is this outside of Sydney, acknowledging the point that has already been made about the extent of private certification over 22 years, so not all of these defects might come to council's attention either for sign-off or by way of feedback, can you give us any advice about the extent of the building defects issue that you perceive in your council areas either directly or you are getting informal feedback? I might start with Lake Macquarie because we have received submissions and evidence in relation to at least one significant issue in the Charlestown area, but I am interested in the extent of the problem of the broader building defects.

The CHAIR: That was the Landmark building we have had that detail on.

Mr CORRIGAN: I am sorry, could you put the question to me again?

The Hon. JOHN GRAHAM: The building defects issue is of real concern across the Sydney building market. I think the Committee is more concerned about when it started. To what extent, based on your feedback, do you think there is a problem in your council areas and there is a real need to act? I am just interested in your advice about—

Mr CORRIGAN: Do you mean with respect to residential buildings over 3 storeys, class 2?

The CHAIR: I think across the board, the kind of scale and severity of the building defects issue, from your perspective.

Mr CORRIGAN: The Landmark building that the Committee is aware of is the one building that we have knowledge of that might fit into the category that you describe. Our work is predominantly residential work. There is a trend moving towards approvals of more residential buildings, and in Lake Macquarie we might be fortunate that at the start of the curve up towards this that we can address all the systemic problems before it becomes—not trivialising the problem at Landmark, but before the burden on the community at Lake Macquarie becomes greater than it is. There is one circumstance that my mind goes to.

Ms LAMBERT: Just to put some context around where Lake Macquarie sits in the scheme of things, last financial year we did undertake, or received 2,500 development applications, which was estimated at having a cost of \$1.4 billion, but the bulk of that, as my colleague said, is in relation to the smaller-scale development. So, we do not have the large apartment buildings. Last year we received nine applications for residential flat buildings, so that is the sort of scale of development in Lake Macquarie.

The CHAIR: Does that match the starts you have had over the last, say, decade? Would the rough number be nine a year that have actually been built?

Ms LAMBERT: Yes, so, moving backwards, it was nine applications last year, 12 the year before. It is around that figure, so it is not up or it is not down—it is steady.

The CHAIR: Are the applications matching the starts? Are you seeing them tracking through?

Ms LAMBERT: Yes, we generally see that the applications that are applied for do proceed to a commencement.

The CHAIR: So, of those multi-level flat buildings—apartment buildings—what proportion would see council certifiers, if at all?

Mr CORRIGAN: In the last five years I am aware of one that the council has been certifier for.

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The Hon. JOHN GRAHAM: Yes, which is really the point that has been made by your colleague.

The CHAIR: When you are giving evidence about the extent of the defects that you are aware of, you are saying: through the work of your own council inspectors on sites where you are the certifiers. Is that right?

Mr CORRIGAN: No. What I intended to convey was that there is the Landmark building, which council was not the certifier for, that is the one example—

The CHAIR: You could say that a couple of times, if you like, Mr Corrigan—you are not the certifier of that, just to be clear. Yes, apart from that?

Mr CORRIGAN: It is the one example I can go to. Of this building type, we have one other example where council was engaged as the certifier—one.

The Hon. JOHN GRAHAM: So, Newcastle?

Mr DOUGLASS: Whilst I have got no reason to believe that Newcastle is any different to Sydney in terms of quality issues in building, again, we have a very low proportion of the actual certification work. We sit at about—we would be lucky to be 10 per cent of the market and about 1 per cent of the value. So it is mums and dads. Probably the more complicated jobs we get are jobs that go a bit wrong that a certifier wants to walk away from and we are the certifier of last resort. But I cannot remember the last time we were involved in a multistorey residential building from a building approval point of view. It would perhaps go back to the early to mid-nineties.

The Hon. JOHN GRAHAM: Accepting that, though, I am asking a different question, which is: To what extent do you believe there is a problem? I am picking up on the evidence from Lake Macquarie. I imagine in Newcastle, given the planned development, part of the issue here is not what has happened in the past, but making sure that what happens over the next five to seven years is built at a high standard and does not suffer some of the issues we have seen elsewhere. Is that a fair comment?

Mr DOUGLASS: To the extent that we are involved in the process—we are granting development consents, which do not really give us the opportunity—

The Hon. JOHN GRAHAM: I am not asking about your involvement in the process. I am asking about your observation about the council area and the extent of the issue here. Given your view that much of this has been handed over to private certifiers, do you have any observations you would like to put on the—

Mr DOUGLASS: The only observation I have got is that I do not see a great deal of evidence coming our way. Again, not discounting that it is perhaps happening. It is just that we are not getting caught up in it.

The Hon. JOHN GRAHAM: Yes, so you may not see that for the reasons you have outlined.

Mr DOUGLASS: Yes.

The Hon. JOHN GRAHAM: Okay, thank you. And Central Coast?

Mr RATHGEN: Similar to that, I will not talk about our market share which, again, is pretty low, but, yes, it is a matter of whether we hear about the problems in the high-rise buildings. There is numerous currently being erected in the Gosford township, some in The Entrance area. Problems may eventuate down the track. I recall one in The Entrance, which was probably constructed 10 years ago, where I know there are some ongoing problems. We have had a Class 1 dwelling where they changed certifiers and the building had to be, basically, pulled down and started again from frame level. Maybe it is a better question to ask the Department of Fair Trading who may have statistics on complaints in the areas et cetera. But it is only when we hear about it through property owners where they think we can resolve some of their concerns.

The CHAIR: I received some disturbing images about a fairly large development right here in Newcastle—the Bellevue apartments. I think we might even have them available to show you—probably to you, Mr Dryburgh and Mr Douglass. These are the Bellevue apartments down at Wickham—that large grey building that you can see behind the pub. I will run through the various images there. The first one, you can see the extent of all the cladding on the outside. You can see, even from that first image taken from quite a way, large chunks of it are in disrepair. The second image, a little closer, you can see the cladding falling apart on the side of the building there. The third shows a problem with the alignment and the grouting.

The fourth image is interesting because it shows that, in fact, this building won the Landcom 2011 Lower Hunter Urban Design Award, not dissimilar to Landmark, which was an award-winning building. That fourth image there again shows the extent of the problems with the cladding. The fifth image shows the warping up around the cladding and the guttering on the top. The sixth image shows, obviously, further disturbing concerns about the cladding and that last image shows the corrosion and the significant problems with the internal fittings

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caused by water penetration. I am told this issue was raised with council senior executives in a meeting on 4 December. Are you aware of that?

Mr DOUGLASS: No, I am not aware of it at all.

The CHAIR: Are you aware that the Building Commissioner came and met with senior executives of the council on 4 December?

Mr DOUGLASS: I am aware that the Building Commissioner came to Newcastle. I was not involved so I am not aware of that discussion.

The CHAIR: Perhaps you might take that on notice—whether the concerns about the Bellevue apartments were raised at the 4 December meeting and what, if anything, has been done in response. Will you take that on notice?

Mr DOUGLASS: Sure.

The CHAIR: Does it trouble you that such a large and prominent building has got so many obvious visual defects on it? You can see it walking past it. Does it trouble you?

Mr DOUGLASS: It is not an attractive building in terms of the condition that it is in.

The CHAIR: It is downright unsafe.

Mr DOUGLASS: The photos do not tell me a great deal about the detail of the problems that are experienced there. A lot of the photos seem to show peeling paint, which I would not consider to be cladding of the building.

The CHAIR: All right. It is a fairly notorious development. I think the first two builders went into liquidation. One of them might have been shot even at some point. There is quite substantial litigation about it. None of that has come to council's attention on such a prominent, large building so close to the CBD?

Mr DOUGLASS: Perhaps I had some marginal awareness of it at the time. That is not recent. But I am not aware that council, at any point, was asked to be involved or to deal with actual complaints about the construction.

The CHAIR: You could see how just having that example of what look like, on the face of it, substantial defects, significant problems, would be a kind of warning light if there is going to be a surge of additional development in the area. I think there is a master plan around Wickham that has just been issued. You would surely want to get on top of these issues before we have another surge in development.

Mr DOUGLASS: Yes, I would think that a lot of this is systematic, and that is what you are looking into.

The CHAIR: This question is to all of you: What are the systematic things we need to be looking at to ensure these kinds of things do not happen? I might start with you, Ms Lambert or Mr Corrigan?

Ms LAMBERT: As a staff member at Lake Macquarie City Council, I think one of the issues that we experience, is, anecdotally, the integrity of the building industry is being undermined with the lack of overseeing on development sites. Our experience in council is that we received numerous complaints around privately certified work. When work is privately certified we do not receive any fee or anything, but we are expected to pick up the tab on those compliance issues at least in the first instance. The other critical issue around that is the relationship between the owner and builder. There is essentially a direct commercial relationship between those two parties, which I believe is undermining the industry. A greater separation would be great between the two parties and that would provide a lot more transparency across the system.

The Hon. JOHN GRAHAM: Thank you for your submission as well. I noted five of the issues you raised were really about the private certifiers. One was about having a properly resourced building commission that I think this Committee has agreed with your view on. There are two views about private certification: One that it is just fundamentally flawed; there is a conflict of interest and it should be scrapped. That is one view. Another view, including the view of Mr Lambert who wrote a key report, is that there is a problem but it could be dealt with by better regulating the council or private certifiers. Which of those two views are you putting to the Committee?

Ms LAMBERT: I would put to the Committee the second view. It is not a system that I would totally abandon. I think it provides for good competitive tendering for projects and things like that, which is good and which ensures that we are competitive in the marketplace. Therefore I think that if we were to tighten around the transparency and scrutiny, I think that has definitely got benefits.

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The CHAIR: But how can you compete in a market place if there is an unscrupulous certifier willing to sign off on huge cost saving outcomes on the building? How can you compete in the marketplace on that? Is there not such an inevitable conflict of interest that talking about it in terms of competition is perhaps part of the problem?

Ms LAMBERT: In my opinion I would believe that if we had the greater scrutiny across those certifiers who are signing off, then that is certainly going to go a long way because you can only do that for so long.

The CHAIR: We have had countless witnesses and submissions talking about notorious certifiers and, even when they are struck off, they then continue to run businesses. They go from being a certifier to the general manager of the business. Rather than trying to police the police, would we not be better off trying to make sure the private certifiers do not have those conflicts of interest?

Ms LAMBERT: Yes, I agree.

The Hon. JOHN GRAHAM: Mr Corrigan, feel free to jump in. I was going to ask Newcastle for a view, given the concerns you have already raised.

Mr CORRIGAN: Sorry. I will just amplify what Ms Lambert has just said: in addition, a regulatory framework for all practitioners in the building supply chain.

The Hon. JOHN GRAHAM: Yes, accepted.

Mr CORRIGAN: Whether a private certifier is unscrupulous or just busy, if we do not get the checks all the way from the guy who is putting the bead behind the mastic to plugging up the tiles—all the way along then there is a hole—if we could correct that hole it would assist private certifiers and council certifiers.

The Hon. JOHN GRAHAM: I think that view has been put strongly and I think is broadly accepted by the Committee. We have had competing views on the best way to tackle the private certification issue.

The CHAIR: But without fixing that quality in the building and that chain of responsibility all the way through, it does not matter what you do with certifiers: It is like putting a Band-Aid on an amputation. It is not going to fix the problem.

Mr CORRIGAN: That would be my strong view.

The Hon. JOHN GRAHAM: Newcastle, given that you have commenced raising concerns about the 22 years of private certification, which of those two camps are you really recommending to the Committee?

The CHAIR: If either.

Mr DOUGLASS: I think private certification is probably here to stay but I think the underlying problem is it is not about certifiers: It is about the fact that there are not very many people in the system that are actually accountable through either their accreditation or the requirement to have insurance. The certifier is really the only person who has proper insurance, professional indemnity insurance, in the system. That exposes them to a lot of risk. My view is that over time a lot of certifiers become very attuned to that risk and change practices to deal with it. But they are still out there on their own to a large extent. I think the system needs to actually capture a lot more people from the design right through the trades—the whole lot.

The Hon. JOHN GRAHAM: Assuming that happened and that that is an agreed view, picking up my colleague's point, is it possible to then regulate the private certification section of the industry, or are the concerns you raise too fundamental?

Mr DOUGLASS: I think private certification can be adequately managed and regulated, but of course regulating a lot more people will bring some other challenges as well. There will be similar challenges with those individuals as well.

Mr RATHGEN: I will probably talk about my level, what we predominantly deal with, which is class 1 and 10 buildings rather than the class 2 to 9, large commercial development. If private certification works properly and is regulated properly it can work well but the concern is, I suppose, and what has been touched on is the inherent conflict of a certifier working with the developer consistently and his staff needing to maintain that business relationship. There is a natural conflict there that somehow needs to be broken. We have talked about quotas with the certifiers and taxi ranks, et cetera. As it was touched on I think private certification initially came into place because of the poor service in local government in some areas where it was too bureaucratic. What private certification has done is improve the service level because it is competitive.

What we find with what we deal with is that we are concerned about the fees level some certifiers charge. Private certifiers have the same problem with certifiers coming in and undercutting, like tradesmen, just to get the

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market and get them into their office and working with them. If you have provided a service for minimal cost, the levels go down potentially and what they are doing and what they are required to do is not appropriate. But I agree: It is accountable through all the trades and building professionals. There needs to be immensely more accountability in regulation.

The CHAIR: Unfortunately, we have run out of time. On behalf of each member of the Committee I thank you all for your evidence and, Lake Macquarie, your submissions and your guidance earlier in the inquiry. That is always valuable in preparing our interim report. Thank you all also for your attendance today. I think there have been some questions taken on notice. I again remind you that you have 14 days in which to return those answers. Thank you very much.

(The witnesses withdrew.)

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ANDREW HENRY, Building Certifier/Coordinator Regulatory Services, Singleton Council, affirmed and examined

PHILLIP HOAWERTH, Building Certifier/Process Improvement Specialist, Singleton Council, affirmed and examined

NICK GREENHALGH, Senior Development/Building Officer, Dungog Shire Council, affirmed and examined

CHRISTINE ROBINSON, Manager Planning Building and Regulatory Services, Upper Hunter Shire Council, affirmed and examined

The CHAIR: Thank you all for attending. Ms Robinson, would you like to give a brief opening statement about the issues?

Ms ROBINSON: I do not have an opening statement.

The CHAIR: Mr Greenhalgh?

Mr GREENHALGH: Thank you. We have made a submission. We do not have a lot of involvement with a number of the terms of reference listed in the terms of reference, but we have taken the opportunity to make a submission in relation to other matters and, more specifically, about occupation certificates and the lack of regulation or follow-up regulation on that, resulting in some risks to life and property. I have tabled a submission, which I understand has been circulated, and hopefully I get an opportunity to speak to that later.

The CHAIR: I think that was circulated to us yesterday. Do you have some hard copies to hand to the Committee?

Mr GREENHALGH: I have, yes.

The CHAIR: Now would be a useful time. We might come back to that, Mr Greenhalgh. Mr Hoawerth or Mr Henry?

Mr HENRY: Thank you. We have not made a submission but if I could just briefly outline some points in relation to building regulation issues at both Singleton Council and New South Wales generally. Singleton Council currently employs three building certifiers. Our certifiers deal mostly with dwellings, sheds, pools and the like, but certification is also undertaken on small-scale industrial and commercial development. The large commercial industrial development in our local government area [LGA] is undertaken by private certifiers. Singleton Council, however, is committed to be the certifier of choice; so the difficulty in recruiting accredited certifiers and the time frame required to achieve accreditation is a source of concern for my council.

Council is also concerned that any proposals for statutory controls of private certifiers will impact resourcing in local government. A reduction in consumer choice will be the likely outcome as council certifiers may potentially take on an increasing regulatory role. Compulsory training for certifiers on the National Construction Code has merit; this issue was raised in the Shergold Weir report. We think, however, that any training on the National Construction Code should also focus on performance-based solutions. At the moment processes do not encourage regular use of alternate solutions.

Significant work needs to be taken on the occupation certificate system. Our experience in Singleton is that a number of dwellings and sheds and the like do not have occupation certificates and the owners have occupied without those certificates. Can I also conclude by saying that if there is to be a robust building certification system this should include both private and council certifiers. Council certifiers, however, should not be burdened with having a regulatory oversight but have opportunities to provide an efficient and professional certification service.

The CHAIR: Thank you, Mr Henry. Mr Hoawerth, are you relying upon Mr Henry's summary?

Mr HOAWERTH: I am indeed, thank you.

The CHAIR: Mr Greenhalgh, we will now come back to you. Do you want to set out in some more detail the concerns you have put in this opening statement?

Mr GREENHALGH: Thank you, Mr Chair. Dungog council saw a problem with the certification process starting from the development application where consents would be issued; conditions of consent would be applied and, with some relevance for Dungog, there were controls around bushfire control, safety of an asset and access to the property. Through the certification process would be the issue of construction certificates, mandatory inspections. There is no closing the loop with the occupation certificate stage of the development. The process is responsive where inspections are booked and called for by either the property owner or the builder. That process is generally fairly well regulated up to the point of the occupation certificate. As an example, in the Dungog shire area we issue around about 200 development applications, on average, a year; of those, about 70 are

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dwellings and of those we note that occupation certificates are issued on 20 to 30, on average, a year, leaving a large number of dwellings being constructed in isolated bushfire-prone areas that, in my experience, do not meet the minimum standards for access for emergency service vehicles for on-site fire protection and similar bushfire protection measures. That is one isolated aspect of the development.

We talk about swimming pool fencing not meeting the minimum standards, where final inspection is not carried out. The concern of this council is that the process allows for the development to proceed to a point of occupation, but there is no closure in that process where there is an obligation on the certifier to follow-up to find out whether a development has been occupied without consent, and that often then becomes apparent at the sale of the property. Through the Conveyancing Act there is an obligation to either obtain an occupation certificate or demonstrate a reason why one has not been obtained. That does create some closure where the purchaser of the property is satisfied or requires an occupation certificate, but that can be some years—it could be years, it could be decades down the track.

We have buildings in isolated bushfire-prone areas that have poor levels of access for emergency service vehicles, a poor level of access for the occupants on a daily basis. I focus on bushfire; it is not solely about bushfire, but that is relevant for my area. It can relate to essential fire safety measures in commercial buildings. It all relies on the property owner or the builder; the onus is on the property owner to request the final inspection and an occupation certificate. I have provided some basic stats. It is my experience as a builder prior to coming into council that once a development has proceeded to the actual construction phase that it is likely that the development will be finalised within a 12-month to two-year period, generally a lot quicker. In the 2018 period approximately 150 construction certificates were issued and of that 150 only 72 occupation certificates were issued in that same period. So in the past two years 150 applications were commenced but only finalised less than 50 per cent of that.

The CHAIR: What about Hunter? Would you find the same disparity between construction certificates and occupation certificates, do you think?

Ms ROBINSON: Definitely. I would agree with everything that Nick has put forward. We definitely deal with the same problems in the follow-up of occupation certificates—as Nick said, it comes to light when or if the property is sold—and compliance with those consent conditions that are on the consent.

The CHAIR: Mr Hoawerth or Mr Henry?

Mr HENRY: We agree also. Singleton Council's experience has been the same with regards to occupation certificates and development that has not been completed, that quite often that will come up at the conveyancing stage, that those issues will be identified in relation to bushfire and fire safety measures.

The CHAIR: So when it comes up at the conveyancing stage and the purchaser's lawyer has raised the issued with the vendor's lawyer and says, "Where's his certificate?" Is that when council will get brought onto the site to try and retrospectively issue an occupation certificate, or what happens?

Mr GREENHALGH: Sorry, not retrospectively. The consent remains valid and ongoing. There is no time frame to obtain an occupation certificate. It is a statutory obligation to obtain one and it is an offence not to obtain one, but the actual period for which you need to obtain an occupation certificate for consents issued prior to 1 December—for occupation certificates issued prior to 1 December 2019 there was no time frame put in place. So once you commenced work it could take for as long as you needed to complete the work.

The CHAIR: But meanwhile someone might have been living in the property once it was effectively finished for five, 10 years before this issue becomes apparent to any third party.

Mr GREENHALGH: And it is a serious concern of this council that the buildings are occupied, whether it is in a flood-affected area, whether it is in a bushfire-prone area. In my experience, having been involved with a coroner's inquest into a child drowning in a swimming pool—the fence was non-compliant with the standards at the time. That was not the reason for the drowning—the child climbed the fence—but it became apparent that there had been no final inspection carried out on that pool at the time.

The Hon. JOHN GRAHAM: How did the changes that did become operational on 1 December 2019 impact on this issue? Did they make any difference?

Mr GREENHALGH: I do not believe they did. They introduced a requirement that—prior to 1 December 2019 interim occupation certificates could be issued. They have been removed and now the process is that an occupation certificate is issued for part of a building. There is a statutory obligation that the works of the entire building be finished within five years. Again, I raised concerns in my submission about that. There is no obligation on the certifier to follow up. The likelihood of the private certifier to follow up—there is no cost recovery system in place. It seems to be a gap of five years that shows no reason—

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The CHAIR: So there is no financial incentive for a private certifier to take that last step. They do not get paid any more. Is that your understanding?

Mr GREENHALGH: There is not.

Mr HENRY: Correct. Yes, that is my understanding.

The CHAIR: In the absence of a financial obligation, you think there should be a statutory obligation imposed?

Mr GREENHALGH: Correct.

The CHAIR: Does that mean this is just yet another cost shift to local councils, effectively? If private certifiers are missed, you then get brought in to try and fix up the mess at the point of sale. Is that what is happening?

Mr GREENHALGH: I am not suggesting on behalf of council that it would necessarily sit with council—the obligation to follow up on the work. Also I believe five years, as outlined in the legislation, is too long. I think that a follow-up inspection within two years—also, factored into a competitive service, it is a service provided by council and the private certifiers. That was incorporated into the fee structure. There was a discussion in the previous session about the competitiveness in the fee structure. There is an industry discussion of a race to the bottom—the fees. We are all competing in that market. In answer to your question, no. I think that that responsibility could be shared between—should be allocated to the responsible certifier, not council.

The Hon. JOHN GRAHAM: You have made the point this is an offence to move in without having the occupation certificate. Why is that not an incentive? Why is that not being enforced? Whose job is it to enforce that?

Mr GREENHALGH: It is my understanding that it is the responsibility of council in the first instance where they become aware that a development is being occupied without consent. Councils typically, when they instigate legal proceedings—one of the first questions we ask ourselves is whether it is in the public's interest to fine someone. The police do not fine someone for jaywalking across the road unless there is a serious risk. We would look to see that process regulated through the issue of development control orders to enforce requirement with the condition's consent—again, focusing on, for my council, bushfire-prone requirements, but whatever the situation might be.

The fine is on the beneficiary of the consent—that being the property owner, company or individual—and the fines for occupying the building without consent is placed on the owner of the property. That does not address the issue. Our concern is about the risk to life and property through noncompliance with conditions—not the breach that they have occupied the building, but the risk to their life or the risk to the asset, which is predominantly what bushfire protections are for.

The CHAIR: What is Singleton or Dungog's view about the appropriate enforcement mechanism?

Mr HENRY: What we found at Singleton is that a lot of conveyancers and applicants will try and use the building certificate process to remedy previous technical issues in relation to the building environment. We have obviously found that that obviously has particular issues because we are trying to remedy a particular technical building matter via a piece of legislation that does not really address those issues.

The CHAIR: Mr Henry, can you say what that means in practice? Say you have got a building. You have got a problem with the access way. It is narrow; it does not allow emergency services in. It would be quite expensive to widen the road and the like. That is why you have not got the occupation certificate.

Mr HENRY: Yes. How it happens, for example, is that for conveyancing purposes the property is going to be sold. Those issues then are identified—that we have got issues with bushfire access. They are trying to remedy that through, "Okay, we just need a building certificate, then we can sell it with the building certificate." That does not remedy those issues. We need to obviously address that another way because a building certificate is not going to remedy—

The CHAIR: A building certificate is not going to get the fire engine in.

Mr HENRY: Correct.

The CHAIR: Is that the same issue and process you are seeing in Dungog and Upper Hunter?

Mr GREENHALGH: With the certification process that is in place at the moment, mandatory critical stage inspections must be undertaken. The party issuing the occupation certificate is the party that issued the construction certificate and undertook those inspections. Often at this stage—we are talking about at the sale of

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property—we are being approached directly as local government, potentially not having previously been involved with the certification process. So we are not in a position to be able to issue occupation certificates. We move then to a building certificate and the building certificate is a statement of non-action. Council can see no reasons, by the exercise of reasonable judgement, that we would issue an order or notice under the Local Government Act or the Environmental Planning and Assessment Act.

The CHAIR: Is that what is happening in the Upper Hunter?

Ms ROBINSON: Definitely. If an occupation certificate has not been issued, they will apply for a building certificate. As Mr Greenhalgh just said, then it just means that council will not take action.

The CHAIR: I suppose, in the course of that, you send someone out on site to assess what the risk is and it is only if you are satisfied that the risk has been addressed that you would issue a building certificate. Is that what happens? Tell me if it is something else. Let me know.

Mr GREENHALGH: That is correct.

The Hon. JOHN GRAHAM: But you are in quite a difficult position is the point you are making, because time has moved on. The world has moved on. You are under significant pressure to issue this certificate.

Mr GREENHALGH: Correct. It is at the sale of a property, which is normally a fairly dynamic time and a lot of pressure. The issue is that council will turn up on site. I am the only certifier with the council so I am familiar with all the certification work in the council. When I turn up on site, I do an audit of the original consent and if there are access—I appreciate the example, access road non-compliant. We will need to make a judgement on whether that warrants the issue of an order or a notice under the different Acts. In some situations, it would. In other situations where it may be considered minor in nature—and that is a judgement call. It is not prescribed. We condition development consents which are legally binding. We issue a construction certificate that states, "If completed in accordance with the work plans, it will comply with the statutory requirements." We get to an occupation certificate which has statutory binding requirements. When we get to a building certificate process it is by the exercise of discernible judgement, which is not defined.

The Hon. JOHN GRAHAM: I accept this is an issue. You are all saying it is a real problem. The bit I am just struggling with is—this is an offence, to move in and not have a certificate. If you enforced that, wouldn't that create a cycle where this was resolved earlier? Why not deal with it that way?

The CHAIR: A little bit of deterrence. Find a couple of really egregious examples and have a go, prosecute them.

Mr GREENHALGH: In that instance, a penalty infringement notice is used by council as an education tool. People are fined for breaking the requirements of the legislation. When it comes to an occupation certificate, I believe in many instances people knowingly occupy a building in breach of the provisions of consent because they have run out of money. They cannot afford to do the works. But it is also—you would not move into a house if you did not have a front door. You see that as a minimum standard of construction. We believe safe access for emergency service vehicles, a dedicated water supply for firefighting and pool fencing are all mandatory requirements. We could use the provisions for issuing fines on the owner of the property. In almost 30 years in local government, I have done that once.

The CHAIR: Is that because the human picture you are confronted with is someone who did not have the money to finish their building, so whacking them with a fine is a pretty harsh kind of, maybe not a useful remedy? Is that your view?

Mr GREENHALGH: Exactly, and it does not serve the benefit of rectifying the noncompliance. We would rather see the money put into the noncompliance at that stage to remedy whatever the issue is. The fact that they have been in the building for a number of years—sorry, there is one other part. Once the building is occupied for 12 months, the councils have 12 months to catch the person in breach of the legislation. Following that time, the offence cannot be prosecuted. Orders can still be issued to bring the development into compliance with the consent and the construction certificate, but in the actual breach provisions there is a period of 12 months to action that breach. Council needs to become aware of it and is often not aware of it.

The CHAIR: But surely it is an ongoing breach, is it not? Whilst ever they are occupying it without an occupation certificate they are in breach.

Mr GREENHALGH: It is my understanding of my last reading of the legislation that it was from 12 months from the date of occupation that council has to action the breach, the actual offence—

The CHAIR: Is that a problem in the legislation?

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Mr GREENHALGH: Again, I focus on the outcome. I do not think the fining of individuals in properties is what our focus is. Our focus is compliance with the conditions of consent and the safety of the building. That is the remedy.

The Hon. JOHN GRAHAM: So really you are saying to us there is theoretically a way to deal with this but it in practice it does not work on the ground. It is not going to get a result here, and you believe the incentives in the legislation are actually tipping, in your areas, tipping this towards being a very practical problem, given the numbers you have described to us. You would like to see another way to deal with it?

Mr GREENHALGH: Correct. My council deals with 200 development applications a year and 150 construction certificates a year. We are a relatively small council, a population of 9,000, but 200 applications a year and 150 construction certificates is quite a large amount of development in our area. This is a common problem across the State. I go back to the point that I think that there is no closure in the process. It is highly regulated, whether we are satisfied with that regulation or not, but there is still focus.

But when we get to that last point of control there is no set monitoring program that councils, that private certifiers, that the Department of Fair Trading need to monitor that development and issue it with a construction certificate subject to mandatory inspections that under any reasonable circumstances could have been expected to be completed—they started to work, they had their last inspection two years ago and then suddenly it has all gone quiet. I think there is enough information and evidence there that, by the exercise of discernible judgement, government could make a decision that the building is likely to have been occupied—it may not have been, but in most instances it would be.

The CHAIR: One obvious remedy would be requiring the certifier, council or private, to have a compulsory inspection two years after the construction certificate was issued to determine whether or not the property has been occupied and whether or not an occupation certificate is required. I do not know if two years from the construction certificate is the right time, but that kind of mandatory final inspection would one useful way forward? I see witnesses nodding. Nodding turns up really badly on the transcript.

Mr GREENHALGH: Yes.

Mr HOAWERTH: I think it would be a great idea to set a minimum. It would also give a time to review development consent conditions. We have an issue where, the bushfires one, where people can be made to jump through hoops, as it were, to achieve bushfire reports and bushfire compliance but there are no further follow-ups—as evidenced by the recent bushfires and the tragic losses. There are no local government areas that I am aware of that have ongoing review of conditions of consent, particularly around bushfires.

The CHAIR: So you are talking about, say, the asset protection zone or the—

Mr HOAWERTH: That is correct. The inner, the outer and the—so in a scenario where one was called back after, or a mandatory requirement to go back 12 months after or, you know, some date it would give an opportunity to review some of those types of things.

Mr HENRY: Yes, I am thinking that that would be useful. Also not just bushfire, but we have another issue with fire safety certificates for commercial development and that would be an opportunity for us to ensure that fire safety measures have not been removed from buildings, which we do find from time to time. If we had the ability to go back at some point in time beyond, in two years' time after the building was completed that would give us that opportunity to at least review where things were at.

The CHAIR: Do you think this could be married together with the compulsory two-year inspection for the purpose of an occupation certificate, that it would be useful to marry those two things together?

Mr HOAWERTH: Yes, it would.

Mr HENRY: It would be useful. I guess the issue we need to look at is resourcing. Resourcing is always an issue in terms of regional areas. We need to look at, okay, who is doing these inspections? Is it the certifiers or is it some other body? If it is the certifiers, then what impact is that going to have on choice for certification? Does it mean that these guys are going to be tied up with going back looking at existing developments and therefore new developments are going to fall into the realm of private certifiers because simply there is no other opportunity? We need to look at how that is going to be resourced, but the idea—going back—is a good one.

The CHAIR: But in a competitive market you would have to make it mandatory, wouldn't you? Otherwise it will not be done, because someone will issue a tender for the job \$500 less because they do not intend to do that last inspection. It would have to be mandatory, wouldn't it?

Mr HENRY: Correct.

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Mr HOAWERTH: Yes.

Mr GREENHALGH: Correct.

Ms ROBINSON: Yes.

Mr GREENHALGH: But it moves the mandatory inspection role from a compliance role as part of the building—sorry, as a building monitoring role as part of the building process to a certifying role. Once the certifier becomes aware that the occupation certificate has not been issued and the building has been occupied, that function will still revert back to council to regulate.

The CHAIR: All the major metro councils are being moved to an ePlanning process. I do not think it has yet been mandated for the regions.

Mr GREENHALGH: We are part of that process and all councils, to my knowledge, are walking towards time frames for that—

Mr HENRY: Yes, we are. Yes, we are working towards the online lodgement of construction certificates and the like.

The CHAIR: Is there an opportunity to get more transparency about this issue? Once you go to an ePlanning system you can then, if you like, have a regular audit of the disparities between your construction certificates and your occupation certificates and maybe have an inspection regime that flows from that? Do you see opportunities there?

Mr GREENHALGH: Correct. There are some reporting requirements that have been put in place with certifiers to advise on construction certificates and occupation certificates. That could be introduced into that reporting program. That could nominate that the certain inspections for certain development types have been completed and then no further action within a certain timeframe where councils are notified that works have commenced and no further, no occupation certificate issued—

The CHAIR: And where it is two years since the construction certificate and no occupation certificate has been issued, a red flag might turn up and indicate action is required.

Mr HENRY: Yes, that is right.

The CHAIR: Do you have that kind of system in place now or is that most likely to be implemented once you get to ePlanning?

Mr GREENHALGH: In a previous role at Port Stephens Council where I was responsible for building management, a building team just as the subprime mortgage crisis was hitting we were basically looking for work within the team because the number of applications had dropped. It is the only time in my experience in local government in a supervisory role that I was responsible for the implementation of a program of reviewing occupation certificates to determine whether finals had been done, categorising high-risk buildings, swimming pools, dwellings in flood-affected areas and bushfire-prone areas. That program fell by the wayside once the industry picked up again.

Mr HOAWERTH: At Singleton we had a system in place—I am not sure whether it is still in—for commercial premises that received development consent, to do that after a 12-month period, to review, to find out what the status was. Sometimes we would find that commercial premises, existing ones, would be altered but no inspections or finals were carried out and it could have significant effects on essential fire safety matters. We did have a system to review that.

With final inspections, once we have received a request for a final inspection occupation certificate, if it is found to be unsatisfactory we do run a resubmit system so that we actually go back, but we do not have a system to notify ourselves that a certain building has not had an occupation certificate. So the system works up to the last recorded inspection, whether it is stormwater or whatever it happened to be—one of the critical mandatory stage inspections—but then it stops. There is no system in place to review for an occupation certificate or final inspection.

Mr HENRY: Yes. These systems are all basically reliant on human intervention, and that obviously has drawbacks. We are looking for some form of electronic system in place that will raise the red flag so that we are not relying on someone to instigate the action.

The Hon. JOHN GRAHAM: I accept that you have put a strong view to us about occupation certificates. Can I move to certification more broadly in your areas? To what extent is there an issue with the availability of private certifiers in your area or the skills that are necessary or the fact that, presumably, if there is

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a smaller pool of certifiers it is a smaller group of people who are doing some or all of the work? I am interested in how that is different to what we might have been receiving evidence from in Sydney.

The CHAIR: Does it get more difficult as you move up the valley, or not?

Ms ROBINSON: I believe it does. We have had a vacant position we have advertised over the past two years for a certifier. We have been unsuccessful in filling that position.

The CHAIR: Two years?

Ms ROBINSON: Two years. It is still vacant and it is now definitely an issue. We had one application on one of those times. We reviewed salaries—everything. It is certainly very difficult. We have two of us at the moment who do it full time and I think it would be very difficult if one of those incumbents were to move on. We would be very difficult to replace. And, as I said, we do have one vacant position. Both our neighbouring councils, being Muswellbrook and Liverpool Plains, do not have a certifier on staff currently. They hire in private certifiers to do the council's work.

The CHAIR: It sounds like you should ask for a pay rise, Ms Robinson.

Ms ROBINSON: It does not work. We had shared resources with Muswellbrook when they have been stuck, but then that certainly leaves us even more under-resourced. It is certainly a problem.

The CHAIR: You are sharing resources with Muswellbrook, rather than them sharing resources with you? That is going the other way?

Ms ROBINSON: That is right. They do not have a certifier on staff.

Mr GREENHALGH: At Dungog council, as I have mentioned, I am the only certifier. It is difficult. In rural councils, you tend to get the majority of the applications—construction certificates. I have had previous experience managing a moderately large certification and town planning office in private certification outside council. I know in the delivery of those services we extended our inspection service to all areas, where we would have certifiers travelling from Newcastle to Upper Hunter, Singleton and Port Stephens in the same day. The private certification service does extend to the Upper Hunter, mainly through service agreements with project carrying companies, but it is difficult in the smaller councils to get qualified and experienced staff to take up positions if the positions become vacant. As I have mentioned, I am the only certifier so the door is shut at the moment while I am down here. It is the nature of small councils.

Mr HENRY: At Singleton we find it increasingly difficult to recruit new staff. On that basis, when we need to we have engaged contractors to assist with our certification role. Council is keen to be the certifier of choice—in other words, to push that local advantage. It is local and you have got access to certifiers. If you have got issues or concerns, you know where we are and we are happy to discuss things. The problem with that is resourcing. It is not that easy. Then, if you do want to engage a trainee, the time taken to get that trainee up to a suitable level—because the time lag for training and qualifications is a significant one. It is also a financial one as well to actually get that person up to the required standard. While every council has on their brief that we want to be the certifier of choice, that has got to come at being realistic: Can we do that? Can we provide that service? Are there people out there who actually can do that? That is something that we are obviously grappling with at the moment.

The CHAIR: If you are all facing the same issues in one way or another about the ability to attract the key staff you need to do the certification work, what is the cause of that? Is it a location issue? Is it generally hard to attract staff to the councils? Is it a lack of skilled new entrants into the certification profession? Or is there some other cause? What is it that is the problem?

Ms ROBINSON: A few years back I did some research into private certification versus council certification. I think a lot of qualified people go into private certification because you have not got the political and the other things that come with working for a council. You are just a certifier—not just a certifier, but your core job is certification, whereas in a council you have a whole realm of responsibilities.

The CHAIR: You do not have to come to parliamentary inquiries if you are a private certifier. Mr Greenhalgh?

Mr GREENHALGH: That point is exactly the point that I wanted to make. The role in local government as a certifier—the certification role only makes up 30 per cent of the daily job. My job involves attending council meetings. I am a planner by qualification as well, so I issue development consents. I implement regulatory function roles, provide day-to-day advice—

The CHAIR: I can see Ms Robinson nodding at each of these points.

CORRECTED

Mr GREENHALGH: It is difficult, when you are the regulator, to be a regulator competing with private certifiers. So there are two hats there: "I'm in competition but I'm also going to regulate you." It is a conflict of interest. The job of certification as a local government officer works out, in my opinion, to be 30 per cent of my actual daily work. The majority of my work is made up of a range of other functions and normally falls in the job description as "as directed".

Mr HOAWERTH: I have got quite some thoughts on this. I have been doing this work for more than four decades. I think council will always have some difficulty attracting suitable qualified staff. I think we are often used as a stepping stone to somewhere else. There are many competing hats we wear. We are also the plumbing inspectors for the department of fair trading in Singleton, so I wear a plumbing inspector's hat. I wear the building certifier's cap. I also wear a hat as a servant of council, so I have a whole pile of rules I have got to follow there. There are a pile of competing interests. I would love a job where I just did ones and tens and did not have to bother about so many things. But it is always difficult and I think it is a very vexing question for council: What do they expect of me? Do they want me to be the best certifier on earth or the best plumbing inspector on earth?

Then we have got the political interference, because we all know that councils are political creatures. They do not like to upset this guy over here or that person over there. I think with certification it is difficult for the hierarchy to come to grips with what your powers are or what their powers are to demand you to do anything. I see that there are great attractions to the field of private certifier rather than servant of council and a certifier. I really do believe that that is an issue. We have an A4 certifier at work who cannot sign occupation certificates, cannot sign approvals. In effect, there is a great deal of training but still no authority and no way to get that authority other than more experience and a pile of paperwork, let me say—experience and paperwork.

The CHAIR: So is some of the answer perhaps the State Government assisting with a training and recruitment budget?

Mr HOAWERTH: Absolutely.

The CHAIR: Again I see a bunch of heads nodding.

Mr HOAWERTH: But there needs to be something to attract people to local government.

The Hon. JOHN GRAHAM: Any other suggestions about any other magic answers that you would like to, in the brief time remaining, present to the Committee? Because you are describing quite a different situation but I can really see the problem that creates. What would assist with that?

Mr GREENHALGH: I have worked as a trainer for the Local Government Training Institute for 13 years now and tomorrow I am attending a national review of the planning qualifications with Mr Rathgen. It is an Adelaide meeting. In the early 2000s, there was a Federal Government focus on promoting and encouraging the development of skills in women that had spent time out of the workforce. It was heavily subsidised and in my experience, a number of people that took up that function have moved on to highly successful roles in local government. It relied on funding. It was targeted. It was targeted at women that experienced work gaps and required a leg up, an opportunity to be able to take on new qualifications.

In recent times I was invited to do training in Yass and the person that engaged me had moved from the front counter clerical staff and had operated as general manager of councils in the area. I think that the investment, through Federal Government and State Government into the upskilling targeted at women but the certification itself could benefit local government because when they become skilled in the local government sphere of certification, it maintains that concept that as a certifier my role is much broader than just simply that one skill, which gives diversity in employment and job satisfaction I guess.

The CHAIR: I am sure we could ask a bunch more questions on this but I think the Hon. Taylor Martin's car and my car are about to contribute to the Newcastle revenue fund unless we go and sort something out. I thank you all for your evidence today. It has been really helpful and quite a different perspective from the last panel.

(The witnesses withdrew.)

(Luncheon adjournment)

CORRECTED

DAVID GRAY, home owner, sworn and examined

GRAHAME VILE, Director, BAAM Consulting, affirmed and examined

The CHAIR: Welcome back to the afternoon session for the hearing of the Public Accountability Committee into building standards. Do either or both of the witnesses wish to make a brief opening statement?

Mr GRAY: Sure. Thank you for the opportunity to address the Committee. I settled on buying a unit at 5 Tudor Street back in January 2017. I actually employed a fairly well-known buyer's agent to help me by that place because I did not trust myself. I got Rich Harvey and his PropertyBuyer group, which I think they are a great group but they led me to 5 Tudor Street. They said this is within your range and they thought it would be a great investment. I did not envisage at all that there would be any issues with it, that we are having now. I felt that they were building experts. I felt that they would lead me to the right place.

Obviously since then, probably about 12 months after we settled, we heard something about these issues starting to rise up. When we actually bought the place there was some issues within the unit, within the unit block, which they said would not be too hard to fix and there would be a levy. We went through that. We paid a \$5,000 levy, which was more than expected, and we thought that would be the end of it. I would also say that in one of the owners' meetings we had there was some mention that the original building of the building was financed by the original strata management group. They managed the strata for about 14 or 15 years and then we bought the place and then 12 months later the current strata management took over.

The CHAIR: And that is when the defects became apparent?

Mr GRAY: Yes. Whether there is any happening here, that was brought up in one of the meetings. I do not know how factual those statements are but that is what was said in one of the meetings. I think that is pretty unfortunate if that is the case. I also would just like to say that I hope the Government—and I know this is probably a big ask—but I am hoping that because building is a public issue, it is a public trust issue that has been falling down here. So in order to restore confidence I would hope the Government can assist people like us because it is heading towards a substantial loss. We do not know how big that loss will be at the moment. I am sure it could very well break some people, including myself, so we will see where that ends up.

The CHAIR: Is 5 Tudor Street property a strata development?

Mr GRAY: Yes. There is 36 units and it is a strata block of units.

The CHAIR: How many storeys is it?

Mr GRAY: I think it is three storeys. Yes. Part of the problem is also cladding. The original problem was that the building was not built to specifications, so there are water leaks and that has created internal problems in the building. I had better leave that up to the experts. Then there is cladding. The cladding is also a problem.

The CHAIR: Mr Vile, did you want to sketch it out a little more?

Mr VILE: Yes, please. Just to introduce myself in the context of 5 Tudor Street, they have been a client of my firm since about 2017. The sort of defects we see they are not alone. There are a lot of buildings across the State and across the country that have these sorts of issues. Tudor Street itself was built about 2004. It had one round of defect rectification done under insurance in 2011 and 2012. It missed a whole lot of things, that process.

The CHAIR: Was this covered by the home warranty insurance at the time?

Mr VILE: Yes, I believe so. One of the usual businesses in that area managed that defect process. About half of the bathrooms, from memory, were done in that first cycle. But things like leaking facades and balcony threshold details and the other bathrooms either were not looked at because they were not defective at the time or, with a high rate of tenants, the information just did not get back to the inspecting people. Access is often a difficulty for the likes of us getting in and doing a thorough enough job. A frustration of my peers in the industry is that the mistakes that are made are fairly simple mistakes. The cheapest time to fix an error is when you discover it. The trouble is these errors are not discovered until year five or six or seven or 15 and then they can be hellishly expensive to fix, relative to the solution at the day.

The CHAIR: Is a significant amount of these defects waterproofing issues or water penetration?

Mr VILE: It is a large part of it because the consequence of, let's say, a defective tiling threshold in a bathroom is that it might have been a \$10 or \$100 extra effort at the time of construction. To redo it, depending on the size of the bathroom, could be \$5,000 to \$15,000 worth of work. It is horrible. We are wasting our gross domestic product [GDP] by allowing this sort of poor quality building to get through. I would much rather be working on heritage buildings than new buildings and having to hear the stories of people like Mr Gray because, crikey, a lot of money gets wasted on experts and lawyers and disputes.

CORRECTED

The CHAIR: Do you do much work in the Newcastle area, the Hunter region?

Mr VILE: About 30 per cent of our business is up here, with most of it in Sydney and a little bit on the Central Coast.

The CHAIR: Is a lot of that building defect work?

Mr VILE: Yes.

The Hon. JOHN GRAHAM: Can you give us any other information about what you perceive as the extent of the problem in the Hunter and the Central Coast? The council teams really said they were not in a position to give much advice, mainly because they are not certifying and they are not getting that information back, but you are seeing it direct. Have you got any sense of how it compares to Sydney?

Mr VILE: We get invited to look at buildings that have problems, so there is bound to be buildings out there that are fine. However, the trend is the rapid construction and I am not sure about the pedigree of some of the builders that get into a development project. They will whack it up quick, get out and then phoenix. The phoenixing is another issue that comes into play.

The CHAIR: Has that been an issue in your property, Mr Gray, that the original builder is no longer there, or is it simply the effluxion of time—it would not matter?

Mr VILE: I believe the original developer, builder and architect—those entities are no longer natural persons, or whatever the phrase is. They were out of the picture. That is why the insurance policy played.

The CHAIR: So they had all disappeared—gone into insolvency or others—before you became aware of the issue?

Mr VILE: Yes.

The CHAIR: And that is part of the phoenixing pattern that we see. Is that right?

Mr VILE: Yes. Whether it was intentional or driven by other factors, I do not know, but that seems to happen quite regularly when you get involved. Phoenixing is a problem that we need to sort out.

The CHAIR: Mr Gray, you have got about a \$2 million bill. Is that right? Not you personally, but the development across the board has about a \$2 million bill.

Mr GRAY: At the moment it is a \$1.6 million quote, isn't it? Yes. When I put the submission in, I thought it might have been up to \$2 million because there was not any solid quote. Apparently the quote is \$1.6 million now.

The CHAIR: And that is shared amongst 36 unit holders?

The Hon. JOHN GRAHAM: But you still have some uncertainty even after this time?

Mr GRAY: That is correct, yes. Once they get in there, they do not know what they are going to find. Also there is a problem with the fire cladding, which Mr Vile probably could tell you, which might up the—

The Hon. JOHN GRAHAM: How long will it be before you have a final bill for the things you are already aware of?

Mr VILE: Hopefully in the next six months.

The Hon. JOHN GRAHAM: When did you start dealing with this problem?

Mr VILE: Late 2017.

The Hon. JOHN GRAHAM: Yes. So years on, really, you are still at the point where you have got this uncertainty of not even knowing how much you are all up for?

Mr GRAY: That is right. We would not be able to refinance if we needed to. Obviously if we had to sell then nobody would want to buy it. The longer it goes, the more difficulty—hopefully they can fix it. I do not know the details, but hopefully they do not go in there and find that the damage goes real deep.

The CHAIR: To get some sense of the proportion of pain that it is causing you, it is about a \$45,000 bill per unit holder. Is that right?

Mr GRAY: It would be, yes. Probably something like that.

The CHAIR: And how does that compare to your purchase price?

Mr GRAY: We paid \$415,000 for it.

CORRECTED

The CHAIR: More than 10 per cent on top.

Mr GRAY: Yes. Personally, in our situation, we will get through that with a loan. But I am nearly 60 years old so I am hoping to retire. That is why we bought it. Best-case scenario, it will detract from what we actually set out to do.

The CHAIR: You need a \$45,000 addition to your mortgage like a hole in the head, I assume.

Mr GRAY: That is right, yes.

The CHAIR: Mr Vile, is that the usual—a bit over 10 per cent of the purchase price—or is that not a useful metric?

Mr VILE: It really depends on the type of construction. Number 5 Tudor Street is a little bit simpler than many because it is only 36 units, three storey and three blocks. The bigger buildings are complicated by the extra services or fire sprinkler systems and pressure systems, so they can get pretty horrible. Whether it is 10 per cent of the purchase price would also depend on the region. In Sydney that would be a smaller hit for a Sydney apartment of the same size.

The CHAIR: Proportionally.

Mr VILE: Yes, a smaller proportion.

The CHAIR: But on the class 2 buildings, those high rise residential buildings, are you aware of any of those? Obviously you are not in a position to disclose the property details, but are you aware of those in the Newcastle and Hunter region?

Mr VILE: Yes. I was involved in another one up on the ridge at Charlestown which had a \$3 million bill. They did not actually carry out that work. They adopted a different approach. But it was all for compliance and—upgrade waterproofing, poor cladding. Not flammable, on that particular one.

The CHAIR: We had a fair amount of evidence on the Landmark building at Charlestown.

Mr VILE: Sounds like one I might have been involved in.

The CHAIR: It may have been similar to that. Mr Vile, in terms of the stresses you see your clients under, Mr Gray is telling us about extending his mortgage and maybe his working life in order to meet it. Is this a common story?

Mr VILE: Absolutely, yes. The Landmark building had that sort of discomfort. There were people in there who were stretched to the limit. One of the owners up there on the penthouse level, she has passed away since, and I believe part of that was from stress because she was in a difficult position. She could not sell with a good heart and say there were no problems. She had to stick it out and wait until it got fixed. So that is—the human cost is pretty high when people expect a good-quality asset, they move in and then, "Oh, the lawyers are saying we have got to get a defect report." The consultants are saying, "It is going to cost you \$50,000 or \$100,000 to do the investigation." Then you go to tender, go to market and there is a \$3 million—

The Hon. JOHN GRAHAM: That is very difficult. I think what really comes through, Mr Gray, from your story is it is very difficult to tell. You were not doing this yourself. It was not that—you really went and asked for help, took that extra step and still—

Mr GRAY: That is right, yes.

The Hon. JOHN GRAHAM: —here you are with a significant bill but still the uncertainty of not having landed this.

Mr GRAY: Yes, that is right. Often when you are investing money, if you are investing money unwisely or making some poor decisions, then you can say, "Well, that is your fault," but in this case it is very much a matter of trusting the system, and the thought did not even enter my mind that we could be buying something that this would happen to. I realise now—I would never thought twice about buying a unit in the past in terms of trusting whether the building would be okay, but now, if I was going to buy a unit, I would not, unless it was 30 years old or more because, from what they tell me, it is in the last 30 years that these things have started happening. So, yes, I think the public confidence, I believe, needs to be restored somehow.

The Hon. JOHN GRAHAM: Yes, there is an issue going forward but you are also saying there needs to be some assistance for people who are caught in the sort of situation you are caught in.

Mr GRAY: That is right.

CORRECTED

The Hon. JOHN GRAHAM: It would be good to do what Mr Vile is recommending, which is spend the \$100 in the short term and do the job properly—

Mr GRAY: Yes.

The Hon. JOHN GRAHAM: —but that would not help you or many of the people caught in this.

Mr GRAY: That is right, yes. If I happen to lose my job—there is always that possibility—I would have to sell. I do not know what someone would pay for it. It would be very hard to sell. So, yes, that would be a catastrophic sort of problem for us. We would have to sell our current home and everything, so, yes.

The CHAIR: Mr Gray, when you bought the property, I assume you got an inspection done, you checked the strata records, you did what you would expect of a diligent purchaser?

Mr GRAY: Well, yes, I had the property buyer. He did all of that.

The CHAIR: I am not saying you personally. You got people to do the right things with the checks?

Mr GRAY: That is right, yes. We discussed—there were issues with the building but every building is going to have some issues and we discussed that, and the recommendation was, "It would be fine, go ahead with the buy," and so we did. I believe that we did—the reason why I hired the property buyer was to make sure we got a good investment but it has not worked out that way.

The CHAIR: Do you think part of the issue is that the strata manager managed it for 15 years without having any of these issues, raising any of the issues, confronting any of the problems or putting it on the books, if you like?

Mr GRAY: I do not know about that at all but I guess it just makes you wonder because if they had a financial interest in the building and then, after 14 or so years, they left, once the warranties had all run out—so, yes, the word that I was told is that because it was a highly tenanted building, the problems did not get back to the strata management. But you would think that if you know something about building you would see something there. But I have no real evidence to know if that is the case, but just because they are financially involved then you would imagine they might sweep stuff under the carpet.

The CHAIR: Mr Vile?

Mr VILE: Yes. I can add to that. It is not just Tudor Street, but a few others around town and in Sydney. I think there is an issue with the strata managers winning the first management rights off the developer. There is a conflict there. There should not be but there is. You do not get the documents you need. Files go missing, even though they are supposed to be lodged, all the work as executed. All of that stuff at construction, it kind of disappears, and then when somebody comes along to try to maintain the building they cannot find the documents. We have sort of experienced buildings where the strata manager has nursed it along to get it a little bit further down the track so the general defects can disappear and then in the worst cases they hide as much as they can, I believe. Without knowing, you do not see it on the record.

The Hon. JOHN GRAHAM: Those time frames have obviously shifted in the last few years, so that has made that problem that you are describing worse.

Mr VILE: Yes, it makes it harder for us to do our job the way we would like to.

The CHAIR: A strata manager chosen by the builder nurses it through the general defects period of two years and sometimes through the structural defects or major defects period of six years—

Mr VILE: Yes.

The CHAIR: —and then vacates the scene. Would that be an unusual pattern?

Mr VILE: Whether they vacate or not is another thing. Because the management fees are good, they will stick around. If they can keep the body corporate under control, so to speak, they can stay there for a long time.

The CHAIR: The law changed a couple of years ago to say that that initial contract with the strata manager cannot be for greater than 12 months and then has to be revisited.

Mr VILE: Yes.

The CHAIR: Has that fixed the problem?

CORRECTED

Mr VILE: It might have improved the behaviours. You do see changes in managers earlier now and that is probably better. I think it would be a better solution to have strata managers on a panel and the number just ticks over.

The CHAIR: Entirely break that connection between the builder and any appointment or any contact.

Mr VILE: Yes, just split them apart.

The Hon. JOHN GRAHAM: Yes, because we have definitely had evidence that there is a potential conflict here. I think you have probably got the strongest—and with some evidence it is a practical problem—but you are putting the strongest view to us on this. You are saying this is a very practical problem as you are going around trying to assist owners with defects in their building.

Mr VILE: With the issues, yes.

The CHAIR: You can see the obvious conflict of interest and, particularly in the construction industry, we should not be legislating on the assumption everyone is an angel, should we?

Mr VILE: No.

The CHAIR: This is an obvious problem.

Mr VILE: It is, yes, and it should be fixed, and there is a fairly simple fix, I think. I am a simple man.

The CHAIR: That takes us to the issue of private certification. I do not know if, in your business, Mr Vile—

Mr VILE: No, we do not—

The CHAIR: —this has been an issue; inadequacies in private certification leading to defects?

Mr VILE: Oh, yes, it is because—

The Hon. JOHN GRAHAM: I think, firstly, you were going to make it clear that you are not a certifier.

Mr VILE: Not a certifier.

The CHAIR: I understand that.

The Hon. JOHN GRAHAM: Yes, understood, but I think that is useful to put on the record.

Mr VILE: Yes, we see documents that the certifiers have relied on, and it goes all the way down to the self-certification of the waterproofer. For example, waterproofers—I have seen certificates that do not even refer to the right standard. That will be a two-line statement saying, "I certify the bathroom waterproofing complies with AS3740". That is okay, that is the right standard, but what year, what clause, what specific details? None of that comes through.

The CHAIR: And also, what is it worth at the end of the day?

Mr VILE: Not much. It is recycling—just shred it and move on.

The CHAIR: Because there is no accountability on that certificate.

Mr VILE: Correct, yes. It is pretty hard to go through and find the little fellow with his ute and his waterproofing bucket.

The CHAIR: So is that part of the solution—ensuring accountability all the way down the construction chain down to the person who does the waterproofing, signs the certificate and says that it is complete?

Mr VILE: Yes—

The CHAIR: Is it about personal responsibility, personal licensing, all the way down to the people doing the work?

Mr VILE: You would need to do a few extra things, I think, as well, but, for sure, take it down to those guys.

The CHAIR: Please tell us.

Mr VILE: They do need access to the standards and they do need to understand them. There needs to be better training and better access to the standards. At the moment the small guy will not bother to buy the standards. He will do the work the way he was taught by his mentor, and the standards have changed over the years. So, better access to standards needs to happen. Yes, accountability down to the guy who is licensed,

CORRECTED

and that licence should follow him for life because my liability as an engineer, my professional indemnity, follows me. It is like if I have claims, I cannot get reinsured and I am out of business or I go join somebody who has insurance.

The CHAIR: Do you think that registration process should also apply to engineers?

Mr VILE: Yes. I think it would be good. We need some better definition in what engineering roles are. Engineers Australia have got a good membership process.

The CHAIR: There is no requirement to be a member in New South Wales?

Mr VILE: No, they have not protected—

The CHAIR: Anyone can put their shingle out and call themselves an engineer, can they not?

Mr VILE: Yes. It is a disappointment.

The Hon. JOHN GRAHAM: I do not want you to get distracted from the list you are running through.

Mr VILE: Yes, that is for another day.

The Hon. JOHN GRAHAM: Were there other observations you wanted to make?

Mr VILE: Yes, solid accountability, better access to standards and the standards also need to be a little bit better coordinated because there are some parts that are conflicting or contradicting one another. There are some standards that are worded in a non-mandatory sense—so they are optional. The Building Code of Australia [BCA]—we have all got tiled areas in our buildings, but the tiling code, which is a guide, is not referenced; it has not been elevated high enough up the tree because the cost of fixing up bad tiling is pretty expensive as well. So there are a couple of layers that these guys doing the work need—

The CHAIR: Sorry. So the tiling code is not contained in the National Construction Code?

Mr VILE: No, it is not a reference standard. It is a guide to tiling surfaces—I cannot remember the old title right now.

The CHAIR: That seems remarkable. So many of the defect complaints come from waterproofing in bathroom areas and wet areas and yet the National Construction Code does not actually deal with tiling.

Mr VILE: Yes. The tiling is on top. All the waterproofing is dealt with; they are reference standards, so they are in there. The way that the tiling code gets into contracts and sort of elevated is if whoever is specifying the work says you must comply with AS3958; otherwise it is out there as an industry guide and it is vague. We come up against the argument—we have got another one this week—the perimeter joints and the control joints are not in the tiles and they say that the tiling code does not say you have to do it. Well, put it in there because the building is going to move. It is one of these \$100 fixes.

The Hon. JOHN GRAHAM: Why do you believe that has not happened? You are saying there is resistance because of the cost of those fixes?

Mr VILE: Yes, I think it is the cost. How the buildings get built, they will get their price to win the job from the developer and then they will go and reprice it once they have got the job and they will shop around to find the cheapest price at the time. That is okay; that is market forces. But the cheapest price is the guy that learnt his craft from his mentor and has not read the standard.

The Hon. JOHN GRAHAM: Can I ask your view on the issue we were talking about before, which is the role of private certifiers? I am not sure if you were here earlier.

Mr VILE: I was not here for the earlier session, no.

The Hon. JOHN GRAHAM: The two views that have been put to us about private certification are, one, that there is a conflict of interest there in the way certification is happening—I am sure that has been put to you.

Mr VILE: Agreed, yes.

The Hon. JOHN GRAHAM: And that it is a fundamental conflict and that is irresolvable. Secondly, that there is a conflict there, but it could be dealt with through better regulation. Given your experience, where do you sit on that question?

Mr VILE: Absolutely there is a conflict because the PCAs are engaged by the people getting the certificates. It would be better if it is this randomised approach, like I mentioned earlier with the strata managers—sorry, there is a panel; pull the next one out.

CORRECTED

The CHAIR: If you want a class 2 building we have got a class 2 certifier, the one that pops up at random?

Mr VILE: Yes. The second part of it is though I think those guys do not get enough time on-site. There are limits to what they are actually allowed to do, and I am not across all of the details, but fire inspections might only inspect 10 per cent of the examples. If they inspect any more they are outside of their remit. The Clerk of Works model I think is better because those guys previously were employed by the client doing the work and they would be on-site everyday—they would wander around, they would drop in any time they wanted to and look for any detail that was not up to the contract or the standards. Better regulation—it just depends on what shape it takes.

The Hon. JOHN GRAHAM: Sure, although some people say this conflict is fundamental; even with better regulation it would still be.

Mr VILE: Yes, I think it would be a matter of people still take the chance because there is an economic relationship. It is simpler, get them off to the side and pull a name out of a hat each time you need one.

The CHAIR: Some people would suggest that even if you do that randomised you are still going to have private players in a highly complex area.

Mr VILE: Yes.

The CHAIR: And how long has it been now with private certifiers? Twenty-two years? There have probably been 22 different reform efforts in that time to try and make it work—none of them have succeeded. Do you have any hope that another round of reforms with private certification could work?

Mr VILE: Not really.

The CHAIR: Maybe the solution is we go back to a kind of public certifier either through councils or through a State government agency or a mix of each.

Mr VILE: Yes, I think that would be better, if it can be kept independent. It is like construction police, for want of a better term.

The CHAIR: Yes. I did not get to hire my own traffic cop as I drove up from Sydney on the freeway and I do not see why builders should get to hire their own construction police. It seems odd.

Mr VILE: It is a good way of putting it.

The CHAIR: That is my personal view.

The Hon. TAYLOR MARTIN: Any other editorial? That is enough on your issues with the police, David.

The CHAIR: I will hand over to Mr Martin then for further questioning.

The Hon. TAYLOR MARTIN: No, I am happy; all good.

The Hon. JOHN GRAHAM: That certainly has been very helpful.

The CHAIR: On private certification, was yours a private certifier job or was it a council certifier job?

Mr VILE: I do not recall.

The CHAIR: Do you think you could provide us with that answer on notice?

Mr VILE: We can perhaps do some research.

The CHAIR: In 14 days if you could. The secretariat will help you with that.

Mr VILE: Okay, thanks.

The CHAIR: Unless there is any further editorialising or questioning from the Committee members, I thank you both for your evidence; it was really helpful. The secretariat tells me that you may have a document you want to tender.

Mr VILE: Yes, I was going to talk to some of the defects that they have experienced.

The CHAIR: We have got time. If you have got a document that would assist us going through that.

Mr VILE: These are specific to Mr Gray's property—they are not necessarily unique to Mr Gray's experience though; some other buildings have got it. We will flick through the first bit; it is waterproofing failures, balcony and planter box detailing—poor material choices and poor detailing is what it comes down to, plus the

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later discovery of the flammable cladding. As I mentioned earlier, these guys had defect works done in 2011 and 2012. About half the units were dealt with and that was \$360,000 worth of work back then. Eighteen units had wet areas done for that sort of money—it is \$20,000 a throw. Rolling on, other people discovered leaks and problems and that is when we got involved, after the change in strata manager. The sort of defects in there—I do not know if you are flicking through but—

The CHAIR: There is one on page five.

Mr VILE: Yes, that is around an internal courtyard where the flashing and membrane detail on the exterior balcony has not been executed properly, leading to a long-term leak. So you have got rot to the timber framing and consequential damage going on in there.

The CHAIR: Is that water that has come down from above, or is there no membrane between the—

Mr VILE: There is a combination of parts. The membrane detail at the deck has come laterally, but in quite a few areas it gets in the facade further up and tracks down and then discharges at the bottom of the wall. The next one is just an example of the mould that was encountered, and that is not new. The one on page seven is the impact on timber flooring systems that get put in—it does not take much moisture for that to happen. Page eight is an issue that gets skirted around by the Home Building Act because it is not affecting the property but it is affecting connection details that are concealed and cannot be maintained. So what we are looking at there is we are standing in a garage looking up to the underside of the floor and the staining that you are seeing falling down the back is going down behind the structural connection of the floor to the wall. It is due to the leak in the balcony above, but it is leaking in another lot's garage and it is a harder argument to tie the two together and actually win that argument under the Home Building Act.

The CHAIR: You have got to prove that the damage here is connected to there and it is just another expert report.

Mr VILE: Yes, it is. It adds—the dispute costs escalate. Page 9 is arguably incomplete work—that is looking down between the two buildings on this particular site. We are built on the boundary and they have not flashed the gap between the two buildings. That joint you see there was leading to water into the photo on the right-hand side of that page.

The CHAIR: So it was just open to the weather?

Mr VILE: It was open to the weather, yes. It does not get it all the time—you have got a bit of overhanging structure that protects it under certain conditions—but when we have got blustery weather or from a particular direction, it comes through. Those things do not necessarily get discovered easily. Lack of adhesion—this one on page 10—is just basic craftsmanship on site: people rushing the job, not cleaning the joint or priming it and then you get failure of the sealant, which is your primary resistance to water ingress between the panels. It might take a few years for it to let go in a big way, but when it does people like that would have to find it and fix it. Page 11 is a leak from one lot down to a unit below from a deck in between the lining of the wall arriving on their floor. We did flood tests. We found that leak and it was partly around the termination detail of the deck with the precast walls, and there is a planter box in there as well complicating what should be a simple waterproofing detail.

The leaks that do occur can also impact fire separation details, because the facade passes across dividing walls between lots. If there are leaks coming through the facade—that pink material on that page there is the fire-rated plasterboard and if it is degrading that is reducing the fire security between compartments. Page 13 is sheer laziness. It is a close-up view of an electrical cable we discovered in a roof space—so it is out of everybody's visual sight until you do some investigations. The lazy so-and-so has just put it through the joint and they have not even bothered to seal it with fire seal or anything like that. That happens in a few instances. Whether it is a big risk, I cannot really assess, but it is still laziness. This is a poor design on page 14, a poor design and failsafe solution. The hot water services are in this little enclosure in a cupboard in the units there. They do have a tray at the bottom, but this particular one burst at a seam above that tray and the water squirted out the outside.

The CHAIR: There is no drain?

Mr VILE: There is a drain but it was not arriving at the drain. It was hitting the wall and then coming down into the kitchen in the left-hand photo. It filled up the ceiling and then the ceiling collapsed. That happened over like minutes. When the burst happened, the lady was sitting there and she said, "What is that noise?" Then a minute or two later the ceiling collapses.

The CHAIR: Does the National Construction Code have a requirement for adequate draining from an internally stored water heater in those situations?

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Mr VILE: I would have to check the specifics of it—whether or not it needs that to be a wet area, for example. I know it does require a tray. It has got the tray and the drainpipe, but that is good for a slow leak, not for a leak under pressure or a burst.

The CHAIR: It would be odd, would it not, say, finding a hot water heater in a cupboard with a tray under it?

Mr VILE: No, not so odd, but the consequences—well, it probably comes down to how often they fail like this. This could be a one in 10,000 event, I do not know. I have not done the research on that. But if it happens it is an expensive thing to fix. Material choice: the photo on the left there is particle board looking up under a wet area and the moisture that has affected that particle board; it has lost structural integrity. That has allowed the deterioration to accelerate. The codes allow it. I am sure there is water resistant particle board but using something a bit more durable would be smarter. It adds to the cost, yes, but it also reduces the asset risk. The other photo is just another horror story; once it gets behind the primary barrier it helps degrade the rest of the components. A similar thing with the facade—the photo on page 16—is the consequence of the passage of water through the poor membrane detailing getting into the framing under the deck, leading to rot. That takes a bit of time. Repairs might have been just patch and paint but, from the underside, not dealing with the membrane and so the rot continues.

Photo 17 touches back to that poor sealant and poor flashing theme that we have had on this particular building. The left-hand photo shows you how—badly, I apologise; the perspective is not great—the planter box in the background there is above the living area below this lot—so two units, one above the other. The precast panel dividing the units, which is the white bit between the person's arms in that photo: that is a precast panel coming out to the front wall of the building. In the right-hand photo we are seeing the end of the precast panel abutting the front wall of the building and it has just got a sealant joint on it. Okay, that sealant is 15 years old now, but it is still not a particularly good primary waterproofing system.

The CHAIR: How wide is that gap?

Mr VILE: That is probably 30 millimetres, so it is pretty—

The CHAIR: Filled just with sealing?

Mr VILE: Yes.

The CHAIR: It is 30 millimetres?

Mr VILE: Yes, it is a big one. They are not always that large and they probably do move seasonally from 15 millimetres to 30 millimetres but, yes, it is a bit large. It really should have had some sort of formal metal flashing over it. Architecturally I do not know how good that would look but relying on sealant is crazy. Tiling systems: efflorescence and lime scaling is—okay, it has been escalated as an issue but it has also had some constraints around it. Yes, there is a maintenance component, but if they have not got the drainage well organised you will get this too frequently. You can organise the drainage of the decks so that it takes all that moisture down the drainage system.

The CHAIR: You would almost think that was kind of standard design on a tiled balcony. It does tend to rain outside sometimes.

Mr VILE: Yes, it takes a long time—

The CHAIR: But that is just poor tiling, is it?

Mr VILE: Poor falls in the tiles. What happens is the lime is deposited as the water evaporates. If you have got ponded areas where you have not got enough falls you will get built up like this over time. The lime comes from either airborne sources or from the actual construction materials themselves.

The CHAIR: We are running out of time so we will need the edited highlights for the rest.

Mr VILE: Highlights for the rest? Page 20 is about durability of framing materials, where they have not thought about the long-term maintenance requirements of the structure. These are supporting structures for decks. They have just rendered in both metal and timber components. Those sort of details should have been sorted out at construction. Page 21 is a repeat. Page 22 is premature failure of the guttering—less than half its service life it had holes in it before we arrived on site in 2017. That was a lack of falls, so they always were holding water. Corrosion accelerates much quicker—

The CHAIR: So there was no fall in the gutter?

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Mr VILE: Yes, not enough fall. The flammable cladding—unfortunately that is the last slide—the cladding that was put on there was for insulation originally. That was its purpose. But it was 2004; there were not any international fires that raised people's awareness. It was selected for one purpose. I suspect, had people thought about it, they would have thought, hang on, that is just a foam esky we are just nailing to the side of the building and those things can tend to burn. Perhaps our regulations were not up to speed or compliance at the time. The problem we have got is dealing with it now, and that is where we are a little bit almost in front of the game. We did have it tested and it is a pretty nasty flammable material in there.

The CHAIR: One hundred per cent it is flammable.

Mr VILE: Yes.

The CHAIR: A small subset of these are design problems, but the bulk of what you have just taken us through is really shoddy construction, is it not? Nobody on site—

Mr VILE: Yes. Workmanship, finishing details, execution of the works is the bulk of the problem.

The CHAIR: Thank you for that. We have noticed in your submission Mr Gray that you say there should be some collective responsibility for this rather than leaving it with individual home owners. More regulation produces these outcomes so it has not gone unnoticed amongst the Committee that that is your call, Mr Gray.

Mr GRAY: Sure, thank you.

(The witnesses withdrew.)

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BARBARA FERRIS, Member, Newcastle Hunter Urban Planning and Transport Alliance, and Secretary, Body Corporate, local strata building, sworn and examined

THERESE DOYLE, Member, Better Planning Network Inc and Co-convenor, Newcastle Hunter Urban Planning and Transport Alliance, affirmed and examined

The CHAIR: I welcome the two new witnesses. I should say at the outset that I know Ms Doyle as a previous Greens councillor and a member of the party and I have known her in capacities other than as a witness here today. Would either or both of you like to make a brief opening statement?

Ms DOYLE: Yes, we will each make a statement.

Ms FERRIS: I would like to thank you for the opportunity to speak today on this important subject. Our apartment block received its occupation certificate in November 2006. My husband and I moved into our unit in August 2009. We expected all parts of the building to comply to Australian safety standards, building standards as well as fire safety standards. After a few years it was obvious that there were defects which needed to be rectified but we had to have assistance from Fair Trading to get some of the work done. However before the defects had been rectified, and still within the warranty period, the building company folded.

In more recent years we have been told that the fire dampers within the ventilation system do not comply and as the building is now 14 years old, the body corporate will have to bear the cost of rectification. Of the 31 dampers audited 28 were, for various reasons, not compliant. The cost is estimated to be about \$30,000. I have a copy of the audit and a couple of other letters to be tabled. The company doing the work is snowed under and if we cannot get 25 percent of the dampers compliant within the next two months, an Annual Fire Safety Statement cannot be issued and we will be fined.

We do not know how the original installers of the dampers certified them as being compliant or how the yearly inspections did not pick up these defects earlier but if they had been they could have been rectified under warranty. Our annual fire safety inspection costs the body corporate over \$2,500 plus the cost to fix any of the problems found. We also have another issue with the frame of a fan on the roof which was the wrong size and has rusted the roof panels. The body corporate will have to bear the cost of replacing the frame and the roof panels which will probably require hiring a crane.

I do have another story to tell. Our building is across the road from the East End Development in Newcastle. There have been many occasions when construction has taken place outside of the consent hours. In fact, in one three and a half week period in May 2018, work was carried out all through the night within metres of bedrooms because of facade retention. At the time the CEO of Newcastle City Council advised that "construction noise conditions were set by the Joint Regional Planning Panel [JRPP]" when, in fact, work cannot be done outside the hours "unless in exceptional circumstances and with the prior approval of council".

He also maintained that this work was permitted to generate noise during the night as it was the placement of hoarding, not construction work. I have tabled two notices from contractors, saying that they are going to work out of hours. In conclusion I would like to say that when we moved into our apartment building, we expected it to be safe, properly certified and built to satisfactory standards. I would like to see much improved regulations. I would also like to see developers, builders and certifiers held accountable for defects for a period of at least 10 years even if the company folds. Thank you once again and I look forward to improvements in regulations in the building industry as a result of the inquiry.

Ms DOYLE: I would like to concentrate on the general failings of the system in a really fundamental sense. From what we saw this morning with the presentations from council officers, it is quite clear that there is a withdrawal of responsibility on the part of all levels of government. Some councils have retained some of what they regard as their obligation to their constituents to have a proactive approach. I think that we saw some of that from Lake Macquarie City Council. In the case of Newcastle City Council, of which I am a part, I am sorry to say that that proactive approach is sadly lacking.

In fact I would suggest that the only reason that the council knows that there are 45 buildings that have cladding problems is because myself and other councillors moved that there be an audit of buildings with cladding. I want to move in particular to the issue of certification because I think this goes right to the problem. Before I do though I want to say that it is clear from everything that I have read—and I have looked pretty closely at all of the investigations that have happened starting with The Campbell Report in 2002 that have followed the deregulation of the building industry—that nothing substantive has been done to address the crisis that there is.

I would say that the buying of a home is the central financial commitment that any person—ordinary person—makes in their lifetime. It is understandable that people everywhere are losing faith in government because what they are losing faith in is the ability of the system to properly regulate and to ensure that the rule of

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law, insofar as the law is there to protect their interests, will actually be properly regulated by the people who are supposed to do so.

Not only are our councils and our State Government failing to give us the mechanisms by which we can be assured that regulations will be complied with, but the very bodies themselves, such as councils, are being compromised. I am going to point out in one of my examples why this is the case. I will go to the issue of certification first. There is a clear conflict of interest between a principal certifying agent being employed by a builder, developer or owner-builder—that their accountability and the source of their money is dependent on that person. The regulations as to what they need to certify are pretty slim: How long they need to spend, exactly what they need to check, X, Y and Z, still have not been laid out properly. I must say that the first report, the Campbell report, came out only four years or so after deregulation.

The CHAIR: In 2002.

Ms DOYLE: You would expect that things would have been better by now but they are not. If these could be distributed to people, they are just my notes, which I have made copies of, because I am not going to read all this. I am going to start at the end with the examples of regulation failure. Can I just say in the audience are people from not only Newcastle but also members of the Better Planning Network from the Hunter, Port Stevens et cetera. I am very pleased to see that our local member, Tim Crakanthorp, is here as well and was involved in the first example when he was a councillor on Newcastle city council. I need to say I was a councillor on Newcastle city council at the same time. I will read out, with your indulgence, the Merewether case. An owner-builder of a property in Merewether—and he was an owner-builder of other properties in the Newcastle local government area—flouted development conditions with respect to a whole lot of things, including stormwater damage.

The private certifier in the Merewether Janet Street case refused to communicate at all with neighbouring residents who became concerned about how compliance with development approval was happening. Neighbours could find no remedy through Newcastle council, the Building Professionals Board or the department of fair trading. It became so frustrating for all the surrounding neighbours. There were about seven neighbours involved in this case and two councillors were involved: myself and Mr Crakanthorp. The matter finally featured on Channel 9's *A Current Affair* under the title "The battle for Janet Street" in June 2014. I saw the conditions of consent in the approval and could see what was required in terms of the stormwater drainage. I could see with my own eyes, quite clearly, that the drainage, the plumbing, the stormwater facilities were just not there. The council officers both myself and Mr Crakanthorp kept trying to go to for support said, "It's not our business."

The CHAIR: Because of the private certifier?

Ms DOYLE: Because it is a private certifier. Then we went to the neighbours and then myself went to the Building Professionals Board and they said, "Council can issue orders to correct this." Council told us otherwise. So we went on this continual circle and eventually the neighbour that was most trenchant in trying to get answers had to sell up and go away. I could see that conditions of consent were not being complied with. The neighbours had very little solution and the major actor, the next-door neighbour, had to leave. I do not know what eventually happened with that.

The Hon. JOHN GRAHAM: You have given us the case in your submission. Could you also refer to what happened to the certifier, who was given a fine but a very small one?

Ms DOYLE: Yes, that is right.

The Hon. JOHN GRAHAM: I think that is quite important.

Ms DOYLE: Yes. The affected neighbours had to leave. The worst that the principal certifying authority had to endure was a \$1,000 fine from the Building Professionals Board, who did finally take action. That is despite this person having a record of breaches found by them. You can look them up, and I went and looked that person up and he had quite a record.

The Hon. JOHN GRAHAM: Why was that so low?

Ms DOYLE: For this case, only \$1,000. Previously this person had had a \$3,000 fine but, as far as I know, is still practising. So what incentives are there for principal certifying authorities [PCAs] to do anything other than please the person who is paying them? Luckily for all of us, there are a number of PCAs who do the right thing, but there is a huge crisis out there because it is a race to the bottom. If PCAs have to rush through their job to get the money, then increasingly fewer of them are going to spend the time making sure that the development that they are looking at actually complies. The second case—you already have a submission on this. This is the 29-31 Laman Street building, just across the road here. I am not going to read through all of this because what I did here was just copy the Cooks Hill Community Group's submission to your inquiry.

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I will just preface this by saying that this building was on a block of land owned by council. It was a little park owned by council. It sits within the Cooks Hill conservation zone, which has very strict heritage rules about what can be built there. I went to visit the council officers and said, "I'm very concerned that this place may not be in sympathy with the rest of Cooks Hill," and the Cooks Hill residents' group were very concerned about the same thing. I was told, "Don't worry, the Cooks Hill conservation zone considerations trump everything else. So it has to comply with the Cooks Hill conservation zone." Unfortunately, when it came to the decision—and I think this had something to do with the understanding that the purchaser had about what would be allowed on the site. It turns out that the building that was proposed was compliant with the Cooks Hill conservation zone provisions because its bricks looked a bit like the Conservatorium across the road and its bricks looked a bit like the St Stephen's church.

The CHAIR: Is that the three-storey building at the top of the hill there, at the other end of the park?

Ms DOYLE: Yes. It is a monstrosity. Just go and have a look at it. But this is a residential building. All the rest of the residential buildings in Cooks Hill have to conform to the heritage nature of Cooks Hill. This is a gigantic overdevelopment of the site. But not only that, there were conditions of consent associated with this development and many of those were not complied with. It is over the height. It has verandas that should not be there. When it was first constructed there was a bank of very large air conditioners facing the next-door neighbour, who happens to do yoga with me but that is by the bye. So there were myriad ways in which the building did not comply with the fairly generous conditions of consent anyway.

The CHAIR: Again, was it a private certifier on site?

Ms DOYLE: Private certifier. When the next-door neighbours and the Cooks Hill residents' group pressed the principal certifying agent that they were able to actually contact, he agreed with them that the conditions of consent had not been complied with. He came to an arrangement with them whereby—he came to an arrangement with the next-door neighbours, not with the Cooks Hill Community Group who did not like the compromise. He came to an arrangement with the next-door neighbours and they were kind of happy. They were going to accept the compromise. The next that they knew, that principal certifying officer had been sacked. So that is what can happen. There is a new principal certifying authority who then granted an occupation—no, it was not—

The CHAIR: Is the broad thrust of what you are putting to us that there are huge cracks between, say, the council and the private certifying authority? And if the PCA has a conflict of interest with the builder, the neighbours and the community just have nowhere to go. Is that what you are saying to us?

Ms DOYLE: Yes. Well, when the PCA did show some sort of empathy with what the—

The CHAIR: They fast became the former PCA.

Ms DOYLE: Well, the fact that it was not actually—it was pretty obviously not in compliance with the conditions of consent. He did something, so that person was sacked.

The CHAIR: Ms Ferris, you have two pieces of correspondence attached to your schedule which involve notifications you have, one from the Mann Group about the 163 Hunter Street development and one from Richard Crookes Constructions. Are they both in relation to the same development?

Ms FERRIS: Yes. They are both in relation to the same development.

The CHAIR: And both of them were suggesting that they were going to be doing work that was not compliant with the consent.

Ms FERRIS: Consent hours.

The CHAIR: Yes. Did you take that up with the private certifier? Did you take it up with the council?

Ms FERRIS: No. The Mann Group—they were involved with the demolishing of the old building and the retention of the facade. They were the contractors who did the work during the night. That was the part of my talk related to the CEO of Newcastle council, and he more or less turned a blind eye to the night work by saying it was not construction work.

The CHAIR: This was the hoardings work.

Ms FERRIS: This was a hoarding.

The CHAIR: But then did you go to the private certifying authority?

Ms FERRIS: No.

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The CHAIR: What about Richard Crookes Constructions?

Ms FERRIS: They are doing the actual construction of the units now. They had come in after the Mann Group left. And so, they are also—well, they were also working out of hours.

The CHAIR: I assume that they were not—4.30 a.m. is before the approved consent hours.

Ms FERRIS: Yes. The consent hours start at 7.00 a.m.

The CHAIR: So who did you raise that with?

Ms FERRIS: When we received that notice, that was the last day of their construction last year. It was going to be the last day. I went around to Richard Crookes' office with a neighbour and we inquired about their written permission from council to work outside the DA hours. They produced a document and said, "Well, this is our permission to work outside the hours." I noticed that that document was just for road closures, not construction hours, and I asked them where their written permission was for work out of construction hours. They said, "Well, we got permission from the council ranger." I said, "Well, what's his name?" They said, "Well, we don't know his name but he actually comes around here quite a lot." So that was their permission to work out of construction hours.

The CHAIR: What did you say when they said that that was their permission—a chat with the ranger?

Ms FERRIS: Yes. Well, what could we say? We left and we went back and my neighbour rang council. The person she spoke to—I am not sure who it was now—said, "Would you like us to issue a breach order?" And we said, "Yes, we would."

The CHAIR: Was the breach order issued?

Ms FERRIS: We do not know.

The CHAIR: Did the construction work start at 4.30 or 5.00 a.m.?

Ms FERRIS: It did, that next day.

The CHAIR: It did?

Ms FERRIS: Yes, it did.

The CHAIR: Allegedly on the nod from the ranger.

Ms FERRIS: That is right.

The CHAIR: What other interactions have you had with council about this development?

Ms FERRIS: The only other interaction I have had with council was to try and find out if the DA hours of construction had been varied and it took a GIPAA to actually get that information from council.

The CHAIR: How far from the site do you live?

Ms FERRIS: It is across the street.

Ms DOYLE: Ten metres or 15 metres.

The CHAIR: And the council required you to put in a freedom of information application to find out if the hours of construction on that neighbouring site—

Ms FERRIS: Yes. When we lodged the GIPAA they quickly rang us and said, "Well, we can give you that information without this GIPAA going through." They do not like GIPAAAs, apparently, because they are difficult.

The CHAIR: How did it get to the point where you lodged a GIPAA? I would assume you would just phone up the council and say—

Ms FERRIS: I went to the council offices and I asked for the information. The receptionist rang upstairs and they said, "Yes, we will contact you." It just came to the point where I was not getting the information, so that is why I actually ended up doing a GIPAA.

The CHAIR: We have had a number of the councils—well, the council from Newcastle, and you are both focused here in the Newcastle local government area. The position from the council was that they are not aware of a problem with building defects. As you go about your business—you are two quite active individuals in the community. Does that ring true with you, from your anecdotal experience?

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Ms FERRIS: I find there is a lot of secrecy in the council. It is very hard to get information from them about different things. An example is we were at a JRPP meeting regarding the DA for the old Newcastle station. I asked a council officer there about another—well, I was assuming there was going to be a DA, and it has since been lodged, for a section of the old corridor which adjoins a council car park. I mentioned this to him and he had no information about it. He said, "You will have to go to the council offices." I did not have time to do that. But since then I have received the notice of this DA, which means the closure of a 40-space council car park which is zoned at the moment RE1. It is going to be changed to SP3 and I imagine a motel will be built on that site.

The Hon. JOHN GRAHAM: The examples you have given us have been quite useful—those specific examples. You have given us some views then about the general extent but have you got other examples that you think would be useful for the Committee?

Ms DOYLE: I would not like to give chapter and verse here but I would like to take that on notice because we know, just from hearing, that there are a lot of examples out there. During the lunch break I was on the phone to a couple of different community groups and they have examples, but I am not in a position to—

The Hon. JOHN GRAHAM: I think we would be very happy if you took that on notice. I wonder, though, if you could now give us your view on the extent of the problem here. The council has turned up and really said, "Look, because we are not certifying these we are not in a position to really give good guidance." But what is your perception of the extent of the problem in Newcastle or in the Hunter?

Ms DOYLE: I think it is going to be difficult to ascertain the extent of the problem. I had something to do with Aidan Ellis and the Landmark case. The problem there is it is not in the interests of the body corporate to actually make it clear, because those—

The CHAIR: Or any individual owner.

Ms DOYLE: —owners want to be able to resell their properties. So there is a level of secrecy. It is a kind of conspiracy, even, of the people who are affected financially themselves. From reading—

The Hon. JOHN GRAHAM: We have certainly had that view put to us by a range of—including some of those owners. They have been quite upfront about the tensions that they are facing. I think one of the questions for the Committee—one of the reasons why we are here—is to see how much of this is an issue outside of Sydney. We know it is a real issue there, but how much does it extend into a regional area like Newcastle that is facing some significant development over the next few years. Any advice about the extent would be useful.

Ms DOYLE: One of the people I spoke to over lunch is representing the Wickham area and Newcastle West, where there is a lot of new construction going on. She was saying that it is second-tier developers here. They could be, many of them, quite diligent but buildings do sell more cheaply here. There is less of a profit margin. Because of that, I would suspect that there are quite a number of issues. The ability of council to stay on top is very limited because it no longer has the right of certification. Just for the record, the Better Planning Network [BPN] is in favour of getting rid of that conflict of interest between PCAs and builders, developers.

The CHAIR: You have made that unambiguously clear in your submission, Ms Doyle, and in very direct terms.

Ms DOYLE: It is a big problem for councils to stay on top of developing conditions of consent and whatnot. There was another big development going on in Newcastle to which we, as NHUPTA, made a fairly careful submission. I went over all of the reports supporting the application. One of the reports submitted by the developer was surveying the extent to which the proposed development complied with the Building Code Of Australia. It highlighted two aspects in which the development does not comply. They were disability access and fire safety. At the bottom of the council's report on this on the website it had a number. I rang that number and I spoke to the very nice council officer. They were about to write their report to go to the JRPP, because this is State significant and it goes to the JRPP. He had not read that report and was not aware of the developer's own report that said that the building did not comply with fire safety or access standards of the Building Code of Australia. He thanked me for pointing it out.

The Hon. JOHN GRAHAM: I do want to ask about your view on principal certifying agents. You put two views to us: One, you were for returning it to public control, but you also put another potential alternative, which is really to move to a rotational basis with a three-strike rule—that is referring to the submission that you have put. I was interested in whether you wanted to expand on that at all or how you saw those two things stacking up. You are really saying you would like to see this back in public control. Is that your first preference, or are these two different options that you are putting to us?

Ms DOYLE: Yes, in—

CORRECTED

The CHAIR: Page 6, I think.

Ms DOYLE: Page 6, yes. I represent—the Better Planning Network covers all sorts of people and all sorts of political viewpoints. Our major recommendation is a return to public control but there was a range of views and we all thought that these were reasonable. The most important thing for us is to break the nexus of direct conflict of interest.

The Hon. JOHN GRAHAM: Yes, the conflict of interest. But do you see these as both ways to do that?

The CHAIR: The question is are they equal alternatives or is one preferred to the other?

The Hon. JOHN GRAHAM: Yes, exactly.

Ms DOYLE: The majority—our major recommendation is a return to public control.

The CHAIR: But if not that, a cab rule—three strikes, you're out—that is your fallback position?

Ms DOYLE: Yes. The cab rule is the most important one. There should not be a direct relationship between developer and certifier.

The CHAIR: We have run out of time. Are there any final messages you have for the Committee?

Ms DOYLE: I cannot think of any. Congratulations on the recommendations the Committee has come up with so far. We agree with those. I commend to you the recommendations that we make, which are on the last couple of pages of our submission. We particularly agreed with the recommendations that came out of the Opal Tower—recommendations 13 to 17. In particular, we would like to see the registration of engineers in this State. It is well nigh time that happened. Thank you.

The CHAIR: Ms Doyle and Ms Ferris, thank you on behalf of the Committee for your evidence today.

(The witnesses withdrew.)

The Committee adjourned at 14:30.