

Mr Andrew Latta
Acting General Manager
Georges River Council

By email: smatthew@georgesriver.nsw.gov.au

Re: Regulation of private certifiers

Dear Mr Latta,

Thank you for your correspondence about private certifiers to the Hon Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, Minister for Building. I am responding on his behalf.

I appreciate Council's interest in the regulation of certifiers in NSW and acknowledge your suggestions for reform that are driven by feedback from the Georges River community, including that some private certifiers are failing to give proper notice of upcoming building works and concerns around the compliance of buildings with approved plans and the National Construction Code.

Councils are the enforcement regulatory authority for monitoring development at the local level, including ensuring that private certifiers follow the rules and conditions contained in the development consent. Under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, Councils are empowered to exercise a number of enforcement measures that may assist residents impacted by poor certification work. For example, councils may issue development control orders, including compliance orders and stop work orders. Councils may also commence proceedings in the Land and Environment Court to invalidate a complying development certificate that has been issued contrary to planning rules. Enforcement action by councils against private certifiers who breach planning rules would address a number of the concerns you have raised on behalf of your residents.

Greater response to certifiers who do not act properly

In circumstances where a Council is made aware of poor certifier conduct, the Council should make a complaint to the building regulator. In December 2023, Building Commission NSW was established as a standalone body integrating the regulation, licensing and oversight of the building industry. Building Commission NSW is now the regulator of certifier conduct; staffed by a dedicated team overseeing the accreditation and licensing of certifiers, and informed by digital and data tools that help inspectors to undertake risk-based, targeted audits of practitioners.

More broadly, Building Commission NSW is progressing a range of reforms to the building and construction industry, including the introduction of a plain English Building Act, which aims to

consolidate and modernise relevant legislation. Consultation is ongoing with these important reforms, with a view to introduce through Parliament in 2024.

The whole of sector Building Act will capture work done by certifiers and, as part of that work, the Government has committed to reviewing the working relationship between developers and certifiers and are currently considering proposals to uplift the integrity of certifiers. Building Act reforms will expand upon the recent introduction of Practice Standards for certifiers undertaking certification work for:

- **New Residential Apartment Buildings** - https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0014/1112108/Certifier-Practice-Standard-Vol-1-new-apartment-buildings.pdf.
- **Residential Buildings** - https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0008/1112111/Certifier-Practice-Standard-Vol-2-class-1a-buildings.pdf.

You may be interested to hear that additional powers have recently been granted to the regulator through the enactment of the *Building Legislation Amendment Act 2023* to allow for poor-performing certifiers to be immediately suspended where they have been issued a show cause notice. A show cause is issued by the building regulator where the regulator is satisfied that there are grounds to move to permanently or temporarily cancel or suspend a practitioner's registration.

Previously, a certifier or designer could continue to operate while the show cause process is underway. Now, if Building Commission NSW is satisfied that there may be a serious risk to public safety, a consumer, or another business, if the person was able to continue to do certification work during this period, the person's licence can be suspended.

These new powers will also apply to registered council certifiers. While you have raised concerns amongst your residents about the performance of some private certifiers, any enhancements to the oversight will also seek to lift the capabilities of council and private certifiers. These changes come following audits of private and council certifiers that identified common issues, including both private and council certifiers not ensuring that building work was being carried out in accordance with the National Construction Code.

Measures that would impose substantial impacts on the building and construction industry, such as rotation or pool schemes for the selection of certifiers, need careful consideration. Reforms to certifier behaviour alone are not enough to address the problems expressed by Georges River residents. As outlined above, the Government will continue to build on reforms which are working to change the landscape within which certifiers operate.

Other matters

Regarding your suggestions to introduce a new development fee to assist in funding Council compliance services and to provide neighbours with access to drawings on the Planning Portal, these matters fall within the responsibility of the Hon Paul Scully MP, Minister for Planning and Public Spaces. I have arranged for your letter to be forwarded to the Department of Planning for consideration.

Sincerely,



Vanessa Carmody Smith

A/Executive Director, Policy & Programs
Building Commission NSW