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Dear Sir/Madam

Submission on Discussion Paper on Regulation of Design and Inspection Practitioners in the Construction Industry

The Deakin Residents' Association Inc. welcomes the opportunity to provide a submission with respect to the discussion paper on regulation of design and inspection practitioners in the construction industry.

The background to the discussion paper notes at page 3 that:

"The recommendations in the (*Building Quality in the ACT*) report focused on areas of concern in class 2 developments. However, it was noted that the recommendations were also relevant to other types of building. The Building Act review applies to all classifications of buildings.

"Other issues such as documentation standards, certification of work at stage inspections and mandatory inspection requirements under the Building Act will be included in a separate public discussion paper on the Building Act Review."

We have taken the opportunity now to particularly address the role of building certifiers because the role they play in the planning system is critical to construction in the Territory, and the need to address observed systemic weaknesses in this area is considered urgent.

We have raised the role of building certifiers with Minister Corbell who has advised that it would be appropriate to put our concerns in the context of a submission to this current process.

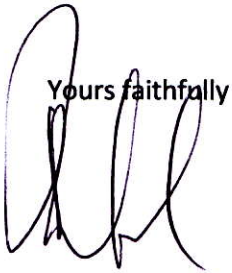
We welcome appropriate urban intensification, but note that the garden city character of inner south Canberra - especially - is being compromised by some inappropriate development.

Page 17 of the discussion paper notes:

"The industry is made up of a melange of practitioners, occupational sectors and providers of diverse goods and services that interact in myriad ways. People in the industry do not have uniform skills and knowledge and are not necessarily motivated by the same objectives. In addition, each building project is different and will have its own issues and problems. This makes it difficult for "the industry" to self regulate, or self-correct when problems are identified."

This is a key reason why the public needs to have confidence in the role of building certifiers.

I am happy to be contacted on 041 226 0501 to discuss matters raised in this submission.

Yours faithfully


Peter Wurfel
President
Deakin Residents' Association Inc.

28th February 2014

Regulation of design and inspection practitioners in the construction industry

Building Certifiers

Background

The discussion paper notes at page 6:

“Building certifiers are not expected to hold qualifications in each of the disciplines required by the building code. Compliance with certain provisions of the building code is usually determined on advice and certification from specialist engineers. Therefore the building certifier is, to a large extent, reliant on the skills and knowledge of practitioners involved in the design of the building but does not have particular criteria to determine competency against.”

Building certifiers are responsible for making sure that building work complies with the Building Code of Australia and the approved plan.

The pivotal role played by building certifiers in construction in the Territory means that the community needs to have a reasonable level of confidence that work will be undertaken in accordance with professional standards.

There are instances in inner south Canberra over the last two or three years where this is not the case, including:

- **Incorrect initial classification of track developments – leading to lack of community consultation and input**
- **Allowing subsequent variations to construction which are not in accordance with the initial approved drawings**
- **Perceptions of conflict of interest with respect to building certifier’s relationship with other parties in the process.**

This tendency of not complying – or not appearing to comply - with the appropriate requirements by parties involved in the building and construction industry should not be allowed to continue, and we are proposing that improvements be made with respect to accreditation, continuous professional development, monitoring, and penalties.

These are further discussed below.

Discussion

1. Accreditation

A building certifier needs to be accredited as a building surveyor with the Australian Institute of Building Surveyors, or registered with the Institution of Engineers, Australia (IEAust) on the National Professional Engineers Register as a Principal Certifier - Building.

It does not necessarily follow that merely being accredited/registered (as above) is enough to ensure that the necessary skills to perform the role of a building certifier in the (privatised) Territory context are held by an individual certifier.

We note that there are many different requirements placed on building certifiers because of the diverse range of buildings under development (single/multiple story, residential/industrial/commercial, etc.), the location (green/brown fields, inner urban, etc.) and it follows that specialisations should be developed for building certifiers, with a condition of their approval that they should be limited to a particular type of development.

We consider that the criteria for accreditation as a building certifier need to be reviewed to ensure that they are sufficient, both for existing building certifiers (if they do not meet the new standards, demonstrate why they should continue) and for new entrants.

It should be a condition of registration that the certifier undertakes to procure additional professional advice in any situation where a certification requires skills or experience beyond those held by that registered certifier. In other words, the onus on applying adequate skills to the task should rest with the certifier.

2. Continuous professional development

Apart from maintaining accreditation/registration (as above) we are unaware of any requirement for continuous professional development with respect to the role of building certifier.

It should be a requirement that building certifiers engage in continuous professional development, both in relation to building requirements more generally, and in relation to the ACT Government regulatory environment. Formal assessment should be part of this process, and continuing accreditation contingent upon it.

3. Monitoring

We understand that there is a rolling program¹ whereby new building applications are reviewed every year.

We consider that this is inadequate in quantum and deficient in transparency, and that a targeted risk management program should be developed.

A key element of the monitoring regime should include the requirement that **all** building certifiers are reviewed on a cyclical basis.

The outcome of this monitoring process should be publicly reported (either on ACTPLA's website, or in its Annual Report) so that the criteria utilised in the targeted risk management program are publicly known, as are the outcomes, as well as consequential actions which could include:

- Remediation/compensation
- Fine(s)
- Suspension
- Forfeiture of accreditation
- Improvements to ACTPLA processes

4. Penalties

We are aware that penalties applying to poor performance by building certifiers are manifestly inadequate in relation to this pivotal role, considering the scale of costs, damages and windfall gains that may be entailed by failure to perform at standard.

The penalty regime should act as a deterrent, but does not.

We believe that ineffective penalties can lead to building certifiers being prepared to risk the (unlikely or immaterial) consequences to them and their livelihood, and lead to a continuation of poor practice.

Overlooked are the consequences to third parties, and to the public generally, and the penalty regime should include consideration of both remediation and compensation.

¹ The 2011-12 Annual Report for ESDD notes at page 124 that "10% of all new building applications lodged in the 2011-12 financial year are audited for building approvals, plans and inspections documentation provided by private certifiers as required under the *Building Act 2004*".