19 November 2018

Ms Rose Webb
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The President,

PIA Submission: Certifier Independence Options Paper

The Planning Institute of Australia (PIA) appreciates the opportunity to comment on the options and to offer further insights into improving trust in the certification system.

PIA acknowledges the findings of the Lambert Inquiry and were pleased to support the ensuing reforms to the Environmental Planning Assessment Act (March 2018). These included the means for Principal Certifying Authorities to issue directions as well as provisions for the issuing of ‘stop work’ notices to enable the investigation of certain complaints.

PIA also supports further reforms in the Building and Development Certifiers Bill 2018 (assented October 2018). They include extending the scope of the conflict of interest provisions, strengthening requirements for clear written contracts and increasing regulatory oversight including the ability to prescribe the code of conduct under the regulation.

PIA supports the inclusion of provisions to align the regulation of certifiers with the other occupational licensing frameworks administered by NSW Fair Trading. While PIA understands this reform would apply to additional building certifying professionals such as fire safety experts. However, there is the potential to explore a role for highly competent Registered Planners (refer link) on roles such as certification of a ‘Design Verification Statement’ under the medium density housing code to acknowledge compatibility of a proposal in its local setting.

Comment on Options Paper

PIA appreciates that more can still be done to improve to improve trust in the fair, effective and efficient operation of the certification system and specifically the independence of private certifiers. We endorse the goals of the options paper but argue that none of the three options is fit for purpose. Each of the three options represent a quite destructive means of distancing the relationship between private certifier and the developer / constructor.
Private certifiers are public officers with a code of conduct and are accountable to their board. Since private certification is now a reality the operation of the market cannot be ignored. PIA argues for the following considerations to be taken into account in considering and dismissing each of the options:

a. *Certifiers should be able to choose their clients*

A certifier should be able to choose who they work for in order to manage their costs through systems they have established and to avoid clients with whom they anticipate an unsatisfactory working relationship.

A taxi rank scheme would mean that certifiers are not able to compete for certain clients at every opportunity. They would be penalised by being pushed down the queue for exercising their discretion to not work on a particular type of project or for a particular client.

A roster could limit certifiers access to the market and potentially match certifiers with clients that might not be suited.

b. *Specialisation of certifiers should be valued*

Many developers / constructors seek certifiers with specific skills and experience on certain types of buildings and projects. Using a taxi rank or roster would mean that the efficiencies of matching a specialised certifier and constructor would be lost.

c. *Don’t penalise good practice in building relationships*

A certifier and developer / constructor should not be penalised for sustaining an effective and efficient working relationship beyond two years. Many projects take two years and working relationships would be beginning to form. Certifiers should be able to reap the benefits of a successful relationship by having the opportunity to continue to work together.

**What alternative reforms should be considered?**

PIA supports further reform to improve trust in the certification process. PIA supports a more rigorous and frequent building inspection regime, training to gain stronger competencies and further resourcing of the Building Professionals Board to undertake audits and hold certifiers accountable.

a. *More frequent and targeted inspections*

Depending on the complexity of a project, as few as a single pre and post construction certification inspection may occur. Inspections should be scheduled to coincide with each key phase of site preparation and construction in order to ensure that the benchmarks of approved project are met throughout. Too few inspections reduce the opportunity for progress in meeting the expectations of all parties and this places pressure on certifiers.

PIA recommend the Board further review the points at which inspections occur across different types of projects and consider an optimum inspection regime that increases the frequency and better targets inspections at key phases. It should also take account of which type of certifier (eg fire safety) should contribute at each inspection.
b. Training and specific project competencies

As public officials, certifiers should remain up to date with their statutory obligations as well as expectations of behaviour under the code of conduct. Maintaining high industry competency as well as ethical standards is essential and requires initial training and ongoing professional development for certifiers to develop skills in certain development types and disciplines. The Board are encouraged to consider the suitability of certifiers competencies to work across the wide range of certification tasks across diverse projects and all project stages. There are already 24 categories of certifier skills and competencies. The inclusion of specialised certifiers from other occupational licencing frameworks (eg fire safety) for specific functions is welcomed in this regard.

c. Greater enforcement capability and BPB resourcing

A rigorous and frequent independent audit regime is important to maintain industry standards and community trust. The Board is urged to consider options to further resource their audit regime and to act rapidly on issues they identify.

Conclusion

PIA is concerned that the three options considered will not be effective in improving the quality of private certification nor improving public trust. The options could add costs to the industry while penalising aspects of good practice where effective and often specialised certifier - developer relationships are built up.

PIA urges the Building Professional Board to consider a wider range of measures to achieve their goals. PIA suggests the Board consider a review of inspection regimes frequency, training and the need to develop and match specialised certifier capabilities and improved audit and enforcement capability from an adequately resourced BPB.

PIA would be pleased to meet with the Department to outline any aspect of our submission. Please contact John Brockhoff (PIA Principal Policy Officer) on 0400 953 025 if you require further input from PIA.

Yours sincerely,

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