PRIVATE CERTIFICATION OF CONSTRUCTION IN NSW: THE STRATA MANAGERS PERSPECTIVE

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The introduction of private certification for construction work by the New South Wales (NSW) state government was aimed at improving turn-around times of building works certification whilst maintaining a consistent level of compliance with statutory building standards. A fundamental role of strata managers is to represent the owner's interests in maintaining a building once handed over on completion. This paper develops a pilot qualitative case study that explores the effect that private certification of construction work has had on the quality of completed construction works and the impact on the work of strata managers. The themes developed in the research indicates that strata managers believe the introduction of private certification has failed to maintain the quality of completed buildings with questions raised about both the building contractor and the private certifier with additional costs for repairs often bore by the owners. Strata managers drew a direct relationship between poor quality work resulting from private certification and an increase in their own workload.

Index Terms- Private Certification, Strata Managers, Remedial Building Works.

I. INTRODUCTION

The role of the Principal Consent Authority is to ensure that construction of buildings in the state of New South Wales (NSW) meets various government standards. Traditionally the responsibility for certification of construction works was placed on the relevant Local Government Authority (Local Councils). A major component of the certification process included mandatory critical stage inspections during construction and is a requirement under government legislation (NSW Environmental Planning and Assessment Act, 2000) [1]. This certification process was introduced to ensure that works are completed in line with approved plans and to Australian building regulations.

In July of 1998 the NSW Government introduced private certification as an alternative to the development assessment process [2]. The aim of the reform was to reduce the response times for development applications, holding costs to developers and home owners, and improve the level of service currently being provided at the local government level.

Since this reform many people believe that the quality of construction has decreased, leaving building owners with an increase in building defects and the burden of costs associated with remedial building works to fix them. The Owners Corporation Network of Australia (OCN) is the peak body representing residential Strata Title and Community Title owners, primarily in NSW. They believe that one of the key reasons for these issues is a failure of the private certification system. [3]

The Building Professionals Board was set up in 2005 to accredit and regulate private certifiers in the state of NSW. A study they conducted showed that a significant number of complying development certificates were issued by private certifiers. In 2009/10 private certifiers issued 58% of complying certificates as opposed to the Local Councils that provided 42 % [4].

Australian capital cities are encouraging the re-zoning of areas to medium and high density living to co-inside with their urban growth policies. The population now living in strata properties in Australia is estimated to exceed three million people and almost 2 million are in the state of NSW alone [5]. The growing demand for medium and high density living has seen increases in residential unit construction, effectively increasing number of dwelling certified privately.

Strata schemes are used to divide up properties into individual owners lots. Each strata scheme has an owner's corporation which is responsible for the maintenance of common property including the façade of the buildings such as roof cladding and external walls, common grounds such as walkways, stairwells, gardens, swimming pool and structural elements including structural walls, floors and roof as well as waterproofing. Owner's corporations are able to appoint strata management agents to manage the strata scheme on behalf of all the owners. Once appointed, the strata manager takes responsibility for maintaining the building including managing remedial building issues.Remedial Construction Work or Re-work is the work carried out to repair, fix or make good defective building work. Remedial work does not include maintenance work undertaken for the ongoing upkeep of a building. Research by Jones reports that in Australia the cost of rework in 2009 was estimated at $5.8 million [6]. According to the Australian Bureau of Statistics building works in Australia in the financial year of 2008 – 2009 totaled

$75.9M. Taking into account the figures above, remedial works significantly constituted 7.6% of all construction work in Australia in 2009 [7].

The most common defects found in the University of NSW study were issues such as water ingress; water leaks in internal areas; defective services; defective or inappropriate design of balconies or balustrades; guttering faults; electrical faults; building movement; cracking to internal and external structures; tiling problems; various defects caused by the use of inappropriate building materials; corrosion, poor fire and safety compliance [8].

Sydney has approximately 27.5% of its residents living in strata developments and if the plans under Sydney's Metropolitan strategy are realised, this percentage will increase to approximately 45% of Sydney's dwellings being strata title by 2030 [9]. This increase in the market base is likely to equate to more work in the area of strata management.

In recent times there have been several highly publicized incidents in which compliance certificates were supplied by private certifiers have resulted in catastrophic failure [10], [11]. The Sydney Morning Herald reported that a balcony collapse in Sydney's Lane Cove was certified however in an inspection since the failure, the balcony was found to have inadequate structural fixings [10].

In another case, criticism was raised against a private certifier in the case of a tragic fire in an apartment block in late 2012 which resulted in the loss of life. Following this incident a member of parliament David Shoebridge noted "Building standards have been under pressure for more than a decade with the split in authority between local councils and private certifiers" [11]. He further went on to say, "The explosion in private certification in the last decade and a half has produced very questionable results for building standards" [11].

In a criticism of the private certification system, Shoebridge noted that whenever a developer is selecting and paying a private certifier, then there is a real risk that the public interest will be poorly served [11].

A major study of strata titled dwellings in NSW carried out by the University of NSW, revealed that the majority of strata owners (85 per cent) with buildings constructed since 2000 reported defects in new buildings, and that three out of four of these said that the defects had never been fixed [12].

The aim of this research is to explore the impact that private certification has had on the quality of completed buildings and on the strata managers (as the representatives of Owners Corporations) who have to deal with potential remedial construction issues. We examine what, if any, remedial construction work is the most common and the cost associated such repairs. This paper reports on the initial findings of the research that takes the form of a pilot case study. This pilot will be used to inform an in-depth survey that is intended for distribution to a larger audience of strata managers in the future.

II. RESEARCH METHODOLOGY

The qualitative nature of the research, understanding the effects that private certification has had on the work of strata managers, suggested that the subjects needed to freely respond and allowing the research to be guided. That is, it is not known what the effect of private certification of construction work would be on strata managers and is something that requires guidance from the strata managers themselves. Silverman [13] proposed the use of interviews is an appropriate approach in cases where the result is determined by the research. The research was triangulated using a concurrent survey [14] that was developed from earlier literature review into the area of remedial work. This use of the mixed methods approach ensured that the data collected was validated and provided a "deepening and widening" view of the strata managers [15]. It also allowed for the ongoing development of the survey questions to be used in the broader survey.Four (4) strata managers formed the sample group for the development of the pilot case study. The sample group operated in a variety of strata organisations from across the Sydney metropolitan area. Although the experience of selected strata managers varied, all managed both pre and post 1998 completed buildings in their portfolio and all managed buildings that were both local government certified and privately certified buildings (see Table 1. Strata Manager Sample Group below). Although one of the strata managers was only associated with strata work for a relatively short period of time (2 years) some of the properties in the individuals portfolio included properties that were pre-1998 and therefore pre-private certification. All the strata managers in the sample group were required to attend to remedial repairs of buildings in their portfolio.

Table 1. Strata Manager Sample Group

Participant	Strata Manager 1 (SM1)	Strata Manager 2 (SM2)	Strata Manager 3 (SM3)	Strata Manager 4 (SM4)
Time working as a Strata Manager (Years)	10	16	2	24
Portfolio included buildings requiring remedial building works	Yes	Yes	Yes	Yes

Interviews with the strata managers lasted approximately 1 hour and were digitally recorded. The

recordings were transcribed with all data collected subject to desensitization to ensure the anonymity of case study subjects and the organizations where they were employed.

Following the interviews all case study subjects completed a survey. The survey was developed using a previous literature review. For example, a list of common remedial defects was identified in the literature review and the survey required respondents to identify the most common types of remedial defect they had encountered with respect to the buildings they managed. Additionally further questions were developed, such as an indication of the average cost of such remedial repairs.

Open coding of the transcriptions was used to develop a thematic analysis of the interviews and was then triangulated against the survey results to construct the pilot case study.

The research interviews and survey sessions were initiated with an explanation of the parameters of the research. The interviewer clarified the research to ensure the focus on the remedial and repair works associated with the original building works, not work undertaken due to a lack of maintenance. Although one of the strata managers was only associated with strata work for a relatively short period of time (2 years) some of the properties in the individuals portfolio included properties that were pre-1998 and therefore pre-private certification.

It should be noted that some remedial repair works might not appear for several years after the completion of building works. For example, concrete spalling is associated with the corrosion of reinforcing steel in mass concrete structures. The minimum coverage of concrete over steel reinforcing should be 40mm to an exposed surface. If this is less then moisture can soak into the structural element and eventually corrosion could take place, expanding the steel reinforcing and causing the concrete to spall away. The potential for defective work to take several years to materialize (and still considered to be remedial work associated with an original building works defect) meant that even the strata manager with minimal experience was questioned about the possibility of remedial works in pre-1998 buildings.

III. FINDINGS AND DISCUSSION

Many of the themes resulting from the research were found to be consistent with previously published research. For example, the strata managers suggested that there was a trend for construction certification to be carried out by private certifiers rather than the local government authority. This appears to be consistent with research published by the Building Professionals Board [4] that indicated the majority of construction certifications are undertaken by private certifiers (58%).

In the interviews the strata managers consistently agreed that there was an increase in the need for remedial works post-1998 buildings. Three (3) of the strata managers further indicated that of the buildings under their management, they believed that all the buildings post-1998 required remedial building repairs. The other strata manager also indicated an unusually high rate (90%) of remedial works required on buildings in the post 1998 construction era. In comparison, strata managers indicated that a relatively low rates of remedial works on buildings constructed pre-1998 varying from 0% (SM3) - 35% (SM4).

SM2 had an interrupted career having worked an initial period of 3 years in the 1980s as a strata manager before a hiatus until returning in 2001. The working life of SM2 afforded her the ability to make a direct comparison of defective work in construction pre- and post- 1998. SM2 believed that there has been a significant (or “huge” sic.) increase in the defective works in buildings constructed in the post-1998 era.

All four strata managers were of the opinion that all the buildings that required remedial works and that were constructed post-1998 had their building certification attended to using private certifiers. The consensus of strata managers was that faults were a result of poor decisions (for example, inappropriately selected materials) or poor workmanship by the builder rather than materials itself as the primary cause. The poor workmanship of the builders was directly attributed to the lack of supervision from the private certifiers.

Of particular note was the condemnation of private certifiers with SM1 noting that these professionals “sit at their desks and collect pieces of paper from the people who have done the work rather than undertaking inspections to check if work had been attended to correctly”. SM2 appears to be just as damning, believing that the private certifiers were not attending to the mandatory building inspections. SM2 stated: “I know of one building where the certifier never saw the building through the whole process.”

A clear theme presented by the research is a lack of trust that strata managers had for both the builders who are the source of poor workmanship and private certifiers endorsing building compliance when it is not justified. The strata managers suggested that both the builder and private certifiers were not being held to account for their work. SM3 stated that there is “need for reform to monitor (certifying) work by builders. I’m surprised they get away with what they get away with. There needs to be some form of accountability otherwise you get to the end of the second year and if the developer has sold all the properties then the cost involved are huge and you end up fixing it yourself.”

The concerns around accountability by private certifiers is highlighted by a suggestion by SM2 suggested that local government control should be

reinstated to make random reviews of certifiers and building works under their authority while SM1 suggested that the "owners need some sort of security retention held on the builder for a period of time".

The strata managers rated water ingress as the most common defect however several other defects were noted. The strata managers provided several examples of specific serious building faults that incurred major costs to rectify. These included:

- A multi-unit residential block required 85-90% of the waterproofing to the bathrooms reinstalled and took 6 years to complete.
- Electrical cable running between 2 residential blocks in the same development was laid in ground without any protection (it should be housed in conduit). The cable deteriorated within 6 months of completion of the build causing ongoing short-circuiting of power supply to the rear building.
- Water ingress due to incorrect installation of cavity flashing
- Installation of inferior grade materials such as stainless steel balustrading to the balcony of a residential unit block opposite the ocean. This has created additional costs to owners for the ongoing cleaning of rust from elements.
- Failure of footings to a building due to mud and debris in the excavation at the time of the concrete pour.
- The owners of a unit in a residential complex noted water ingress through windows and doors. The water ingress issue was addressed however uncovered additional concrete spalling (corrosion of reinforcing steel) that can be attributed to the water ingress resulting in additional repair costs.
- All the balconies to a residential unit block lacked control joints as well as insufficient drainage causing the tiling to delaminate. New control joints, drainage points and tiling to defective areas were required.
- Non-compliance with fire regulations was found in a building that was certified by the original builder and resulted in costly upgrades.

The impact of the remedial building issues such as those listed above is one that affects both the owners and strata managers. The first impact on the owners is that until the repairs are undertaken as well as during the remedial works, the occupants suffer a loss of amenity. Owners are also often left with the cost of repairs even though the warranty for construction may be enforceable. SM1 believed that often the original builder does not attend to defects as they "go into liquidation and walk away from the problem". The majority of strata managers identified the typical costs for remedial repair projects on properties under their management as being in the $1 – 2 million dollar range.

SM3 noted that there was additional cost associated with pursuing the original builder in order to get them to return and make good repairs often requiring legal action. This legal action has a reasonable cost association and sometimes it is more efficient to pay for repairs from levies (payment by the owners). "My intention is to always get the repairs attend to by the builder but it just depends on the cost of pursuing it and the cost of actual repairs. If you can spend the money and get it done straight away and prevent further damage to the building at a reasonable price then that is what you do. Legal action takes a long time, its expensive and you're not always going to get all your costs back anyway." (SM3)

Additional to the actual repair costs owners corporations incur consultancy fees of engineers to produce reports that identify the issues and rectification requirements as well as supplementary management fees to the strata manager. SM2 noted that remedial works "takes up an enormous amount of time and our management agreement doesn't allow us to do it as part of our normal service. We charge clients on hourly rates". SM4 additionally pointed to potentially high costs associated with legal fees in the case of a court based dispute with the original builder.

All four strata managers identified a substantial time impact on their time as a result of addressing remedial building work and a reduction in their ability to manage other buildings. SM2 specifically commented that dealing with remedial works has decreased her management portfolio by 10%. SM1 considered the demand on time and resources was even higher with one out of the four strata managers in his office dedicating their entire time to specifically deal with remedial issues in the buildings they manage. SM2 added that dealing with remedial work is accompanied by an increase in stress for the strata managers. Stress is increase with the time demands to deal with remedial repairs, the need to communicate and instruct consultants along with socially interacting with disgruntle owners contributed to increased burden associated with the work of strata managers.

SM2 suggested that since 1998 there has been a substantial increase in the volume of large residential unit development. This is the main area in which the interviewed strata managers considered defective building work appeared. SM2 suggested that the volume of work and increased time pressures were the catalyst for shortcuts by contractors as well as private certifiers and is an argument that will be pursued as part of future research.

CONCLUSION

All the buildings constructed post-1998 under the management of the sample group of strata managers and requiring remedial repairs were privately certified. Although the severity of remediation varied, strata managers outlined several specific instances of serious failure in completed buildings. Under the

statutory warranty periods in NSW the original builder should make good defective work however strata managers indicated that it was not uncommon for the owners of new buildings to bear remedial repair costs. Addressing remedial works created significant time demands upon all the strata managers involved in the case study. In one case the strata manager indicated a 10% decrease in the number of properties she could manage and in another the strata management practice a separate position was established to specifically manage remedial repairs.

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