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**From:** Marianne E Standish  
**Sent:** Tuesday, 23 July 2019 9:18 PM  
**To:** Building Confidence Response  
**Subject:** "Building Stronger Foundations Discussion Paper"

Dear Minister

The following is provided in response to the "Building-Stronger-Foundations-Discussion-Paper". I am providing these comments as an interested citizen.

While the Shergold & Weir report has produced highly relevant recommendations, but they are narrow in response to overly restrictive terms of reference.

Even if enacted in full, **the remedies proposed by Shergold & Weir will not address the fundamental problems in apartment development arise from the actions taken by Developers and Head Contractors.** These are the entities that control what goes into the building and how it is installed.

Once the facades, ceilings, walls and flooring are sealed, what's behind the sealed structure, and indeed even on the facade, will become someone else's problem over time – the entire industry works on this basis.

**Unless the NSW Government takes action to address these problems, the crisis will not abate, and consumers will continue to be left with unsound buildings.**

**The developer, often the head contractor as well, takes all the upside on the project, but the current legal environment has enabled the developer to either push responsibility through the head contractor to small sub-contractors or in many cases completely evade responsibility leaving the problem with the incoming purchaser.**

Because of their enormous market power, head contractors have been able to push responsibilities for their failures in project management, and contract structure down to the small subcontractor through onerous and capricious performance clauses and financial withholdings. The situation is completely deplorable and insupportable.

These points A. to E. are additional to the matters raised the Discussion Paper, and also answer in part questions 13 to 15, and 29 in the Discussion Paper.

Additional legislation and regulations are required to ensure that:

- A. **Full responsibility, both practical and financial, resides with the developer and in turn the head contractor for delivery of the residential project to the approved design.**
- B. **The approved design should be specified digitally, using 3D modelling such as BIM, and all specified products to likewise be specified in 3D / BIM form; this should be used in the development approval process, and remain the record to compare with what has actually be developed.**
- C. **The construction phase should be fully digitally recorded, including point cloud records taken during the construction process. Full specification details of all products installed should be stored. Head contractors should not be able to substitute specified materials without approval from the specifier. Those working onto the site during construction should also be recorded, along with the actions taken during the construction.**
- D. **Variations during the build should be recorded digitally, including detailed explanations for any deviation from product specification, and approved where relevant with specifiers and authorities.**
- E. **There should be an "as built" 3D / BIM form, together with all relevant digital documentation, should be provided to the Building Commission, local council, and strata manager at the conclusion of construction. This should also demonstrate the "as built" form aligns with the approved 3D design. This would provide**

corroboration of the head contractor/builder's declaration that the building has been constructed in accordance with the design and specification.

On risk management measures:

F. Risk in the industry should flow upwards to the developer and head contractor. Head contractors should not be able to contract out of their responsibility to deliver the project as specified. Retentions and other payments withheld from subcontractors and other service and product providers should be held independently in trust accounts until due. Developers and head contractors should not be funding their projects using funds which belong to subcontractors and other service providers.

G. Developers should not be able to evade responsibility through bankruptcy. Full penalties should apply. Individuals who have been a director of a Developer entity entering bankruptcy or administration either during construction or after completion should be prohibited from becoming a director on another development entity for more than 15 years. The penalties and impositions on individuals must be meaningful and provide a strong disincentive to those seeking to profit by avoiding their responsibilities.

It is time this industry joined the 21<sup>st</sup> century as users of widely available, existing purpose build digital tools for the building & construction industry that are readily at its disposal.

Properly implemented, these measures supported by a digital approach to construction would dramatically increase productivity in the industry, dramatically improve quality, and lower overall costs. It would also increase the capacity of those coming after completion to effectively manage the building and have confidence that the building is fit for purpose has been delivered to specification.

Consumers have a right to expect that an apartment has been built to high and appropriate Australian standards and that the law will support their rights. It is essential the NSW Government acts to restore confidence.

Sincerely,

Marianne Standish