Submission to the Queensland Construction Productivity Commission

Subject: Challenges Faced by Private Building Certifiers Under the Current Legislative Framework

This submission outlines key issues that Private Building Certifiers are experiencing when working within Queensland's current planning and building legislation. The system we operate under is increasingly complex, time-consuming, and inconsistent — not just for certifiers, but also for landowners, builders, trades, and the referral agencies we deal with daily.

We need a framework that allows certifiers to carry out their functions with consistency, certainty, and transparency. Right now, the inconsistencies in how local governments apply and interpret the legislation are making that almost impossible. The lack of alignment between councils — and between the **Building Act**, **Planning Act**, and associated regulations — leads to delays, added costs, and mistrust of certifiers' roles by the public and industry alike.

Key Issues

Some of the main areas of concern include:

- Unclear distinctions between **building work** and **material change of use**.
- Misapplication of roles by councils acting as **referral agencies**.
- Confusion around the implementation of **sections 32 and 33 of the Building Act**.
- Overlap and inconsistency between **planning interpretations** and the **National Construction Code (NCC)**.
- Local governments overstepping into **building certifying functions**.
- Poor understanding of what constitutes the **building assessment provisions**.

These issues are not isolated — they are widespread across Queensland. Our organisation, GMA Certification Group, operates across all local government areas and also provides building surveying services to several remote councils. These examples come from direct experience and illustrate just how fragmented the current system has become.

Real-World Examples

Moreton Bay –

A referral was triggered because a Class 10 shed exceeded the height limit in their planning scheme. The shed was located in a bushfire-prone area, more than 6 metres from any neighbouring Class 1 building — well within NCC compliance.

Despite this, planning officers issued an Information Request, asking for a bushfire assessment report to demonstrate appropriate separation from vegetation. This is not a planning matter — it's a **building assessment provision** clearly governed by the **NCC**. Not only did this delay the approval, it placed an unnecessary burden on the applicant and us as certifiers.

This is a clear example of how councils are blurring the lines between planning and building roles, leading to inefficiencies, delays, and frustration for everyone involved.

Scenic Rim –

Scenic Rim planning scheme does not regulate building work. All building work must be assessed against the building assessment provisions. A referral application for a carport was lodged for a carport associated with an existing dwelling house land use— clearly building work regulated by the Building Act. But because the property was within a **landslide overlay**, Council refused the referral and instead deemed the proposal as a **material change of use**. We've seen the same happen with Class 10 sheds in flood overlays. Local government believed they should be the assessment manager for these minor developments and as a result manipulated our current legislative processes, creating delays and substantial costs to the respective landowners.

Gold Coast –

Gold Coast officers regularly reject referrals or delay applications if they disagree with the proposed building classification or speculate how a space *might* be used. We've had cases where applicants were accused of *potentially* turning a rumpus room into a secondary dwelling just because there was a kitchen sink nearby, or because it was 'capable' of having a sink installed at a later date through a simple form 4. Even without containing all the required facilities under the NCC and the Planning Act's definition of a 'dwelling', GCCC will insist on the *potential* of an unwanted use existing. Every building has the *potential* to be used contrary to how it's been approved. If the landowners choose to use a building contrary to how it's been approved, this is matter for development compliance, and not a reason to hold up the building approval process.

A referral for a waterway setback encroachment has triggered more stringent requirements which are far outside the scope of the building assessment provisions. GC hydraulic engineers are insisting on water conveyance reports and flood storage reports for these referrals. The matter of a waterway setback is now a planning matter and should not be dealt with through section 33 of the Building Act. Additionally, the conditions we receive back on their referral responses contradict NCC requirements and hinder our role in ensuring life safety. Specifically, around pool barrier fencing. GCCC believe they have the lawful right to require glass pool fencing to be frameless and on base supports which allows the fence to be 'knocked down' during a flood event. This is a matter governed under the NCC, the QDC and their referenced standards. The life safety of a child far surpasses any planning requirement for flood conveyance.

Gold Coast also attempts to place conditions within their referral responses dictating what classification a building must be. A recent approval for an amenity and aesthetics application stated that a 1700sqm shed, being the subject of the approval must be classified as a class 10. Given the size of the shed and its intended function, no Building Certifier will comply with this condition. Applying a classification to a building is a building certifying function, which only a building certifier may carry out.

Townsville –

Townsville insists secondary dwellings must share facilities or demonstrate a "nexus" with the primary dwelling. This contradicts the **Planning Act**, which clearly defines a secondary dwelling as a **self-contained dwelling**. Their interpretation undermines critical fire separation requirements under the **NCC**, especially following the State Government's position that secondary dwellings can be rented. Life safety is compromised when councils disregard NCC classifications and fire safety requirements in favour of their own planning interpretations.

Townsville also does not nominate the non-prescribed aspects of the QDC MP1.1 and 1.2 within their table 1.6, nor does it regulate building work within their tables of assessment. If P4, 5, 7, 8 and 9 aren't being nominated a s abuilding assessment provisions under s6 of the Building Regulation, we cannot assess building work against those aspects. What governs the height of a building or the number of carparks which must be provided?

Redlands –

The definition of a designated bushfire prone area is *land which has been designated under a power of legislation as being subject, ort likely to be subject, to bushfire*. For the purposes of applying the NCC and AS3959 for construction in bushfire prone areas, Building Act ins section 32 gives the *power of legislation* to Local Government. They must designate under the Building Regulation s7 in order for building certifiers to enforce any bushfire construction requirements. We look for these designations within each planning scheme, typically they're found in Table 1.6 of each scheme. Redlands calls up section 32 within their table 1.6, but doesn't specifically designate their bushfire prone areas. Instead there designation is found in their bushfire overlay code, as an editors note –

> Editor's note—Redland City Council designates the hazard area shown on the bushfire hazard overlay map as the bushfire prone area for the purposes of section 7 of the *Building Regulation 2021*. The bushfire hazard area (bushfire prone area) includes land covered by the very high, high and medium hazard areas as well as the buffer area category on the overlay map.

Unfortunately just above this designation is another editors note which states –

> Editor's note – the bushfire hazard overlay mapping is sourced from the Queensland Government's *State Planning Policy 2017* (SPP) Interactive Mapping System (IMS). Review of the SPP IMS should be undertaken and may provide more recent bushfire hazard mapping (refer to section 8(4) of the *Planning Act 2016*).

Section 8(4) of the Planning Act does not negate section 32 of the Building Act when applying the building assessment provisions. Refer to section 8(5) of the Planning Act. These contradictory editors notes creates uncertainty and a lack of trust in the legislation we operate under.

Additionally, Redlands interpret their role and function as a referral agency to include assessment against all applicable QDCs irrespective of the reason for the referral application. An application was lodged for referral against Table 3 of Schedule 9, due to a front boundary setback encroachment. Redlands refused to release a referral response due an RFI item requiring they assess against QDC MP1.4. This created many weeks of delays and frustration to the landowner and the builder. As the assessment manager, we assess against the building assessment provisions, and where there is inconsistency we lodge a referral for those matters.

Under section 46 of the Building Act, a referral agency may only assess against the provision or part of the building assessment provisions prescribed by the Planning Regulation in schedule 9.

Gympie -

Under section 33 of the Building Act, a *planning scheme* or *PDA instrument* may include provisions that are alternate, or different, to the QDC residential design and siting provisions. Gympie's planning scheme does not regulate building work, this means there are no alternate design and siting provisions within their scheme. However, Gympie provides alternate provisions via an amenity and aesthetics resolution. This is in contrast to section 33 and means that a referral for non compliance must be carried out under table 1 of Schedule 9 instead of table 3.

Western Downs –

Western Downs has extensive flood and bushfire affected areas, and has seen devasting loss due to both natural hazards in recent years. Yet the Western Downs Planning Scheme but does not designate these areas for the purposes of the NCC and the QDC.

All Council Jurisdictions -

The popularity of the Plan of Development under the Sustainable Planning Act has created a significant trip hazard to the residential sector of the Building Industry. Plans of development and other such earlier approvals are not easy to source and are often the cause for a Building Certifier approving a development incorrectly.

There is also inconsistencies with what a plan of development may contain. Many contain provisions around the appearance of a building, for example colours and materials. These elements should not fall under the responsibility of the building certifier. Many also contain provisions relating to the width of eaves, the colour of the roof, or the orientation of the buildings. These matters impact on the energy efficiency of the building and the requirements of the NCC and QDC.

Implications for Building Certifiers

The complexity and inconsistency in local government requirements create significant challenges for Private Building Certifiers, affecting their ability to perform assessments efficiently and in accordance with the **Building Act**. Examples include:

- Delays in issuing approvals due to local governments' overreaching interpretations of planning schemes.
- Increased costs and administrative burdens on certifiers and developers.
- Diminishing public trust in the certifying process due to conflicting guidance from local authorities.

Where Do We Go From Here?

The **Queensland Housing Code** (QHC) provides an opportunity to clean up this system and introduce real efficiency to residential building approvals across the state. But unless we resolve the underlying problems — especially local government overreach and legislative misalignment — this opportunity could be lost.

Revisit Section 33:

Local governments should be granted the option to **adopt or not adopt** specific provisions of the **Queensland Housing Code (QHC)**. If a local government chooses to adopt certain aspects of the QHC, these provisions must be explicitly included in **Part 1** of the planning scheme. Once adopted, these aspects cannot be modified, altered, or further addressed within the planning scheme itself.

However, if a local government determines that certain provisions of the QHC are unsuitable within their jurisdiction, they have the option to **not adopt** them. In such cases, the requirements for these aspects would be addressed within the planning scheme, and any non-compliance would trigger a building works assessed against the planning scheme application.

Under this model, the local government would act as the **assessment manager** for these developments, establishing the relevant **performance criteria** and **acceptable outcomes** within their planning scheme. These aspects would no longer be considered part of the building assessment provisions, and building certifiers would no longer be responsible for them. Instead, certifiers would focus solely on the building compliance aspects prescribed under the Building Act.

This approach would prompt local governments to carefully evaluate and decide which aspects of development they deem essential for their jurisdiction to govern, thereby reducing unnecessary complexity in the approval process while ensuring clear delineation of roles.

Simplification of the Referral Processes:

Referrals must be assessed under correct legislative process so that there is certainty for all involved. Make the Planning Regulation clearer in what a referral agency responsibilities are. This will ensure Building Work applications are processed quickly with limited local government interference.

Local governments should not have the authority to influence building approvals beyond their role a referral agency. Planning matters such as flood mitigation, sight lines, height impacts and land use should be addressed within planning schemes and not interfere with building work assessments.

Clarification of Building vs. Planning Work:
The distinction between building work and planning-related issues must be clearly defined. Local governments should be limited in their ability to impose planning-related conditions on building work referrals.

Make critical documentation available:

Where PODs exist, overriding the planning scheme requirements, these are to be identified within Council's overlay mapping.

Conclusion

The current legislative framework governing building approvals in Queensland is fraught with inconsistencies and inefficiencies, particularly in the way local governments interpret and apply building and planning legislation. These challenges have a direct impact on the effectiveness of Private Building Certifiers and, ultimately, the broader construction industry. Through the adoption of the **Queensland Housing Code** and the implementation of the reforms suggested above, Queensland has the opportunity to significantly streamline the approval process, reduce unnecessary regulatory burdens, and ensure that building approvals are processed in a timely and efficient manner. This will benefit all stakeholders in the construction industry, from certifiers to developers, tradespersons, and homeowners.