LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
Mr Jeremy Hanson MLA (Chair), Mr Michael Pettersson MLA (Deputy Chair),
Ms Suzanne Orr MLA, Mr Mark Parton MLA

Submission Cover Sheet

Inquiry into Building Quality in the ACT

Submission Number: 012

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Mr Jeremy Hanson MLA

Chair of the Legislative Assembly's Standing Committee on Economic Development and Tourism

Legislative Assembly for the ACT

Via email: LACommitteeEDT@parliament.act.gov.au

Dear Mr Hanson,

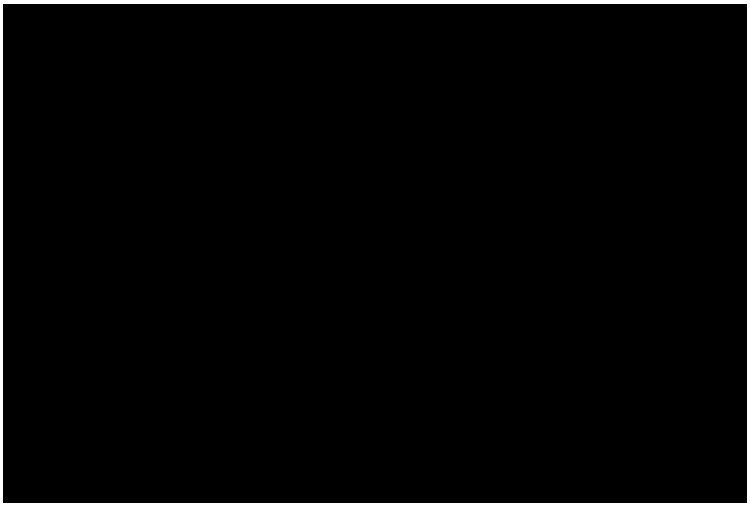
INQUIRY INTO THE QUALITY OF RECENTLY CONSTRUCTED BUILDINGS IN THE ACT

1. Why we are making this representation?

We are writing to you as a resident of [redacted] ACT with a concern relating to the construction of residential properties within the ACT and the mismanagement of complaints by Access Canberra. We do not believe that the regulatory frameworks in place are sufficient to provide safeguards against existing property owners, particularly with respect to breaches in the building codes. We believe that builders are conscious of the lack of regulation and are taking advantage to build structures which breach the law, knowing that no action will be taken against them.

As direct adjoining residential neighbours to the left of the property at [redacted] we are also making this representation due to the major impact that the structure has on our property at [redacted]. The impact is one of significant detriment to our privacy and major impact on our ability to have comfortable and convenient enjoyment of our own property due to its breaches to the side-setback requirements.

The facts in our case are that the structure at [redacted] is an upper floor pool deck (unscreened element) at 2.1m side setback (where the building code requires 6m) and 2.1m high (the exemption criteria only allows 1.0m) which towers above the allowable fence height. This means that there is a major non-compliance and unduly interferes with our privacy as it is too high and too close according to the building code laws. Please refer photograph for perspective.



2. Background

Our direct residential neighbour commenced a knockdown/rebuild on their block at [redacted] on 1 October 2015 (over 2.5 years ago). This build was advised to us as a single dwelling and we were provided proposed plans at that time. These plans were significantly different to the house that was built resulting in a complaint from us to Access Canberra. The pool above was included in

the plans as an in-ground pool which is clearly not what has been built due to a major surveying error.

We were then advised that the development application had been approved as amended. However, Access Canberra were not required under the current laws and processes to provide us with an amended set of plans, nor an opportunity to comment on these changes even though they now consisted of a plan which was in breach of the Single Dwelling Housing Development Code. (Refer Issue 1 below).

3. Building Certification – Closed Loop Conflict of Interest

The process whereby a closed loop specifically excludes neighbouring residents from providing any feedback or complaint would appear unacceptable to the general community. The owner pays the builder who then in turn pays the certifier is a major conflict of interest. We have not been permitted any information from the owner, builder or certifier and when we complained to Access Canberra we were informed "I do not have the right to send out plans for your neighbours block. You may need to request a copy from your neighbours or their certifier." (Emailed correspondence from Access Canberra).

As you can imagine the response from our neighbour's certifier was one of complete refusal. Who does the certifier work for? Is the certifier not a part of the regulatory framework? Why is it enforced that they display their name and contact details on the front of the block if they have no intention or responsibility to converse with the neighbourhood? (Refer Issue 2 below).

We believe that it is a major conflict of interest that the certifier is procured by the builder. How can this possibly result in an equitable result for the residential neighbourhood?

In our case the certifier supposedly approved the retrospective plans (but we have no proof). In addition the certifier approved plans which were in breach of the exemption criteria for pools and this resulted in the owners having to obtain a retrospective Development Application which has still not been approved after 2.5 years. Our complaints to Access Canberra seemed to indicate that it was an outsourced model and the Certifier is responsible – surely the government still retains responsibility of the process as a whole.

4. Timeliness of Retrospective Development Applications

Once it was discovered that the Exemption criteria had been breached, our neighbours were instructed to apply for a Development Application for the pool which has now been lodged. There is a major issue with the regulation of the timeliness of retrospective Development Applications (DAs) – how long is too long? Once notified that the exemption criteria had not been met, the neighbours seemed to have as long as they liked to lodge the DA. We were informed by Access Canberra that they were allowed due process. This took over two years and we believe that this is completely unacceptable. (Refer Issue 3 below).

There should be legislated timelines for the lodgement of retrospective development applications. Our neighbours have now had two full summers swimming in an unapproved structure – how long will this continue as the structure is still not approved as at the time of this submission.

5. Breaches of the Single Dwelling Housing Development Code

We believe that the pool structure at [redacted] has several breaches to the Single Dwelling Housing Development Code and have submitted a representation against the Development

Application. Again the timeliness seems to be an issue, as we have received no response to our representation even after the legislated 45 days.

These breaches involve significant non-compliance with side-setbacks, breaches to reasonable privacy and reasonable separation. Why bother having legislated building codes, if a builder can simply breach them and then ask for a retrospective DA or 'conditions'? Who decides whether these conditions are sufficient? We believe the builders are using the lack of regulation in this area to simply breach the building code and then request that plantings etc. will be good enough to mitigate – they are not good enough in our instance and we would request that this area of the legislation should be a major focus of your inquiry. (Refer Issue 4 below).

6. Unapproved structures – Certificates of Compliance

The process surrounding Certificates of Compliance is flawed. Our neighbours not only moved into the house prior to obtaining a Certificate of Occupancy, they are allowed to swim in a pool which is over 2m high without a Certificate of Compliance or approved Development Application.

Again, as these are provided by the conflicted certifier, their existence is questionable anyway. In our instance they appear to have been quickly provided once we had made a complaint. The certification for the house was then quoted to us multiple times however no mention was made of the fact that the pool was a separate structure and required its own certificate (which we still don't know if this exists due to the lack of Development Application). This doesn't seem to stop them from using the structure. (Refer Issue 5 below).

7. Correspondence and the ACT Ombudsman

We have made numerous complaints to Access Canberra and written correspondence to our local MLA's on this issue which we are happy to provide to this inquiry. In addition, we have engaged with the ACT Ombudsman to facilitate speeding up the lodgement of the Development Application which we do not believe would have necessarily happened if we hadn't engaged with the Ombudsman and for which we are grateful that the Ombudsman at least seemed to hold Access Canberra accountable.

We do not believe that it should require this level of engagement from a neighbour to make the builders and certifiers do the right thing – we believe that the current lack of regulation means that you are effectively pitting neighbour against neighbour when it should be the government who maintains regulation and safety for the community.

We would like to see this inquiry make real change to the regulation issues we have highlighted in this submission in the hope that what has occurred in our situation doesn't happen to others.

Yours Sincerely

Steven and Melinda Kouparitsas

8. Contact Details:

Steven and Melinda Kouparitsas

[redacted]

Summary of Issues:

Issue 1 – Amendments to plans

Where a set of lodged plans to a residential building are amended, opportunity to comment on the revisions should be given to the direct residential neighbours, otherwise what is the point of giving them opportunity to comment in the beginning. Builders are currently using this as a loop hole to exploit the fact that they can just build something not on the plan.

It doesn't seem right that approved development plans can be changed without re-submitting to the original requirement to inform the neighbouring residents. In fact neighbours can't even request a copy.

Issue 2 – Closed Loop regulation – conflict of interest

The process whereby a closed loop specifically excludes the neighbouring residents from providing any feedback or complaint would appear to be a major conflict of interest and unacceptable to the general community. The owner pays the builder who then in turn pays the certifier. We were refused any information from the owner, builder, certifier and government and hence do not believe that the regulatory framework is in the best interest of all parties involved.

Issue 3 – Timeliness of Retrospective Development Applications

There should be some legislated timeframes surrounding retrospective development applications to stop builders simply building whatever they want. Once these timelines are not met (i.e. in our case the owners simply lodged incomplete documentation several times) any unapproved structures should have penalties (or face demolition). This might ensure that the builders and owners are at least compliant with the retrospective conditions (at present they couldn't care less because they seem to have never ending time limits).

Issue 4 – Single Dwelling Housing Code Breaches

There should be a major review of the ability for builders and certifiers to accept breaches to the Single Dwelling Housing Development Code particularly given the conflict of interest considerations in Issue 2 above.

Builders can currently build a structure that is non-compliant with the building code, no-one can comment against it and if they do spend the time to go up against the bureaucracy, the builders are then simply allowed to attach conditions (ineffective screens on plantings) to the breaches and their paid (and conflicted) certifier then signs off. This system is completely rigged in favour of the builder and owner and has no consideration of the residential neighbourhood at all.

Issue 5 – Lack of Certificates of Occupancy/Compliance

Use of a Residential Structure should be limited until proof that a Certificate of Occupancy or Certificate of Compliance can be given. This should include a completed and approved Development Application where one is required. Over two years for this to be obtained is completely unacceptable.