



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

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Submission to the Standing Committee on Economic Development and Tourism Inquiry into the Quality of recently constructed Buildings in the ACT

1. The quality of residential building construction needs reform and improvement. The ACT government is responsible to ensure that any purchaser of a dwelling can be confident that:
 - The *Building Act 2004* (ACT) standards are met by developers;
 - Certificates of completion are provided on independent inspection;
 - ACT Government/ independent certifiers sign off on building quality;
 - Authorised and certified professionals install wet seals;
 - Builders are held accountable for the standards stated in their building plans;
 - Transparent processes remove Conflicts of Interest;
 - ACT government supports consumers to seek redress for building defects;
 - Builders who consistently do not meet building standards should face both litigation and loss of licence, and
 - Effective and speedy processes for rectification of building defects be legislated to protect buyers and Body Corporates.
2. Builders/developers need to be liable for breaches or defects. Strengthening the accountability of developers to ensure that building standards are met is essential for property values to be maintained and consumer confidence in building services. If this was the standard, the ACT Government would ensure that developers would be held accountable for quality builds. This is not the case at present. If this cannot be achieved then the ACT government needs to take responsibility for the cost of building defect rectification if the developer cannot be held accountable.
3. Poor building standards leave unsuspecting owners in Body Corporates (BC) with expensive repair bills, high insurance levies and property values at risk.
4. The ACT government needs to provide free and improved services. Information should be available to all BC and consumers on their rights and processes to seek redress when quality building issues arise. Tool kits for new and existing BC need to be developed to support them to take action. The ACT government should ensure that processes avoid the costly avenue of legal action, BC levies to repair defects or use time chasing the developer.
5. Statutory warranties should be set at the longest limit to protect consumers. However, if a defect can be identified from the original building plans as not meeting the Building Act, a rectification order should not be excluded outside the statutory warranty period. This will ensure that builders use products and standards that are quality and sustainable.
6. A register of all **Rectification orders** should be made accessible and public. (As per the submission by Kerin Benson Lawyers.) For a rectification order in a Unit Plan, the ACT government should formally notify the Body Corporate and instruct the executive of the Owners' Corporation (OC) to inform all owners. Mandatory reporting by ACT Government to UPs will ensure any Strata Manager conflicts of Interest with developers is minimised. BCs should also be mandated to report back to ACT Government on this disclosure.
7. The **UTMA** needs to be strengthened to empower BCs to act against developers as a UP rather than as individual owners. The cost implication of rectifying multiple units would be costly for builders and hence hold them more accountable for quality building.
8. The **UTMA** needs to be strengthened under conflicts of interest to ensure that developers who maintain ownerships of numerous properties within a UP must not act on the executive committee and not deal with any matters relating to any building defect issues.
9. BCs should hold a full copy of all building plan documents on inauguration. These should be freely available to any prospective or current owner. Strata Managers should act in the interests of owners

to ensure any rectifications are notified to all owners in written form and a motion declaring this tabled at the AGM.

10. Conflicts of Interest should be treated more seriously in holding builders to account and legislation changed to make this a more serious breach.

Terms of Reference 8: Dealing with Developers and Conflicts of Interest- UP 2418

We are owners of a two-storey townhouse in a Unit Plan (UP) with 20 units. Prior to purchasing in 2014, we consider that we undertook “due diligence” in investigating the status of the UP through the Strata Manager by investigated the AGM minutes, financial statements and a building inspection. Once living in the UP it became obvious that we had a fresh perspective on the building quality and these documents did not reflect our new reference.

Early signs of water damage from bathroom and balconies required an insurance claim on the former and repair work that revealed extensive damage to the flooring structure below the bathroom tiles. Only a full bathroom renovation would reveal the extent of the damage. It was clear that the standard wet seal was absent or minimal and water leakage had created significant damage to the framing of both the floor and walls of the bathroom. The damage had created structural integrity issues. Redress from the builder is difficult and was not a process we knew we could take or how to take action. Once the extents of the problems were revealed, involving ACT Government inspection during the renovation would delay the work and was problematic for our repairing contractor.

Our contracted repairer (builder) clearly stated that there was both insufficient and incorrectly laid wet sealing and flooring. There was no evidence of a wet seal in the main bathroom. The shower screens were screwed through the boards allowing water to penetrate below the tiles creating hidden and continual water damage over time. This water ran along joists and beams that were also affected.

Firstly, following the renovations we investigated the UP building plans at ACTPLA Mitchell found some key information that we had not been privy to. The approved building plan documents stated the builder’s standard to be applied to bathroom and balcony wet seals as follows:

Waterproofing membrane system for bathroom and wet areas.

Prior to applying Emer-Proof WB in wet areas prepare and prime the substrate in accordance with the surface preparation recommendations.

Once this has been completed, a fillet of Hilastic 66 Joint sealant should be applied at the junction of the wall and floor (perimeter seal) and allowed to cure. Prime the wall and floor surfaces with Emer-Acrylic Sealer. Apply Emer-proof WB at a wet film thickness of 400 microns(2.5 msq / litre), then lay reinforcing fabric onto the wet Emer-proof WB. Apply a further coat of Emer-proof WB at a rate of 2.5 msq/ litre, wet on wet. Allow the Emer-Proof WB to dry for 16- 24 hours and apply a final coat at the same coverage rate of 2.5 msq/litre. The resultant total dry film thickness, not including the reinforcing fabric should be 750 microns minimum.

Priming

Emer-Acrylic Sealer, a water based acrylic latex primer is used to prime timber work, concrete and masonry and allowed to dry for 2 – 4 hours before application of the Emer-proof WB.

The developer/builder did not use the above standard in the initial build.

Secondly, the wet seal certifications were a photocopied page with the unit number on it, signed off by the builder himself. There was no evidence of independent certification or use of a qualified tradesperson. There is no indication that this certification was checked or inspected. This would appear to be a breach of both building standards and a conflict of interest.

On inspecting the building plans and files at Mitchell, ACTPLA staff was cooperative with our questions but unhelpful in providing information or advice on how to move forward with building defects and the appropriateness or lawfulness of the building plan documents for the UP. Clearly a developer signing off on their own wet seals is a breach of the building standards and should warrant some follow up.

Thirdly, a further complication exists with the builder having retained ownership of three of units. One of the family members remains in residence in the complex holding authority to act for three units. This individual is also a company director and an authorised signatory for the builder, having signed off on numerous original building documents for the UP. There could be perceived and potential conflict of interest as this individual has remained active, and on the executive of the BC for the length of the BC's life. BC executive minutes and AGM minutes do not show no declaration of conflict of interest, nor any reference to any issues of building defects. We have numerous examples of potential conflicts of interest still ongoing within the BC.

A majority of units have had similar ceiling water damage, water ingress and bathroom leakage problems over the past few years. Numerous claims for water damage have increased our insurance premium and an expense to individual owners to rectify. Our insurance premium remains high with multiple claims each year. Owners who sell their units leave new owners unaware of the building issues.

The same builder has retained a majority share of another UP in Belconnen built after our UP. The authorised company director on the executive at this UP, is the same person who lives in, and is on, the executive of our UP. In 2016, ACAT tribunal made a ruling against the director in relation to inappropriately using their majority vote to prevent an AGM motion to raise a levy to cover legal advice in relation to building defects. The tribunal found that as a director of the building company that 'such conduct is oppressive to, and unfairly prejudicial to the unit owners...'. The tribunal noted the conflict of interest as a member of the executive of the BC and her status as authorised representative for the company. Our OC seems to be unaware of this situation and the potential implications managing ongoing building defects.

The **Access Canberra** website is inadequate to support owners and BCs to seek information on how to proceed with a claim for building defects. How does a person know the form to fill in is a *Controlled Activity or Construction occupations complaint*? The website does not assist owners or BCs to seek information. When the specific area is found in the website, the next screen states "What Access Canberra does not act on" with numerous examples. This information is buried deep in the website under 'contractual issues or Civil disputes. It states there is a seven month complaint resolution timeframe. Nothing on this website supports owners or BCs to seek redress for building defects and how to practically go about this. The negative language on the site also seems to discourage any claims. Given that building quality is such a huge economic issue, the website needs to provide greater logical access markers and resources for owners or BCs. It would be good to provide new BCs with free workshops or meetings by the ACT government to go through the processes and expectations. Funding could be provided for the ACT Owners Corporate Network to provide independent workshops on processes within the ACT Government.

How does an owner in a BC find out about Rectifications of building defects? Knowing about a notice of rectification and its implementation has been difficult to source. As it is not public information, we are presently seeking this under *Freedom of Information*. The application requires specific information to be provided in seeking relevant documents for this UP. We have been told that the third party (presumably the builder) is given 20 business days to respond to the release of documents. The third party can seek to have our request denied on the grounds it may 'adversely effect their business'. This makes a total mockery of seeking FOI. New owners in an established BC will have difficulty finding out about any known defects unless the BC has shared this information. Our recommendation would be that all building defects identified by ACT Government and Rectification Orders served, should be made public including mandatory informing of all owners in the BC.

The builder of this UP, by retaining ownership of numerous units and maintaining a presence in the UP and its executive committee, has demonstrated an ongoing conflict of interest to potentially minimise their obligations to rectify defects. In essence the 'live-in' protects the developer from action by owners as a whole Unit Plan. The ACT Government should ensure that builders are restricted in holding multiple ownerships of units within a complex or be unable to hold executive positions on a BC for a period of ten years.

It is vital that information, standards and toolkits are available for consumers to be confident that they have purchased a quality building or how to seek rectification of defects. Once an owner in a BC, the focus changes to managing the building and surrounds to ensure that the value of the property is maintained and grows. This can lead a BC to exclude building issues in AGM or executive minutes for fear of effecting property values. Strata Managers and BCs should be mandated through the UTMA to disclose building defects and their rectification in minutes.

In Unit Plans, the mix of owner- residents and investor-owners create BCs that have varying priorities for the use of funds and maintenance of buildings and differing levels of interest in involvement in the executive committee. Turnover of ownership creates a void of knowledge for new owners on the status of the quality build or any rectification processes undertaken when there is no official record of defect rectification by BCs or ACT Government. Investors simply want a good financial return. Owners in residence are more likely to be aware of ongoing building issues. With ACT government support all BCs should be requested to complete a 'building audit' within the first five years of a new UP. This could identify potential issues early in the life of a UP.

Conclusion

The ACT government needs to reform standards and processes to ensure that independent certification occurs and that quality building standards are met. The defects are costing individual owners and BCs a lot of money and risking property valuations to fall.

It is obvious that ACT Government, Body Corporates, Strata Managers and owners need to work constructively together with builders to ensure that the quality of our buildings provide a positive environment for ACT citizens and investors alike.

Thank you for your consideration of this response to the inquiry.

We hope that the ACT government will be able to use the information provided to improve quality building in the ACT. We would be happy to assist on a working group to prepare some of the toolkits for owners and Body Corporates.

Yours sincerely

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