



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: 014

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Finlay, Hamish

From: [REDACTED]
Sent: Thursday, 5 July 2018 9:41 PM
To: LA Committee - EDT
Subject: Inquiry into building quality in the ACT
Attachments: Inquiry into building quality in the ACT.docx

My name is Suzanne Maginnity, I live at [REDACTED] I am making a submission into the above inquiry, to share my personal experiences and some possible causes. My story has been shared in The Canberra Times twice, and referred to during The ACT Legislative Assembly's Annual Reports on at least 2 occasions. Despite this strong publicity, and the involvement of Joy Burch MLA, Gordon Ramsay MLA, Nicole Lawder MLA, Mark Parton MLA and more recently Gai Brodtmann MP Member for Canberra, I am still to have our issues resolved. I have included a timeline of events in my submission for simplicity of explaining the complex problems.

I have been battling for 4 years and 1 month to have the landslide on my property addressed, which was directly caused by the over excavation of the block next door, during an unauthorised and unsupported **5.6m** near vertical cut at and under our common boundary during the construction of a new house. Worksafe, and the multitude of govt departments have been involved ever since, with no real progress. We still don't have a retaining wall, we still have the landslide, and the house next door has been built to lock up stage, despite the landslide occurring at the excavation point. The excavation was presumably certified, and the plans with no retaining wall were presumably certified, and now there seems to be 92cm at the base of the remaining dirt face, in which to build a 5.6m tall structurally engineered retaining wall. I have been presented with 10 plans for a retaining wall, the first scribbled on a piece of paper. All of which have required me to engage my own Geotechnical Engineer to assess them. For obvious reasons I didn't think it was a good idea to rely on the builder's expertise, having been the cause of this problem.

This saga has consumed 4 years of my life and cost me just over \$40,000 in engineering, surveying and legal fees to try to get the relevant government departments to act. I am sure it has also wasted many hundreds of hours of time of these government departments when some decisive action at the start could have resolved the issues quickly.

In summary, I would say that there were a couple of errors that occurred-

- *Certifier failing to notice that a deep cut on the block would require a retaining wall, and approving the plans.
- *The builder doing an unauthorised 5.6m metre cut at and under the boundary with no support structures or approval from an engineer.
- *Certifier failing to notice a landslide within 92cm of the house foundations and progressively certifying the required stages of the house's construction up to the lockup stage.
- *Worksafe allowing the builder to work underneath the 5.6m high dirt face of the landslide.
- *Worksafe/various Access Canberra departments failing to be proactive in their approach to the landslide. The reactive approach was taken, often resulted in it being too late to fix problems.
- *I think I was put in the "complaining woman box", I was left there, and ignored.
- *In trying to keep the builder "engaged", they have disadvantaged the neighbour, who has done no wrong.
- *The Enforcement Dept's idea of a solution is for the neighbour to take legal action... effectively "outsourcing enforcement" to the lady who lives next door at her considerable cost.
- *In the rush to get the problem to go away, Access Canberra has resorted to forcing the neighbour (us) to accept any conditions they impose, removing the need for a DA. Rather than forcing the builder and owner to fix the problem, which should have been the first and most logical step.

Clearly writing a submission is not one of my special skills, but I hope that someone will read this and the attached word document and use it as a tool to improve the current procedures. All of these comments are true, and I have well over 400 emails and many photos that I am happy to make available to this inquiry. I am happy to discuss all of the above should that be considered useful. My saga is ongoing, and all I wish for is to have my land reinstated, a

suitable retaining wall put in place, and for this to be cost neutral for me. Surely a reasonable outcome for “the lady who lives next door” and who has played no part in the creation of this landslide and loss of land and property.

Thank you for your time and interest in my never ending story,
Suzanne Maginnity

Inquiry into building quality in the ACT.

8. Personal experiences that could inform consideration of any of the above....

Timeline of events.

September 2012 ACT Planning and Land Authority approves plans for a house at [REDACTED], on the block next door to my property.

December 2012 Building approval was issued by [REDACTED], the certifiers.

Approx. May 2014 Unsupported near vertical excavation up to 5.8m in depth of [REDACTED] began at the boundary with [REDACTED]. We later learnt that this excavation was not following the approved excavation plan in the DA. This excavation was more than 1.5m in depth, and within 1.5m of the boundary in breach of R20 of the Single Dwelling Housing Development Code, and in breach of the Building Approval.

24-25 May 2014 approx 40m length of boundary fence and upper retaining wall fell into the excavated hole over 2 weeks. Over the next few weeks more of our land fell away, until we were left with a total of 3 fence panels remaining over the entire boundary and the boundary now in mid-air. This demolition was undertaken without development approval, and without our approval to remove our land and common retaining wall and fencing.

Mon 26 May 2014 We called Worksafe, they attended within 2 hours

Various dates in 2014 Builder verbally assured us that the retaining wall would be fixed by July 2014, then also by October 2014, then also "well before Christmas 2014". No progress was noted....

Sunday 1st March 2015 Builder exceeds noise regulations using an angle grinder on the roof for approx. 2 hours. Authorities notified.

Approx 10 March 2015 Stop work notice issued to builder. Also issued with a Section 62, to make safe the area before anything else is done.

9th April 2015 Internal stair case built. Authorities notified.

10th April 2015 Internal walls now being built. Authorities notified.

20th April 2015 First “safety fence” falls over on a windy day. Authorities notified, builder fixes fence but we can still walk to the collapse by walking around our swimming pool. It takes 1 year and 8 months for this to be fixed so that my daughter cannot access the 6 m drop in her own back yard.....despite repeated complaints to Worksafe and the enforcement dept, who I later learnt would drive past and note that the front section of the “safety fence” was still present, but no one bothered to contact me to ask why I kept complaining. They couldn’t see the back section of the yard which was easily walked to.

July school holidays 2015 Windows installed. Authorities notified.

10 Sept 2015 Cupboards delivered.

12 Sept 2015 2nd storey windows installed witnessed by both David and Suzanne, denied by builder after being questioned by ACTPLA.

24 Dec 2015 Coffey Geotech report initiated by Suzanne, including comments on the DA plans....

12 January 2016 DA [REDACTED] closes....

Sat 2 Feb 2016 Meeting with the builder. He informed us that the DA had passed. It had not passed.

Sat 5 March 2016 Builder at site, hammering noises between 8-10am. A dog is now being kept inside the house.

March 2016 A Construction Occupations Complaint was lodged on our behalf, requesting a Rectification Order against the site. This was refused.

April 2016 Further detail on new plans were requested of [REDACTED] from Planning Dept. Coffey Geotech comments on these plans provided by Suzanne to Planning Dept. Coffey indicated that all the previous comments still applied since the plans were essentially the same as the previous plan.

29 April and 8 June 2016 We repeated the request for a Rectification Order.

25 May 2016 DA refused. Builder indicated he would appeal the decision to refuse the DA. He is given until 23 June to submit his appeal. He is given an extension to submit his appeal... until 14 July 2016. No appeal was submitted.

30 June 2016 Employee of the Construction Occupations Registrar advised the “for a rectification order to be imposedthere must be a structure which is defective or has not been built in accordance with an approval or to the code.” So the Rectification Order was refused because the retaining wall was not considered to be “a structure by the definition of the Building Act 2004”.

2 July 2016 Builder supplied us with another plan. Much the same as the others, with slight modifications, included anchors entirely on our property. I enquired with Coffey about more comments....

August 2016 Another plan.

September 2016 Deputy Construction Occupations Registrar asserted again that “there is no structure by the definition of the Building Act 2004 there is no mechanism with which to issue a rectification order”.

October 2016 Another plan.

November 2016 Another plan.

22 June 2017 A meeting was held with both party’s engineers, the builder, the builder’s representative, three representatives from Access Canberra. I was not invited to this meeting.

July 2017 Amendments to a previous plan. This plan is eventually agreed upon at the above meeting. But requires a boundary survey to determine where the boundary is, since all the ground at the boundary has fallen away during several landslides.

December 2017 Despite an agreed plan, another plan is put forward by the builder.

23 March 2018 Meeting with builder, builder’s representative, Construction Occupations Registrar, other Access employees, myself, and my lawyer. We are back to the “agreed plan from July 2017”, the Construction Occupations Registrar says he will issue both parties a Section 62 order. On being questioned by my lawyer, he changes his mind, and says only the builder and owner will be issued with a Section 62 order. Construction Occupations Registrar agrees that he will have a boundary survey done by the Crown Surveyor. This survey has not been done to my knowledge as of 4 July 2018.

30 May 2018 Section 62 order issued to us, the Maginnitys (who live next door, and who did not cause the landslide, and who don't own the property) and another Section 62 order issued to the builder and owner of the block. Now it seems that "the excavation was effected to create a flat building platform, without which the dwelling as designed could not have been constructed, and as such the excavation works carried out are building work as defined under section 6(1)(a) as they are integral to the construction of the dwelling. Further, the pre-existing retaining wall is considered building under section 7 of the Act." So now it is a building and now the Building Act applies, whereas in June and September 2016, it was NOT considered a building ??? A boundary survey has still not been done. The geotech assessment of the "agreed plans" relies on the position of the boundary, the boundary having long gone in multiple landslides. The Construction Occupations Registrar now seems to be pre-occupied with our health and safety, when no real change has occurred to make it any less safe now than 2 years ago. The builder was allowed to work within 92cm of the base of the landslide, the dirt face being approx. 5.6m in height with no temporary shoring (see attached photo at the end of this word document). The house was constructed within 92cm of the base of the landslide. My daughter was allowed by Worksafe to walk with no obstruction to the cliff in her own backyard for 1 year and 8 months despite my repeated complaints. Even a photo sent to Worksafe, Peter Apps, and Brian Connors on 28 Oct 2015, of her standing next to the dangerous 5.6m cliff in our backyard sent to Worksafe and Access Canberra staff, did not interest them enough to force the builder to extend the "safety fence". . Jane MacCulloch (A/g Manager Construction Enforcement) assures me in an email from 7.1.16 that "Worksafe have advised, that at this stage they are not taking any further action on this matter as they were satisfied with works undertaken." How can Worksafe be satisfied with children being able to fall down a 5-6m drop in their own backyard??? Safety didn't appear to be a concern before March 2018.

It has been suggested to me that the landslide is really a "minor slippage". I had a visit from Dr Marion Leiba, a Geology and landslide scientist who maintains the Australian Landslide Database. She said that it was most definitely a landslide caused by the over excavation next door, and the landslide was now on the landslide database.

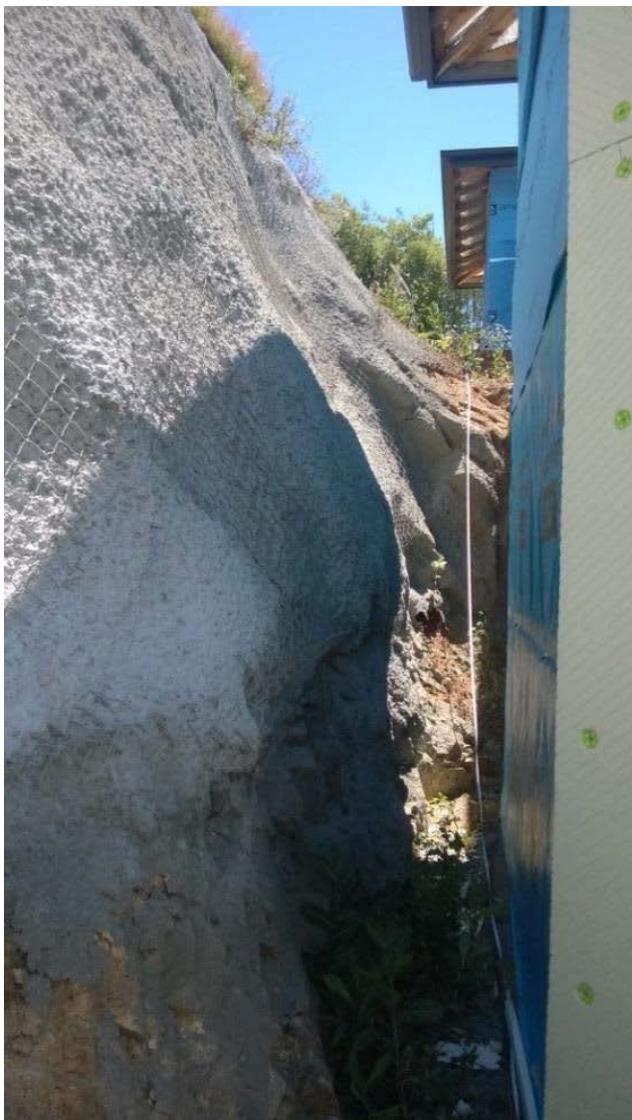
I placed a call to a Building Code advisory service, which was located in Canberra. I described the 5.6m near vertical cut at and under the boundary, and was met with laughter. The gentleman said that it was a ridiculous idea to do this excavation, and I was met with disbelief when I said that it had already been done. He was very surprised that "the authorities" had let this happen. He informed me that all excavations over 2m required specific engineering approval.



The first collapse. This cut is approx. 5.6m in height. Note proximity of the cut to the existing boundary, and the near vertical nature of this cut.



A subsequent collapse.



Note the close proximity of house to the base of the landslide area approx. 92cm. How can a structurally engineered retaining wall now be built in this 92cm space??? Barely enough room to use a shovel !!