



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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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: 72**

**Date Authorised for Publication: 5 December 2018**

SUBMISSION TO THE ACT GOVERNMENT ASSEMBLY STANDING COMMITTEE  
ON ECONOMIC DEVELOPMENT AND TOURISM  
INQUIRY INTO BUILDING QUALITY IN THE ACT

We write as the Executive Committee of the Owners Corporation on behalf of [REDACTED] [REDACTED] which was built by [REDACTED] under the trading name [REDACTED]

As unfortunate owners of a building built by [REDACTED], our complex of 70 unit owners have had personal experience with the grievously poor and inadequate system of building quality inspection and assurance in the ACT. This has led to our insurance case with the Master Builder's Fidelity Fund (MBFF) which is currently pending, in line with a Federal Court challenge by the [REDACTED] under similar circumstances.

At the crux of both our, and more broadly Canberra's building quality issues is the current practise of the building certifier not being responsible for checking all aspects of the quality of work. Leaving this responsibility with the land owner and builder is pure negligence by the ACT Government and the direct result is our crumbling complex. The owner of [REDACTED] who sold units off the plan was also the builder and the developer and this resulted in a complete absence of checks and balances when it came to ensuring the quality of his work.

Additional encouragement of such negligence is the ACT practise of allowing a builder to deviate from building plans and install "alternative solutions", and for these works to be approved by an ACTPLA certifier without sight or inspection and without notification to those who had purchased off-the-plan.

As we have attempted to navigate the path of ascertaining what has gone wrong and who was to blame for the extensive building defects in our complex, we have struggled to be able to access the appropriate building records from ACTPLA. Records have been incomplete, non-existent, unable to be located, or we've been denied access. We have been informed that "alternative solutions" were approved for our complex however for the reasons mentioned we cannot identify these on the building records available to us.

Our financial challenges have existed for several reasons. The first is the common practise of mis-representing strata fees when advertising and selling new off-the-plan units. In addition to the increases that were required to cover normal operating costs and maintenance programs that were not put in place, which were far greater than were advertised by our owner/builder/developer on sale of the properties, the special levies that have had to be imposed in order to rectify all the building defects that started to occur over these first 6 years of the life of the complex have been a severe financial burden. The Executive Committee estimates that our cost to fix these defects to date is \$120,000 and the source of nearly all of these defects can be attributed to water ingress through leaking roofs, balconies and courtyards as is the case across Canberra.

Unfortunately this was just the beginning, and now that we have started investigating just how severe the building defects actually are we have identified approximately \$6 million worth of rectifications through expert building reports which support our experience that water ingress is our single most prevalent and costly issue. These reports along with legal representation to lodge our Insurance Claim have cost owners at [REDACTED] \$70,000 to date. If our insurance claim with the MBFF is unsuccessful, an additional special levy of up to \$85,000 per unit owner will be required in coming years to address the severe structural and building defects.

The units at [REDACTED] have lost approximately \$100,000 in value in 6 years as a direct result of these building deficiencies, which are the result of a negligent system which has allowed builders such as ours to thrive and continue with their second-rate operations free from justice. We believe that our builder is probably one of those using the well-known practice of employing unlicensed and unqualified contractors to save money and then leaving unit owners with a liability, rather than an asset, that causes no end of financial hardship, stress and anxiety.

Other than fighting for a positive outcome for all owners regarding our Insurance Claim on the MBFF the biggest challenge we now face is funding building defect repairs and resultant damage. As a result of our lodged claim on the MBFF any repairs undertaken are not deemed “permanent fixes” but now classified as “temporary fixes” by repairers in the industry which means our relevant building insurance *does not cover* the cost of any repairs or resultant damage while our claim is pending. These repairs could cost several hundred thousand dollars during the time that we must wait for the MBFF claim to be resolved.

Our owners have been severely negatively impacted in a number of ways, including emotional stress, financial stress, and many previous owners have been forced to sell already at a substantial loss and move due to the impact of these building defects on their lives. Unfortunately this option is now more difficult to pursue as the building defects at [REDACTED] have become well known in the real estate industry and selling units in our complex has become almost impossible, even at a bargain price.

Many owners have invested in these apartments as their major life investment – their home, and others have made this investment with their superannuation as their retirement plan and will now be a financial burden on taxpayers much earlier in their retirement than they had planned. Most, if not all, owners cannot afford the additional impost of finding \$85,000 each for the repairs that will be required if the MBFF claim is unsuccessful. None can fathom how builders who practice negligently have been able to operate with ACTPLA legislative endorsement for so long.

In spite of all this [REDACTED] remains an appealing place to live. Members of the EC have spoken to many past and present residents and without exception they all enjoy living at [REDACTED]. The northerly aspect of the units, the outlook onto the lovely open central grassed area, the community garden and the quiet surroundings are all identified as positives by residents.

## RECOMMENDATIONS

- There must be an independent auditor to assess the quality of building work, and not this current system of so called certification, which does nothing to adequately ensure building quality;
- “Alternative solutions” to building plans should be either banned, or extremely closely monitored through a formal and visually certified approvals system, to ensure defects are not built in after the building plans have been approved;
- Regular professional inspections (perhaps by qualified architects) during construction and final certification by government-employed certifiers would assist in preventing a large percentage of problems due to defects;
- There must be greater laws to stop the practise of phoenixing, the fact that our builder and many others are still practising building development, albeit perhaps no longer directly as a builder, is further evidence that legislative checks and balances are grossly inadequate;
- Investment in Information and Communication Technology for management and storage of building and development records for multi-unit developments allowing for access by owners and Owners Corporations should they require them. All drawings required in the course of a build should be included in the building file eg electrical, irrigation, landscape, data, hydraulic etc.
- The practise of under-quoting the realistic costs of strata fees must be stopped through honest and clear reporting and advertising by new developers selling off the plan units. To assist with this Preventative Maintenance Contracts must be in place for all assets at the complex before a Certificate of Occupancy is issued, this should not be made the responsibility of the builder appointed Strata Manager and the new, usually inexperienced, Executive Committee;
- Harsh penalties need to be imposed for those who operate under such negligent practises, and create these now common building defects;
- Enforcing of available penalties for auditors and inspectors who approve negligent building work;
- Clearer lines of ACT government support and assistance for those who feel they have a claim against a builder or a concern about building quality and work;

- Those who purchase off the plan have a financial interest in the property and therefore must be informed of any and all deviations from the approved Development Application;
- A change to the insurance system to ensure that claims for building works and resultant damage can still be made and supported while relevant legal claims are pending;
- Mandatory qualifications and licensing for waterproofing contractors must be legislated;
- Inspection and certification of all waterproofing for balconies, courtyards and tiled areas must be made mandatory;
- Leak testing of roofs must also become part of legislation and require certification;
- The licensing and qualifications necessary for builders undertaking to build multi-unit complexes in the ACT must be of a higher standard;
- The standing of an Executive Committee to act on behalf of owners needs to be legally acknowledged in ACT legislation.

Thank you for the opportunity to highlight the difficulties we have been facing and continue to face as owners in a complex caught up in these widespread sub-standard building practices in the ACT. We hope that the ACT Government does not just pay this inquiry lip service, as it has to past inquiries, and takes on board our recommendations and those of others who have taken the time to complete submissions. The financial and personal cost to the ACT community is becoming too much to bear and the Government must have the courage to act.

John Keeley OAM

Chair Executive Committee, Owners Corporation

[REDACTED]

On behalf of the Executive Committee

[REDACTED]

[REDACTED]

28<sup>th</sup> November 2018

[REDACTED]