



**LEGISLATIVE ASSEMBLY**  
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

---

STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES  
Ms Jo Clay MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),  
Mr Mark Parton MLA

## Submission Cover Sheet

### Inquiry into Property Developers Bill 2023

**Submission Number: 13**

**Date Authorised for Publication: 7 March 2024**

## COMMENT – PROPERTY DEVELOPERS BILL 2023

### BACKGROUND

Eastlake Football Club (the Club) was established in early 1926 following a meeting at the Eastlake Tradesman's Camp. The Club's primary purpose is;

- (a) to foster and promote the game of Australian football in the community;
- (b) to promote enjoyment of Australian culture and to foster friendship among Members;
- (c) to provide a range of social and recreational amenities for Members and their guests; and
- (d) to support sporting, cultural, charitable and other community groups in their contributions to society.

The Eastlake Group now consists of three venues, Eastlake Football Club located in Griffith, Eastlake Calwell and Eastlake Gungahlin. The Club also has a property at 16 Georgina Crescent Kaleen, formerly the Kaleen Sports Club and Kaleen Indoor Sports Centre. The Club welcomes the opportunity to provide comment on the Property Developers Bill 2023.

In accordance with the Parliamentary and Governing Agreement – 10th Legislative Assembly Australian Capital Territory Appendix 1: E (6) states that the ACT Government intends to *"(6) Facilitate planning and other processes to allow clubs to diversify to other revenue-generating streams, particularly development of available land for social housing and land supply purposes, that are supported by the community"*.

In line with this ACT Government objective the Club designed a strategic plan for its Kaleen site that we believe comprehensively accomplished this outcome. Consequently, the Club began the process of preparing the site for development by undertaking a Territory Plan Variation (2015-2021) and a subsequent Lease Variation (March 2022 – September 2023). With the TPV process finalised in August 2021 the Club set about seeking a development partner for the site after losing its original partner, Japara Aged Care, due to lengthy delays in the planning process. The Club signed a development agreement with a reputable builder in early 2022 while waiting for the LVC process to be finalised.

## **UNINTENDED CONSEQUENCES OF BILL**

Recently, our Lawyers Clayton Utz provided a brief to the Club's Board on the Property Developers Bill 2023 advising of the consequences if passed in its current form. Amongst other things, they explained that the Bill provides for the following:

- the creation of a licencing regime for persons who are carrying out residential development;
- making a property developer responsible for building defects caused by others (e.g. the builder and its subcontractors);
- the creation of a new statutory duty of care for property developers and builders for losses arising from building defects;
- the ability for rectification orders to pierce the corporate veil and to apply not only to the property developer company but also to directors of the property developer company (and for up to 10 year old developments);
- for the first 2 years post building completion, for any claim to rectify works, there will be a presumption that the claimed defect is a defect; and
- the ability for the ACT Government to go back up to 10 years from the law commencement date, to issue a rectification order.

Needless to say, these points raised some serious concerns amongst our board members, particularly given the Club entered a legally binding contract in early 2022, well before this Bill was raised.

Our directors are all volunteers and do not receive any remuneration for their role as an Eastlake director. They take their responsibilities very seriously and only engage with appropriately qualified consultants and reputable licensed builders under arm's length contracts. While only ever dealing with reputable entities, sometimes things can and do go wrong from unforeseen circumstances. To capture directors of not-for-profit organisations such as ours is unreasonable given that they do not personally profit financially from the development.

Additionally, the proposed legislation is overreaching by holding directors of our Club retrospectively responsible for defects and deficiencies of the licensed builder and consultants retained by the developer.

The Club believes the Bill will have the unintended consequence of stymieing the development of club sites due to the current broad scope of the Bill which captures the Club and its directors as the property owner. This we believe inherently undermines the objectives of the ACT Government as identified in the 10<sup>th</sup> Parliamentary Agreement.

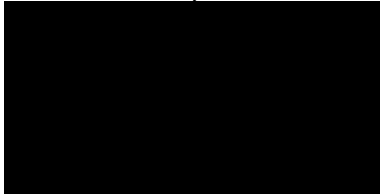
## **RECOMMENDATIONS**

In summary the Club recommends:

- The Bill be amended to exclude the Club industry and their boards and management committees from the scope of the liabilities outlined in the Rectification Scheme;

- The Scheme exclude individual directors and management committee members of Clubs and other not-for-profit entities from the personal liabilities currently proposed by the Bill;
- That the retrospective provisions of the Bill exclude clubs and the not-for profit sector from its scope; and,
- That the 10-year prospective exposure of Clubs and the not-for-profit sector in the Rectification Scheme be removed.

Yours sincerely,



Anthony Ratcliffe  
Chief Executive Officer

27 February 2024