



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

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The Committee Secretary
Standing Committee on Economic Development and Tourism
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

INQUIRY INTO BUILDING QUALITY IN THE ACT

Dear Sir/Madam

We wish to make a submission to the Committee's inquiry into building quality in the ACT.

We purchased our apartment 'off the plan' in 2015, with the contract signed in 2016. We then took possession in late 2017. Our seven-figure dream apartment has turned out to be nothing that we expected.

The main issues being that the building quality has been very poor, defects are still outstanding and the developer has attempted to bleed us dry in our attempts for remediation.

With regard to the Committee's Terms of Reference, we outline our personal experiences below:

Approved plans and role of certifier

To date we have not seen or been provided with the approved plans for our apartment even though we have paid for them and are legally entitled to them. The term 'off the plan' for us was a basic diagram of a floor plan and a few 'architect renders' of the external facades of the building, which ended up changing.

We requested that the plans be provided to us as part of the contract negotiations but the Developer declined this request. In our case, most draft drawings have been provided by the Developer through our Body Corporate.

The Developer has advised that they believe they have provided all plans. If they do not know whether they have, who does? How do we as owners know whether any plans have been missed. Not being experts in the construction field, we need to know what to ask for. For individuals, who are we to turn to for assistance? Although there is legislation in place that provides for these plans, this Developer has flaunted that legislation with impunity as the ACT Government has shown no interest in enforcing the legislation.

We see the ACT Government playing a stronger role in assisting homeowners to be satisfied that building certifiers are indeed independent. As homeowners we cannot see what goes on during the construction of a building, so it is the certifier's role to ensure excavation, structure, etc. is compliant. There does not seem to be any mechanism to assure final build quality, ie. what can be **seen** by the purchaser. It is then left to the homeowner to inspect.

For example, our front door was meant to be fire rated. We only found this out by reading the relevant Code. During pre-settlement inspection we discovered the door was both badly damaged and too short meaning there was a large gap at the bottom. It took much insistence to have this rectified. We approached the ACT Fire Department with respect to this issue and

were told their role is not to identify deficiencies in building construction. So our question is why did the Certifier certify that our door met code when clearly it did not?

When reviewing original development application plans for our development some time ago, grandiose landscaping promises were made - this is nothing like the end result. Developers are seeking buy-in from local residents during public consultations and wooing them with elaborate designs, however the finished product is vastly different.

Architects approved plans

When attempting to verify fixtures, lighting placement, electrical, etc, the inclusions list provided by our Developer simply stated “as per architect’s detailed design”. When we asked the developer for evidence or copies of these plans, we were advised that these were not available. Effectively this meant that we had no idea what we were buying.

Building quality

Building quality comes down to the materials used and the workmanship that goes into the construction of those materials into a finished product—being the building.

With regard to quality, we are depending on the certifier to ensure that building products all meet Australian Standards and Codes. For large apartment blocks such as ours it would be very difficult for a certifier to check that every product used meets Standards and Codes. As owners, we can only check those products that we can see.

We attempted to conduct our own due diligence when first looking into our purchase. The standard form contract was so poorly written that we asked our solicitor to confirm with the Developer that works “... are to be undertaken in a proper and workman like-manner”. Anyone can conduct building works in a proper and workman-like manner however, they may not be skilled and/or qualified to do so.

We sought confirmation that all persons who would be conducting building works would not only conduct those works in proper and workman-like manner but would also be skilled and qualified to do so.

We also asked for confirmation that there were no current legal actions or proceedings against the Developer or Builder. In their response, we were assured that the builder was “extremely reputable” and there was no response to our question about legal actions. There needs to be a register of successful legal actions against Developers for poor construction or breaches of contract.

The licensing regime for tradesperson’s in the ACT is inadequate. We have seen teams of foreign tradespeople brought in with little skill or care. These teams included painters and drywall installers in particular. Some of the work done was so poor that we have crooked walls and walls not at 90 degree angles.

There are concerns with the waterproofing to our building. When we first moved in, there were waterfalls of water running down the walls in our underground carpark. Instead of investigating the problem (which was coming from one of the external garden walls), the fix by the builder was to install a drip tray along the length of the leak to catch the water

overflow. This does not address the root cause. We fear water leak issues in the future. Additionally, there is a high likelihood of concrete rot setting in because of the ingress of water.

Building materials

The window frames installed in our development have been imported from China. We have asked the developer to provide evidence these windows meet the building code for thermal efficiency. The developer has yet to do so.

Energy ratings

We were guaranteed a minimum energy rating for our complex of 6 stars. The developer has failed to provide evidence of this despite being asked for it on a number of occasions.

Our apartment faces due west, has no roof overhang and full height windows running the length of the apartment. In summer we have measured the temperature of the aluminium frames in excess of 50 degrees Celsius. Although there is a mathematical formula used to calculate energy ratings how do we know the correct information has been used to do so, especially when the Developer refuses to divulge this information.

We are unable to install any shade solution due to design of the building exterior. The developer and builders are building the absolute minimum to maximise profits and no consideration is given to the comfort or enjoyment of the occupants. We wonder how this building got approved with no consideration of its orientation to meet minimum energy or thermal comfort standards. Or was it approved and the plans varied? Was the 'as-built' plan approved?

Contracts

Developer contracts are ridiculously weighted in their favour. Our solicitor advised us that we had very little power to negotiate and it was the developer who held the power.

Processes and practices for the identification and rectification of defects

The cost to us personally in lost time away from work to meet contractors on a daily or weekly basis over the last 12 months for remediation has been immense. The alternative is to have carried out repairs ourselves or ignored the issues. We have been relentless in our pursuit of getting these defects remedied. But at a cost to us. We identified 60 defects, some major. These were as a result of shoddy workmanship or damage caused by other tradesmen. There still remain a handful of defects after over 12 months even though these are well outside of the builders 90 day defect period. Would this occur if reversed - ie the developer would be suing us for breach of contract. Instead most people give up waiting.

Legal recourse - lengthy and costly

Developers have very deep pockets. Taking a Developer to court for breach of contract, even when there is insurmountable evidence against them is costly and time consuming. There have been recent cases where these disputes have been taken all the way to the High Court.

The role of body corporates should be examined as they only deal with common area defects. This leaves individuals to fight the developer for rectification on their own or band together for Class Actions.

There should be monies held back from developers/ builders to rectify defects. It would also be useful for the ACT Government to hold a register of these companies. Having their reputations tarnished would serve as an effective deterrent.

Phoenixing

Although our Developer did not go broke they changed their name after completing our development. Where does this leave owners if the original Developer company ceases to exist in the future? This is who our contract is with. How do we chase up issues after the statutory warranty period has ended?