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STANDING COMMITTEE ON PLANNING, TRANSPORT, AND CITY SERVICES
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Submission Cover Sheet

Inquiry into Property Developers Bill 2023

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ROSSTAYLORASSOCIATES
SPECIALIST WATERPROOFING CONSULTANTS

Submission to

Inquiry into Property Developers Bill 2023

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In passing judgment on new legislation it is worthwhile to start with clearly defining the root cause of the problem to be solved. While there will be many perspectives on root cause of the malady of expensive building defects in the ACT and elsewhere, I offer the following view. It is based on 45 years of repairing water related defects in Class 2 and major Public Buildings. The last 25 years have been spent mostly on peer reviewing new design in major buildings for the purpose of defect prevention and regulatory support advice in NSW.

The average developer sees expenditure on design consultants as an impost on their already entitled projected margin. A necessary evil to be managed and minimized. They then engage designers on a shoestring and whip them into line by hiring a Project Manager to keep them lean, mean and siloed. No opportunity for that essential design coordination between the Architect, Structural engineer, façade Engineer and Hydraulic Engineer which prevents snafus and defects. No budget for that !

And so the building leaks through the gaps between the designers inputs.

I know these few things to be true about the industry:

1. The defects that home unit consumers, subbies and workers need to be protected from, by regulation, are the systemic defects that repeat throughout the building.
2. One error in design can get repeated 200 times in a medium size high rise residential building. A leaking balcony or bathroom can cost \$20,000 each to fix. The total repair bill on one issue can then end up being \$4,000,000.
3. Almost always, in my experience, the expensive to fix defects are due to design failure. Systemic defects are the ones with five zeros (\$100,000 plus). These are the ones that involve lawyers and defect consultants.
4. By contrast isolated defects are usually due to workmanship failure. Builders will generally go back and fix the small, one off defects regardless of its cause. Defects with up to four zeros (\$0 - \$10,000) generally do not involve lawyers and consultants and usually handled by negotiation. These are not the ones needing a lot of regulatory support.
5. The most common causes of design error in water related issues is incomplete design (prior to commencement) and lack of design coordination between Developer, Architect, Structural Engineer and Hydraulic Engineer.
6. The main reason for the incomplete design and lack of design coordination is the developers initial brief to the Design Consultants such as Architect , Structural Engineer, Civil Engineer and Hydraulic Engineer. This brief is usually focused on capping costs and the compliance to NCC only. There is often no money for design coordination.
7. Of all the professionals involved in creating a high rise residential building in the ACT, developers have the most influence on, and the least responsibility for, design.

8. The reason that the average developer in the ACT and their trusty enforcer, the average Project Management Consultant , don't care so much about quality, is that their focus is on time and cost. These are the front and centre issues. They currently escape the net of regulatory accountability for defects so its not a priority. Of course, that lack of focus is not the case for the good and honest operators- more on that later.
9. The injustice in the current system is that developers, and their deputy (The Project Manager) who have the biggest influence on the biggest cause of defects have the least responsibility for the quality of the final product under the current regulatory regime.

The irony is that this business model of the developers, that generates the most defects, is based on their mistaken belief that its the best way to preserve their margin. Their business model is predicated on only paying designers sufficient to get building approval. Finalisation of design is then taken on by a design construct contract or similar contractual arrangement. Commonly the contractor, who usually has little or no design resources or training then passes on their design risk to subcontractors – who do it for free.

This business model which the current regulations actually encourage, are not adopted by all developers. Good developers with a long term business model worked out long ago the trap of incomplete and un-coordinated design. Their reward is repeat customers, better brand reputation, better pricing from builders and subbies who know they will have less rework costs during construction and less defect issues on completion.

I support the proposed legislation. It's not perfect, but perfect is the enemy of good. The proposals at least bring the developers into the tent of accountability. Once they get there the honest but ignorant will find its actually a better business model. The good ones won't need to change a thing. The dishonest will be gone.