

14 July 2019

## **NSW BUILDING INDUSTRY OPINION – CHICKENS COMING HOME TO ROOST**

We are now seeing the results of a succession of changes to the NSW Building Industry which has shifted from a regulated, professional led process of ensuring long term quality, to a system without effective accountability for long term quality.

Long term quality has been subsumed to the goal of constructing buildings quickly, at least cost, and at least risk, to ensure maximum returns to property developers.

Each incremental step under the guise of “cutting red tape” or “reducing corruption” or “reducing time” or “reducing cost” has had a direct effect, and an unforeseen knock-on effect, with minimal consideration for the wider or longer term consequences. For example:

The change from the Government Home Owners Warranty to Private insurance

The reduction in insurance cover

The change from Council certification to Private Certification

Developer pressure on Consultants to minimise fees

The change from Architect Contract Administration to Project Management

The change from fair and equitable Construction Contracts to Guaranteed Maximum Price Design Construct Contracts.

The change from Consultants engaged by Owners to being engaged by Contractors

The practice of novating Consultants to Contractors

The change from co-ordination of consultants and their documents by the Architect to lack of co-ordination by Project Management

The practice of changing consultants during the process

The transfer of the risk for latent conditions from Developer to Building Contractor

Developer pressure on Contractors and Consultants to reduce costs and time through value engineering

The temptation to conceal defects and cut corners to save costs and time

The practice of self-certification

The temptation to minimise site inspection as a conflict of interest

The practice of folding development companies after completion of construction.

Ironically, the most regulated Building professional group – Registered Architects – is increasingly sidelined in the process, particularly after design and documentation.

Some of the outcomes from the above practices are obvious, but most require some explanation to understand the process.

### **How the evolved process typically works:**

Developer sets up a new company specifically for carrying out the development

Developer / Project Manager engages consultants to design the development

Developer / Project Manager gains development approval

Developer / Project Manager gains prices for construction including development of design and gaining a construction certificate.

Project Manager uses a Design development and Construct contract with fixed or guaranteed maximum price.

In order to have a competitive price the Contractor minimises any allowance for unexpected costs due to latent conditions.

The developer / Project Manager / Contractor instigate value engineering – to make short-term cost savings

Such contractual and construction arrangements are appropriate for wartime emergencies where time is desperately short and long term quality is of no consideration. This is quite the opposite of the construction of strata titled apartment blocks with multiple end users and strata owners relying on a long term structure without defects hidden from view.

The Building Contractor is required to engage consultants at most competitive fees to make the changes. The consultants may or may not be the original consultants.

If the Building Contractor encounters unexpected costs or delays it is at the contractors cost under a Guaranteed Maximum Price Contract.

The Building Contractor therefore has a choice to eat into its profit margin, or to save costs by cutting corners and lowering quality.

Thus the viability of Building Contractors becomes an issue if they maintain quality whilst absorbing unrecovered costs OR

Cost cutting by substituting cheaper materials, reducing quality, reducing quantity of unseen components etc results in a building which looks OK but has hidden flaws.

Compounding the hidden quality issue is the self-certification process which is only as good as the longevity of the sub-contractor.

Site inspections are minimised enabling the majority of construction to proceed unseen by anyone other than the Construction Company which then declares it has completed the work in accordance with the legal requirements.

The issue of inspection and certification is vexed with potential perceptions of bribery, corruption, conflict of interest, perceptions of bias... and the perceptions can apply to council staff, certifiers, project managers and consultants.

At the conclusion of construction and the expiration of the shortened warranty period and the sale of units the Development Company is closed.

The result is that building defects are typically not discovered during the shortened warranty period and when discovered, the Development Company no longer exists.

If the Building contractor has not survived the onerous conditions of the Contract, it may no longer be in existence.

The purchase of a strata titled unit now has an unquantifiable risk not easily ascertained before purchase, and if found later, could result in having an uninhabitable unit with  
a mortgage still to be paid,  
alternative accommodation to be paid, and  
extraordinary and unquantifiable repair costs in cooperation with all the other strata unit owners. Good luck.

## **Conclusion**

Clearly this now has a considerable impact on the Building and Housing Industry.

These poor outcomes coincide with the changes to the way the industry has evolved over the past few decades. This is not chance or coincidence, but cause and effect.

Therefore these changes need to be reconsidered and if necessary modified or rolled back in order for anyone to have any confidence in the construction industry.

Yours sincerely

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