

SUBMISSION - Private certifiers (PC)

PRESIDENT UNIT OWNERS ASSOCIATION OF QUEENSLAND - WAYNE STEVENS

This submission is written with the interests of unit owners in mind. The writer is not a building expert, but a person with considerable experience in dealing with strata issues.

In the case of units, a developer builds a development with the intention of selling the entire project upon completion, and maintaining no ongoing relationship with that development apart from obligation to warranty, which is 6 years and 6 months in Queensland.

In the case of other property, private housing and commercial development, the completed development is most likely to be kept by the owner who will maintain an ongoing relationship with the development. They have a greater interest in the continuing long-term viability, maintenance needs, and value of the property into the future.

These variances determine different approaches to the developments they undertake and to the ultimate quality of the final product.

In the case of strata units, that final product at the time of completion is passed over by the developer to a collection of new owners which become the body corporate. As home ownership is in the cases of most people the largest transaction they undertake, new owners are an inexperienced group. Also there exists an historical belief formed over a lifetime, that the supervision of building is a local government function that has in the past been highly respected. New owners find that their new apartment does not have the supervision they expected which they learn has been provided by a PC who seemingly has an inappropriate concern for the master they serve. The PC should be committed to protecting the ultimate owner's interest as local government had formerly provided. The incidence of excessive premature defects throughout the strata community demonstrates that the system is not serving the community as was intended.

In the case of a unit development:

A far more cosy relationship is likely to be established and maintained between the initial owner, as he becomes the developer, and the PC he engages. The incentive for a unit development is profit, and maintaining or reducing cost is paramount.

Unit developments can tend to be larger projects and significant costs are involved. Because of size, a substantial proportion of a certifier's income may come from a single developer, and there is a strong incentive to maintain a continuing relationship.

As the developer ultimately sells the entire project to unit owners, there is a totally inadequate opportunity at the development stage for the ultimate owners to participate in a review or supervision process as is available to private home ownership, even though many have committed to buy off-the-plan before the building phase has commenced.

There is a perceived lack of independence in the process, particularly as the owner in strata development has totally different intentions to a private owner of a standard house. The ultimate owners should have greater protection in the process and the certifiers should be more accountable to the owners who purchase from the developer.

Advice at design stage by certifiers.

The UOAQ is concerned of the practice of developers who design and specify a development, and then place the plans and specifications with a second party who is paid a commission on savings he can recommend. This goes to minimum standards and providing standards that may survive the course of the warranty period only, rather than the reasonable life of the development.

Certifiers should be expected to protect the ultimate owner's expectations of the life of their investment, maintenance, and continuing market value of the development. That could be better achieved by involvement at the design stage.

My personal experience

In 2000 I became Chairman of The Phoenician a 330 unit resort on the Gold Coast which had opened in 1998. My first experience was to learn that the majority of top floors units, almost 30 in all, suffered from unwanted water entry. An engineer engaged to investigate discovered that a waterproof membrane had not been installed on the roof. On referring this discovery to the developer I was advised by the developer that the private certifier had approved an additive in the final pouring of the roof concrete that would prevent leakage. To the layman there is no additive that could be added to concrete to prevent its cracking because of exposure to the elements, ultimately leading to leakage. The installation of a membrane cost around \$700,000 of which the developer contributed around \$500,000. In the negotiations I cannot remember the private certifier's name ever coming forward or taking any responsibility. It was as if the PC was being protected by the developer.

To correct the membrane issue, the roof-top gardens were removed as it was discovered that the roots of the plants were entering into cracks in the roof-top. Should a PC ever have permitted such gardens in these circumstances. At the same time, large palm trees 30 feet in height, on the podium deck being the first level above the street, had to be removed as they were heaving above the concrete deck. These trees were considered dangerous as they

were so tall and heavy, that should they have fallen they could have landed in the street below. A responsible PC should never have approved such trees.

Around 2003 it was discovered that large copper pipes throughout the building were breaking down and that the pipes were under specified.

The pipes were installed in concrete and were an expensive upgrade. This was seen as a massive cost impost to ultimate owners to save the developer a few miserable dollars, and the PC must have approved the original installation.

Questions must be raised as to who was acting in the ultimate owner's interests to ensure the avoidance of future premature maintenance.

In the case of The Phoenician the PC would have been engaged by the developer, who for a short time would have also be the owner. The interests of the developer/owner are to minimize cost, not the future avoidance of premature maintenance expense. In a development the size of the Phoenician the PC fees would have been substantial providing the developer inappropriate clout and influence. The expensive failings as experienced above demonstrate an unreasonable cost burden on ultimate owners whose interests seemed to have been ignored.

Penalties could be imposed on a PC who fail to ensure that current building standards are complied with. Penalties could be considered in the range of 25% of rectification cost to owners who are required to remedy by need or imposition. The introduction of Option 4.(1) a, provides the opportunity for a PC to avoid penalty.

Building classification

Under the BCCM Act Classes 2 and 3 buildings require classification.

The proposed use of the building determines the classification. A residential building should be classified as Class 2 and an accommodation building should be classified as Class 3. Because of the transient nature of occupants of Class 3 buildings, the fire standards are required to be higher and connected directly to a fire centre to minimise response times. Class 2 buildings not complying with the Disability Discrimination Act (DDA) standards for access by a person with a disability, and not complying with AS 1670 fire standards, cannot be legally used for transient short term accommodation and therefore cannot qualify under the BCCM Act as 'Accommodation Module' buildings.

However, building classification is currently being compromised in Queensland. as a consequence of developers being encouraged to sell management right agreements of 25 year's duration in developments under the accommodation module of the BCCM Act; notwithstanding that they are built and certified as Class 2 buildings.

Queensland law currently proscribes that only developments that are to be used predominately for accommodation purposes (short-term rental) (Class 3 buildings) are to be classified 'accommodation module'.

Developers are classifying residential development Class 2 buildings as accommodation module which permits 25 year agreements, whereas the standard module for the use of residential developments restricts management agreements to 10 years.

Residential owners who have purchased their unit to specifically live in a property with like-minded residential owners require the certainty of knowing that the development cannot be used for short-term rental.

Should a developer mis-classify a development, a PC should be required to ensure that the correct classification is determined.

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