

**Submission
No 58**

**INQUIRY INTO REGULATION OF BUILDING
STANDARDS, BUILDING QUALITY AND BUILDING
DISPUTES**

Name: Mr Allan Veney

Date Received: 25 July 2019

Early in 2017 the Owners Corporation of a strata scheme in which I am an owner resolved to accept a quote from a registered bricklayer to build a cement block retaining wall on the scheme's common property, for a shade over \$40,000.00.

The quote states the wall will be constructed in accordance with relevant standards and building codes.

I happen to know enough about retaining walls to know that the structure did not comply with the applicable building codes and standards, so, shortly after being elected Strata Committee Secretary, I asked the local council to investigate. Following an on-site inspection, the council informed the owners corporation, via its registered strata managing agent that, in the absence of the required Development Application and Certificate of Compliance, council would order that the wall be demolished.

(As a side issue, examination of the financial affairs of the owners corporation as kept by the managing agent at that time revealed that for some unexplained reason, the managing agent paid the builder circa \$55,000.00, not the agreed \$40K, but more on that another occasion)

Given the council's demolition ultimatum, the managing agent convenes a meeting of the Strata Committee at which it was resolved to engage the firm of structural engineers as recommended to satisfy the council requirements. The Strata Committee resolved to accept the \$3,250.00 fee proposal.

On 4 May 2018, the engineering report lands in the registered managing agent's inbox. The report, correctly addressed to the owners corporation, is forwarded by the managing agent to all members of the Strata Committee. The engineers' assessment of the structural integrity of the wall is damning. The required Certificate of Compliance cannot be issued, and will not be issued. The report lists a number of structural problems, including "inadequate footings" which, on further photographic examinations, is later upgraded to having "grossly inadequate footings"

So, at that point the owners corporation owns a substandard wall with grossly inadequate footings that, for some unexplained reason, has cost the owners significantly more than the agreed price - for a wall that was supposed to comply with all relevant building codes and standards.

Towards the end of May 2018, a draft business paper for a forthcoming general meeting of the owners corporation is distributed, however the draft paper does not mention "problems with the wall" in any way, shape or form.

Taken aback by the absence of any feedback to the owners, – and in my capacity as Strata Secretary and the original complainant - I bypassed the managing agent, enquiring directly of council as to its current position, in light of the owners' engineers' report notifying of the range of structural deficiencies.

Council's response was to claim it had no knowledge whatsoever of the existence of the owners' engineering report! Indeed, council had been provided with a structural engineer's statement that, contrary to the owners' official report, the wall did in fact comply with relevant codes and standards.

At this point, early June 2018, the council has in one hand a comprehensive engineering report, addressed to the owners corporation, paid for by the owners corporation, duly commissioned by

resolution of the Strata Committee and recorded in its minutes, that condemns the structural integrity of the wall, but on the other hand, a two page statement from another engineer, not addressed to the owners corporation, not addressed to the Strata Committee, not obtained by any resolution of any meeting, not recorded in any minutes, but addressed to a particular individual, falsely representing himself as acting for and on behalf of the owners corporation! What is council to do?

It is later revealed through FOI that council had already approved the wall PRIOR TO it became aware of the existence of the owners corporation official engineers' report. At this point, council has clearly been deliberately misled by one individual, an individual intimately associated with the wall from its conception. That individual has been aided and abetted along the way by others, for one reason or another. Some for monetary gain, others seeking to cover-up professional incompetence or negligence, others tribal loyalty.

The official council TRIM file, obtained under FOI, shows little more than a series of benign procedural events. The independently retained email exchange between various senior officers, the registered managing agent, various strata committee members, and the author, points to a local government authority desperately searching for a face-saver. The council had been deceived into issuing approvals after being deliberately presented with false statements. But rather than taking measures to rectify the situation once the deception had been exposed, it chose instead another course.

Council devised a scheme whereby the owners would be required to engage a third structural engineer. 'The owners corporation should engage a third structural engineer to review the two conflicting assessments. And that third assessment will finally decide the question' However the means by which that third report was obtained and presented to council mirrored the dodgy nature of the first "unauthorised report" - not commissioned by resolution of the owners corporation, not recorded in the minutes of any meeting of any body associated with the owners corporation, no Common Seal affixed, no critique of the two earlier structural reports, nothing! Council wanted the matter to disappear. By mid June, when the council finally slammed its file closed, I had been sacked from the Strata Committee, (not for any wrongdoing. It was argued that establishing a smaller committee would increase prospects of a quorum!) the registered managing agent had given notice that he was resigning his commission within weeks, and I suspect council thought now would be as time as any to slam its file shut.

In summary, I support the appointment of a Housing Commissioner and the appointment of a senior Minister with responsibility for building regulation, building quality and building disputes in NSW.

My experience to date in dealing with numerous state government agencies has been very disappointing, to say the least. Early in the piece, police formed the view my building dispute was a civil matter. NCAT, on several occasions, informed me it does not have the necessary powers to make the orders sought. "Try the strata scheme auditor" They won't return my emails. Fair Trading claims it added comments to its building complaints data base and issued "educative notices" to the builder. More recently, in light of additional information coming to hand, Fair Trading informs me that criminal deception, or fraud, may be involved, and advise that I should consult police further. All the while, the registered managing agent continued to operate as if nothing has happened. He comes under Stock and Station Agents Act! Two structural engineers have 180 degree contradicted the official structural report, and while all three can't be right, all three continue operating unimpeached. I'm told I might file a complaint with Engineering Australia!

For the past 18 months I've encountered no shortage of very polite public servants happy to tell me what I MIGHT DO! Seek legal advice. Commence court proceedings. Contact the department of local government. And what did the Department of Local Government advise me to do? Contact my local council! And if my local council is doing anything, they are not sharing that information with me!

Every word I've written in this submission is supported by independent documentation. For example:

- The \$15,000,00 overspend is shown in the strata's audited financial affairs statement.
- The quote detailing the type of wall, the specifications, the agreed price, is in the strata minutes.
- The failed attempt in NCAT to justify the overspend as a valid contract variation and dodgy invoices are contained in the respondent's sworn evidence given at various NCAT hearings.
- The structural deficiencies identified in the owners corporations official engineers report are not minor or cosmetic. Defects listed include grossly inadequate footings in a structural wall!

And at every turn, I'm constantly told what I could do! There are 100 lots in this particular strata scheme. I'm an aged pensioner. How about a dedicated state government agency, with a dedicated senior minister responsible, helping a bit with the lifting?

The rogue strata committee office bearer is:

The strata registered managing agent at relevant times was:

The owners corporation auditor at relevant times was:

The owners corporation's structural engineers report was provided by:

The two unauthorised structural engineers reports were obtained from:

NCAT case reference numbers are:

Police event number is:

Fair Trading correspondence references are:

Department of Local Government reference is:

ICAC reference is:

And the local council is:

FURTHER DETAILS WILL BE PROVIDED UNDER SEPERATE COVER IF REQUESTED.