



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2022-135

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	34
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From: no-reply@act.gov.au
To: [CMTEDD.FOI](#)
Subject: Freedom of Information request
Date: Monday, 25 April 2022 12:21:53 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:

First Name:

Last Name:

Business/Organisation

Address:

Suburb:

Postcode:

State/Territory:

Phone/mobile:

Email address:

Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

1) a copy of Rectification Order under the Construction Occupation Licencing Act 2004 issued by Construction Occupations Registrar, Access Canberra to the builder () on 11 January 2022 to undertake the necessary repairs to the balcony defects at unit and associated damages at unit). Reason for the request: - The rain / storm water from the balcony of unit leaks into courtyard of my apartment - this has been happening over 3 years - There are unresolved and ongoing associated damages such as stains, cracks, cracked counter-productive sealant on my property due to the defects at the balcony of unit - The unresolved associated damages has compromised a clearance and sale of my unit - I am a member of Owners Corporation of therefore I am entitled to access this document 2) a copy of direction under Building Act 2004 issued by Construction Occupations Registrar, Access Canberra to the owners corporation of in February 2022 to undertake a further acoustic assessment consistent with the findings of the previous report prepared by and provided

to the owners corporation of [REDACTED] in August 2020. Reason for the request: - Constant structure-born and building services noises heard from my apartment by me and my family have been substantially disturbing and annoying us for the past over 3.5 years - The problem of noises is ongoing and continues to directly annoy me and my family throughout days and nights - I am a member of Owners Corporation of [REDACTED] therefore I am entitled to access this document

I do not want to access the following documents in relation to my request::

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2022-135



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 25 April 2022, in which you sought access to:

“Copy of Rectification Order under the Construction Occupation Licencing Act 2004 issued by Construction Occupations Registrar, Access Canberra to the builder ([REDACTED]) on 11 January 2022 to undertake the necessary repairs to the balcony defects at unit [REDACTED] a copy of direction under Building Act 2004 issued by Construction Occupations Registrar, Access Canberra to the owners corporation of [REDACTED] in February 2022 to undertake a further acoustic assessment consistent with the findings of the previous report prepared by SLR and provided to the owners corporation of [REDACTED] in August 2020.”

Authority

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 16 June 2022.

Decision on access

Searches were completed for relevant documents and four documents were identified that fall within the scope of your request.

I have decided to grant access in full to two documents relevant to your request. I have decided to grant partial access to two documents

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as an attachment to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the Act,
- the content of the documents that fall within the scope of your request,
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

The documents you have requested contain information that falls within this definition and while the documents could be deemed exempt in full because of this definition, I have also taken into account the objectives of the Act and determine that some of the information can be released to you.

My reasons for deciding not to grant full access to the identified documents and components of these documents are as follows:

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lie. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure in the public interest:

(a) disclosure of the information could reasonably be expected to do any of the following:

(i) promote open discussion of public affairs and enhance the government’s accountability

(xiii) contribute to the administration of justice generally, including procedural fairness

Disclosure of the information pertinent to this case may help to promote discussion of government business and enhance the government’s accountability, especially with the public and how the ACT Government is committed to ensuring safe and consistent building practices along with contributing to the procedural fairness for you. As such, I afford these factors some weight in my deliberations.

The FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of a representative democracy. This concept is promoted through the objects of the FOI Act, and I consider that giving access to the information sought would support this intention of the FOI Act.

Factors favouring nondisclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially when dealing with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of employment with the ACT Government or are covered by a duty of care in an educational setting for students. This, in my opinion, outweighs the benefit which may be derived from releasing the information of those persons involved in this matter.

Individuals are entitled to expect that the personal information that has been supplied in response to a government process will be dealt with in a manner that protects their privacy. Considering the type of information (names and signatures) to be withheld from release, I am satisfied that the factors in favour of release can be met while protecting the personal information of the individuals involved. I therefore weight the factor for nondisclosure more highly than the factor in favour of release for this information.

I have applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Access to documents

Pursuant to section 38(6) of the Act, I am required to defer access to all the identified documents as an affected third party has objected to disclosure. This third party may apply for review of my release decision within 20 working days after my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred.

Charges

Processing charges are not applicable for this request because the number of pages to be released to you is less than the charging threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents

released to you in response to your access application will be published in the CMTEDD disclosure log between 3-10 days after completion of the deferment period of 20 days or a longer period allowed by the Ombudsman. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the date my decision is published, or a longer period as allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 02 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Matt Leonard
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

15 June 2022



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
Copy of Rectification Order under the Construction Occupation Licencing Act 2004 issued by Construction Occupations Registrar, Access Canberra to the builder [REDACTED] on 11 January 2022 to undertake the necessary repairs to the balcony defects at unit [REDACTED] a copy of direction under Building Act 2004 issued by Construction Occupations Registrar, Access Canberra to the owners corporation of [REDACTED] in February 2022 to undertake a further acoustic assessment consistent with the findings of the previous report prepared by [REDACTED] and provided to the owners corporation of [REDACTED] in August 2020.	CMTEDDFOI 2022-135

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-11	Record of Inspection	16 Nov 2021	Full release	N/A	Yes
2	12-19	Rectification Order	12 Jan 2022	Partial release	Schedule 2 s2 (a)(ii)	Yes
3	20-25	[REDACTED]	22 Mar 2022	Full release	N/A	Yes
4	26-33	[REDACTED] - Special Purpose Inspection	1 Jul 2020	Partial release	Schedule 2 s2 (a)(ii)	Yes
Total No of Docs						
4						



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Record of Inspection

Date of Inspection: 12/11/2021

Time Inspection Commenced: 10:10

Time Inspection Completed: 10:45

Did you access leased land?: Yes

If you accessed leased land, under what authority?: Section 130 Building Act

Photographic Evidence:

Photo No.	Photo Name	Taken From
1	COVID-19 Risk Management Form	
2	Water leaking from Balcony above [REDACTED]	Courtyard of [REDACTED]
3	Water leaking from Balcony above [REDACTED]	Courtyard of [REDACTED]
4	Water leaking from Balcony above [REDACTED]	Courtyard of [REDACTED]
5	Possible cracking and erosion of downpipe connection	Courtyard of [REDACTED]
6	Water stains from vent above window	Courtyard of [REDACTED]
7	General photo of balcony walls	Courtyard of [REDACTED]
8	Holes and cracks appearing in sealant installed on balcony above	Courtyard of [REDACTED]
9	Water build up at edge of balcony. And show of different tiles installed to originals in RHS of [REDACTED] Balcony	Balcony of [REDACTED]

Purpose: Inspectors Douglas Farr and Jean-Marie Shima conducted an inspection in regard to an allegation that the balcony of [REDACTED] is leaking into water into the courtyard of [REDACTED]

Findings and Facts:

The balcony of [REDACTED] is leaking into the courtyard in several places (This can be seen in Photo's 2-4). There appears to be some erosion of the downpipe from the balcony of unit

There also appears to be some water leaking from a vent above the 2nd storey window of unit . Also holes and cracking are starting to appear in the sealant applied by the builder to stop the leaking. This appears to be moving towards failing as a solution.

The tiles on the RHS edge of the are different to the tiles on the rest of the balcony of Unit . This could show that the remediation works done by the builder were only on that row of tiles only and not the whole balcony as initially claimed by the builder.

Douglas Farr
Inspector
Access Canberra

16/11/2021



ACT
Government

Risk Management and Implementation

Business and
Residence
Job Site (Safe Entry)
Analysis (JSA)

Pre-Inspection Health Screening Questionnaire

Name: DOUG FARR & JEAN-MARIE NSHIMIRIMANA

Salesforce Case: _____

Inspection Date: 12/11/2021 Inspection Time: 10:10

Location: _____

Note

- If a "yes" response is provided to any of the questions below, the inspection will be cancelled or deferred until all questions are no.
- Officers can also cancel or defer an inspection based on an on-the-spot assessment of each situation.

1. Has anyone in the residence been diagnosed with COVID-19 in the last four weeks?
YES / NO
2. Has anyone in the residence been advised or requested by ACT Health or NSW Health to isolate or quarantine at home?
YES / NO
3. Has anyone in the residence had any cold or flu symptoms in the last 14 day:
YES / NO
4. Has anyone in the residence been in contact with anyone diagnosed with COVID-19, travelled internationally, or travelled to an area within Australia considered high risk for community transmission in the last 14 days?
YES / NO
5. Is a distance of 1.5m able to be maintained during the attendance?
 YES / NO
6. How many people occupy the residence?

Officers name: DOUG FARR & JEAN-MARIE NSHIMIRIMANA

Photo 1



Photo 2

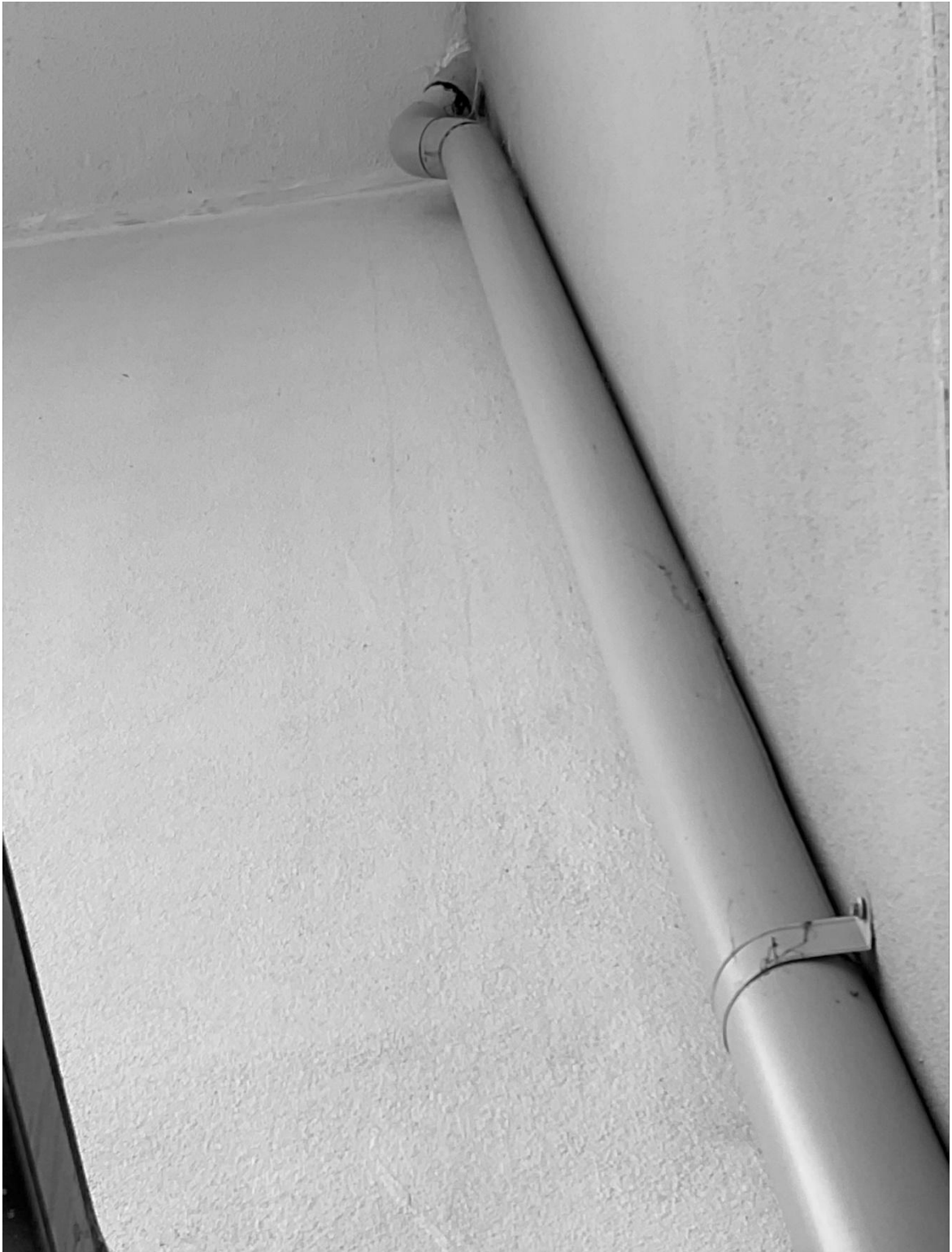


Photo 3



Photo 4



Photo 5



Photo 6



Photo 7



Photo 8



Photo 9



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RECTIFICATION ORDER

Issued pursuant to s 38 of the *Construction Occupations (Licensing) Act 2004*

Place in relation to which this notice applies	
[REDACTED]	
Name of the lesses	
[REDACTED]	

Issued to	[REDACTED]
Address	[REDACTED]
Construction Occupation	Builder
Occupation Class	Class A
License Number	[REDACTED]
License Expiry Date	[REDACTED]

Section 1	Order
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Under the *Construction Occupations (Licensing) Act 2004* (COLA), Section 38, I order you, [REDACTED] ([REDACTED]) to take the stated actions as described in Section 2 of this order to rectify the defects identified in section 3 done as part of a construction service at [REDACTED], known as [REDACTED] (premises).

The evidence for the making of this order is set out in section 3 of this report.

You have the right to appeal this decision to the ACT Civil and Administrative Tribunal (ACAT). Relevant information about your review rights is included at the end of this order.

Section 2	Rectification order details
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Program of Works

1. Within 14 days of the receipt of this Order, [REDACTED] must prepare and serve on the Lessees and the Construction Occupations Registrar (Registrar) a Program of Works.
2. The Program of Works must set out the full scope of works and outline a clear and detailed methodology for rectifying the building defects identified at Section 3 of this order. This methodology must contain sufficient detail and information (for example specifications, work methods and drawings such as cross sections where required) to identify clearly what works are proposed, and how those proposed works will result in a building that meets or exceeds the minimum requirements of the *Building Act 2004* (**Building Act**) Building Code of Australia (**BCA**) and other relevant mandatory codes and standards.

3. The Program of Works must also include:
 - a. sufficient plans and drawings to enable a building approval to be issued, if required
 - b. an estimate of access and storage requirements, and the time/s of day and duration of work involving loud noise, vibration, or unpleasant odours; and
 - c. a Schedule of Works which must specify the separation of works by trade, including a brief description and expected commencement and completion dates by each trade. This must be represented by a Gantt chart, or similar program diagram, and include the critical path.
4. The construction work required by this order must commence within 28 days of the program of works being accepted by the Registrar or upon application in writing by [REDACTED] by such further time as is allowed by the Registrar.
5. The Program of Works may be varied where it is stated to be necessary by the building surveyor to pass any building inspection or to be able to obtain a Certificate of Occupancy and Use under section 69 of the Building Act.
6. Where a delay of more than 7 days occurs in the scheduling outlined in the Program of Works, [REDACTED] must provide written notice and reasons to the Lessee and the Registrar within 14 days of the delay occurring. These reasons may be considered by the Registrar should PBS Building seek an extension of time for the completion of the rectification works.

The building approval

7. [REDACTED] is to provide with the Program of Works, all the drawings, specifications and any other documentation required by a building surveyor in his or her role as a Private Building Certifier for the certifier to issue a building approval, if a building approval is required.

Superintendent of works

8. Within 1 week from the day the Program of Works is served, and before any building approval is issued or any works commence, the lessees are to engage a suitable person of their choosing to act as Superintendent for the works. Once the appointment is made, the lessees are to notify [REDACTED] of the Superintendent's contact details and a copy of the letter of engagement/contract.
9. The fees charged by the Superintendent for their services shall not exceed the amounts listed in the relevant [REDACTED] for project managing minor works on a weekly pro-rata basis. All costs of the Superintendent are to be paid for by [REDACTED]
10. Should [REDACTED] not agree to the lessees' choice of Superintendent, they may lodge of notice of objection to the Registrar within 2 days of being notified of the Superintendent's details. The Registrar will consider the reasons for the objection and decide whether to confirm the Superintendent's appointment or require a different Superintendent be nominated by the lessee. An alternative Superintendent may only be required by the Registrar if the Registrar is satisfied that the currently nominated Superintendent will, to a substantial extent, be unable to perform their role. The Registrar may nominate an alternative Superintendent to be engaged by the lessee's. The decision of the Registrar is final.

11. The role of the Superintendent is to monitor the progress of the rectification works against the Program of Works and liaise between the lessee, the Private Building Certifier, and [REDACTED] or their appointed builder. Before the building approval is issued, the Superintendent must also assess the scope, timeframes, designs, materials, construction systems and methodologies specified in the Program of Works and make recommendations or suggest changes if they consider it appropriate.
12. Where a delay, caused by [REDACTED] or their appointed builder, occurs to the rectification works that affects the scheduling outlined in the Program of Works, [REDACTED] are to provide written notice of the delay, explanation as to causes for delay and scheduling impact and, where necessary, an amended Program of Works to the Superintendent and the Registrar. These reasons may be considered by the Registrar should [REDACTED] seek an extension of time for the completion of the rectification works
13. Where an extension of time has not been granted by the Registrar and [REDACTED] are in breach of the terms of the Order, the Registrar may take action under section 41 of the COLA and/or refer the matter to the Director of Public Prosecutions for considering as to whether an offence has been committed under section 40 of COLA.
14. Where delays are caused by the lessee's agents, such as the Superintendent, the Building Surveyor or any other professional engaged by the Building Surveyor under this order, [REDACTED] are not required to seek an extension of time. In such cases, the Superintendent is to keep both [REDACTED] and the Registrar informed regarding progress and timeframes to enable [REDACTED] to update the schedule of works and commence or continue with works in a timely manner.
15. The Superintendent must keep a register of damage to property, services and equipment resulting from the rectification work (**property register**) and is to maintain that register and make it accessible to the lessee, Superintendent and Registrar. [REDACTED] must address the issues listed on the property register to the Superintendent's satisfaction prior to an application for a Certificate of Occupancy and Use for the rectification works. If [REDACTED] and the Superintendent are in disagreement, the Building Surveyor will decide the dispute or any aspect of the dispute and determine whether the damage recorded on the property register has been satisfactorily repaired by [REDACTED] and if not, specify what additional work is required to achieve the level of satisfaction.
16. The Superintendent shall liaise with the Building Surveyor regarding the inspection of works as they progress at intervals consistent with the stages of progress of the works. The Superintendent shall provide information regarding the status of works to the Building Surveyor and Registrar as required.

Completing the rectification works

17. Under section 38(4) of the COLA, if [REDACTED] as the entity subject to the rectification order, is not licensed, authorised or qualified to do a thing required by the order or the Program of Works, [REDACTED] must arrange, and pay for, the thing to be done by someone who is licensed, authorised, or qualified to do the thing.
18. Within 3 months from the date the Program of Works is served by [REDACTED] on the Lessee and Registrar, or within such time as approved by the Registrar, [REDACTED] must complete all the works required to be undertaken.

Note: The rectification works required by the order to remedy the defects identified below are taken to be complete only once all the requirements of this order have been complied with and a Certificate of Occupancy and Use has been issued for the works.

19. In complying with the order, [REDACTED] must:

- (a) comply with all applicable Territory laws, including but not limited to the Building Act and COLA;
- (b) ensure all work is to be done in a proper and skilful manner using new materials suitable for the purpose for which they are to be used and which comply with the standards under the BCA applicable at the time of use;
- (c) pay all costs associated with compliance with the order, including but not limited to the cost of materials, plant, labour, a building surveyor, any additional engineering or specialist advice or sign off/approval/certifications (including as required by a building surveyor), and any additional engineering or specialist advice or sign off (including as required by a building surveyor).

Note: It is reasonable that a building surveyor may determine that additional stage and/or hold point inspections are required to ensure works are compliant with the Building Act. The full costs of the entire private certification and building surveying processes are to be borne by [REDACTED]

- (d) provide a building surveyor all relevant approvals, certificates and reports required under the Building Act within 5 working days of them being obtained, to enable the Registrar, if satisfied, to issue a Certificate of Occupancy and Use under the Building Act in respect of the completed rectification work;
- (e) during the completion of works required by this order, [REDACTED] must give reasonable notice of work involving loud noise, vibration or unpleasant odours to the Lessees, and shall refrain from seeking access to residential units to perform those works unless there are no other options reasonably available.
- (f) if works required by the order prevent access to any residential unit or render any residential unit unable to be occupied, [REDACTED] must immediately, and for the duration of those works or until access to any such unit is restored:
 - i. provide and pay for equivalent furnished residential accommodation to the residents of such units in the suburbs of [REDACTED];
 - ii. provide and pay for, so far as reasonably necessary to prevent loss and damage, the removal and return of furnishings and possessions within such a unit to a commercial storage provider; and
 - iii. provide and pay for the storage of such furnishings and possessions with a commercial storage provider;
- (g) re-instate or make good any damage to the premises, services and equipment as a result of rectification work; and

- (h) remove and dispose of all waste generated by the rectification work.

Section 3	Defect
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Defect 1 – [REDACTED] Balcony Leak and Membrane Failure

- The Construction of the Balcony of [REDACTED] does not comply with Section FF1.1 of the National Construction Code 2014 Volume 1 (NCC 2014 Volume 1).
- Section F1.4 of the NCC 2014 Volume 1 States that Waterproofing Membranes for external above ground use must comply with AS4654 Parts 1 and 2.

Note: The Notice of intention for this matter quoted the National Construction Code 2015 Volume 1 (NCC 2015 Volume 1). This is the incorrect Code and was an error made in writing the Notice. Section FF1.1 and F1.4 of the NCC 2015 Volume 1 and Section FF1.1 and F1.4 of the NCC 2014 Volume 1 are identical. The requirements did not change.

Evidence considered by the Registrar:

- **Attachment A:** Report of [REDACTED] dated 8 July 2020 stating that waterproofing has not been provided in accordance with AS4654.2 – 2012

Note: The incorrect standard number has been written by [REDACTED] in the report, however the correct title of the Australian Standard has been referenced.

- **Attachment B:** Access Canberra Record of Inspection dated 12 November 2021

Section 4	Non-Compliance with Rectification Order
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40 Rectification order offence

- (1) A person commits an offence if the person intentionally fails to comply with a rectification order given to the person.

Maximum penalty: 2000 penalty units.

- (2) Each partner commits an offence if—

- (a) the partnership is given a rectification order; and
- (b) the partners, or some of them, intentionally fail to comply with the rectification order.

Maximum penalty: 2000 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—

- (a) that—
 - (i) the partner did not know about the failure to comply; and
 - (ii) reasonable precautions were taken and appropriate diligence was exercised to avoid the contravention; or

- (b) that the partner was not in a position to influence the other partners in relation to the failure to comply.

39B Rectification order—licensee or former licensee wound up after order made

- (1) This section applies if—
 - (a) the registrar makes a rectification order in relation to a licensee or former licensee (the **entity**); and
 - (b) the entity is a corporation; and
 - (c) after the registrar makes the order—
 - (i) the entity becomes the subject of a winding-up order; or
 - (ii) a controller or administrator is appointed for the entity; or
 - (iii) the entity is deregistered.
- (2) The order is taken to have been made in relation to each person who was a director of the entity at or after the time the construction service was provided.
- (3) Subsection (4) applies if—
 - (a) a rectification order or emergency rectification order requires an entity to do a thing; and
 - (b) a person who was a director of the entity at or after the time the construction service was provided—
 - (i) is not licensed, authorised or qualified to do the thing; or
 - (ii) if a licence, authorisation or qualification is not required to do the thing—does not have appropriate experience and skill to do the thing.
- (4) The person must arrange and pay for the thing to be done by someone who—
 - (a) is licensed, authorised or qualified to do the thing; or
 - (b) if a licence, authorisation or qualification is not required to do the thing—has appropriate experience and skill to do the thing.

Section 5	Should you require further information
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Contact: Andrew Harrold
Deputy Construction Occupations Registrar
Access Canberra
BPC@act.gov.au



Andrew Harrold
Deputy Construction Occupations Registrar

12 January 2022

Important Information

Provided in accordance with s 7 of the *ACT Civil and Administrative Tribunal Regulation 2009*

REVIEW OF THE DECISION BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

You may apply to the ACT Civil and Administrative Tribunal (**ACAT**) for administrative review of this decision.

CONTACT DETAILS

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: www.acat.act.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download [the Application for review of a decision form](#) from the ACAT website.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from the date that you receive this Notice of Decision.

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*).

APPLICATIONS TO THE SUPREME COURT

This decision may also be reviewable in the ACT Supreme Court pursuant to the provisions of the Administrative Decisions (Judicial Review) Act 1989.

TRANSLATION AND INTERPRETER SERVICES

The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 131 450

ENGLISH	If you need interpreting help, telephone:
ARABIC	: إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, ċempel:
PERSIAN	: اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodioca telefoniрајте:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacımız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

Canberra and District - 24 hours a day, seven days a week

[REDACTED]

I am writing to you as the representative of the **Owners Corporation for** [REDACTED]

In ACAT UT 1/2020 orders dated 01 May 2020, Senior Member A Anforth ordered the following:

The respondent [REDACTED] is to provide the Owners Corporation with the names of three suitable engineers to install sound recording equipment in and around the respondent's unit to ascertain the frequency and loudness of the noises. The Owner's Corporation is to retain one of the three nominated engineers to carry out this work and report to the parties. The order was to be completed by 15 June 2020.

In ACAT UT 1/2020 orders dated 24 June 2020, Senior Member A Anforth ordered the following:

The applicant is to have the engineer report, arising from Order 6 of the Orders dated 1 May 2020, filed and served by 30 July 2020. The engineer is to report the cause of the noise, frequency, and loudness.

In ACAT UT 1/2020 orders dated 27 October 2020, Senior Member A Anforth ordered the following:

The time for compliance with Order 2 made on 18 September 2020 is extended to 16 November 2020 but will not be further extended.

On 07 August 2020, [REDACTED] produced a report titled "Executive Committee [REDACTED] Structure Related Noise Assessment Initial Investigation".

The report was unable to determine the cause of the structure – related audible noise and recommended repeating the measurement program during a different season (summer) to determine if there is seasonal variation in the rate of occurrence and the severity of the ticking/clicking noises described by the owner. The measurement methodology could then also be modified such that:

- *More sensors are used (eg vibration could be recorded on separate structural elements such as the roof slab, the floor slab and a party wall), in addition to noise in different rooms.*
- *Attended measurements could be undertaken upon deployment and collection of the sound level meter. This should happen during an afternoon period when the ticking/clicking events seem more likely to occur (guided by the owner's appraisal of the situation). If there is no seasonal variation in the rate of occurrence and the severity of the ticking/clicking noises described by the owner, then alternative methods of locating the noise source would need to be considered.*

On past projects, [REDACTED] has successfully determined the cause of structure-related, audible noise through triangulation: this involves setting up multiple vibration sensors and triangulating the vibration source based on the arrival time of the vibration to the sensor. This is shown schematically in Figure 4. However, this approach requires engineers to be onsite during the monitoring to be effective as numerous sensor relocations are frequently

required. It is therefore only feasible if the time at which events occur can be predicted (within hours), and if a number of events occur within a relatively short timeframe. This approach also requires that the origin of the noise source is fixed. Given the sporadic nature of the ticking/clicking noises and considering that many of these noises did not produce a noticeable spike in vibration levels, a triangulation based approach is unlikely to be effective at this site at this point in time. It may be possible for an engineer to perform attended measurements over numerous late afternoon periods but this would require substantial engineering time with no guarantee of a successful outcome. The approach may yield better results in summer in case the frequency and consistency of the noises increase due to greater temperature variations.

On 10 January 2022, Senior Investigator Doug Farr emailed you to determine if the Owners Corporation had undertaken the suggested follow up noise monitoring and if not, did the Owners Corporation intend to do so.

No response has been received.

The *Building Act 2004* allows for the following:

Building act 2004 Division 7.2A Non-compliant buildings and building work

133A Powers in relation to non-compliant buildings

(1) This section applies if a building inspector believes on reasonable grounds that—

- (a) a building does not comply with this Act or is unsafe; or
- (b) building work has been done otherwise than in accordance with this Act.

(2) The building inspector may give the occupier of the building or the premises where the building work is located a written direction not to use the building or premises, or part of the building or premises, until the building or premises are made safe and comply with this Act.

(3) If the building inspector believes on reasonable grounds that a building or building work is unsafe because work done or supervised by a builder was not done in accordance with this Act, the inspector may give the builder a written direction to take stated action to make the building or building work safe and comply with this Act.

(4) A direction under this section may also require the person to give the building inspector information, in writing, about the building or building work.

Examples—information

1 a written report about a test required in the direction by the person who did the test

1 a written engineer's report about whether building work complies with a relevant standard

2 a certificate from a building surveyor that building work complies with this Act

(5) However, a direction under this section must not require the evacuation of people from the building or premises.

Note The chief officer of an emergency service has the power to evacuate people or animals from a building or close any premises (see *Emergencies Act 2004*, s 34 (1) (l) and (m)).

(6) Subsection (7) applies if—

- (a) a written direction under subsection (3) requires a person to do a thing; and
- (b) the person—

(i) is not licensed, authorised or qualified to do the thing; or

(ii) if a licence, authorisation or qualification is not required to do the thing—does not have appropriate experience and skill to do the thing.

(7) The person must arrange, and pay for, the thing to be done by someone who—

(a) is licensed, authorised or qualified to do the thing; or

(b) if a licence, authorisation or qualification is not required to do the thing—has appropriate experience and skill to do the thing.

Example

A written direction under s (3) requires Sophie to undertake further building work. Sophie is no longer a licensed builder, and she is not able to get a new licence. Sophie must arrange, and pay for, a licensed builder to do the building work.

As the Deputy Construction Occupations Registrar, I am satisfied the noise reported on numerous occasions by [REDACTED] may indicate that building work has been done otherwise than in accordance with this Act. While noise itself is not a defect, it may indicate structural defects exist.

Order and Requirements

Under section 133A (4) of the *Building Act 2004* I require the person (the Owners Corporation of UP 4180) to give me information, in writing, about the building or building work – specifically a further acoustic report by appropriately qualified experts with measurements taken during warmer weather - summer. Advice should include analysis to determine the likelihood of structural defects associated with the noise.

Non-Compliance with this direction

(8) A person commits an offence if the person—

(a) is given a direction under this section; and

(b) fails, without reasonable excuse, to comply with the direction.

Maximum penalty: 50 penalty units.

Maximum penalty for a corporation is \$40,500

Should you require further information

Contact: Andrew Harrold

A/g Assistant Director, Construction and Planning Investigations Team

Email: BPC@act.gov.au

[REDACTED]
Rick Muir

Deputy Construction Occupations Registrar

22 March 2022

Important Information

Provided in accordance with s 7 of the *ACT Civil and Administrative Tribunal Regulation 2009*

REVIEW OF THE DECISION BY THE ACT CIVIL AND ADMINISTRATIVE TRIBUNAL

You may apply to the ACT Civil and Administrative Tribunal (**ACAT**) for administrative review of this decision.

CONTACT DETAILS

Location	Contact details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA CITY ACT 2601	Website: www.acat.act.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370, CANBERRA, ACT, 2601

APPLICATIONS TO THE ACAT

To apply for a review, obtain an application form from the ACAT. You can also download [the Application for review of a decision form](#) from the ACAT website.

TIME LIMITS FOR APPLICATIONS

The time limit to make a request for a review is 28 days from the date that you receive this Notice of Decision.

FEES

Applications to the ACAT, including an application to be joined as a party to a proceeding, require payment of a fee. You can apply to have the fee waived on the grounds of hardship, subject to approval (refer to section 22T of the *ACT Civil and Administrative Tribunal Act 2008*).

APPLICATIONS TO THE SUPREME COURT

This decision may also be reviewable in the ACT Supreme Court pursuant to the provisions of the Administrative Decisions (Judicial Review) Act 1989.

TRANSLATION AND INTERPRETER SERVICES

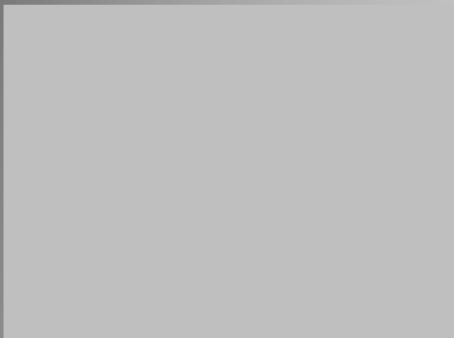
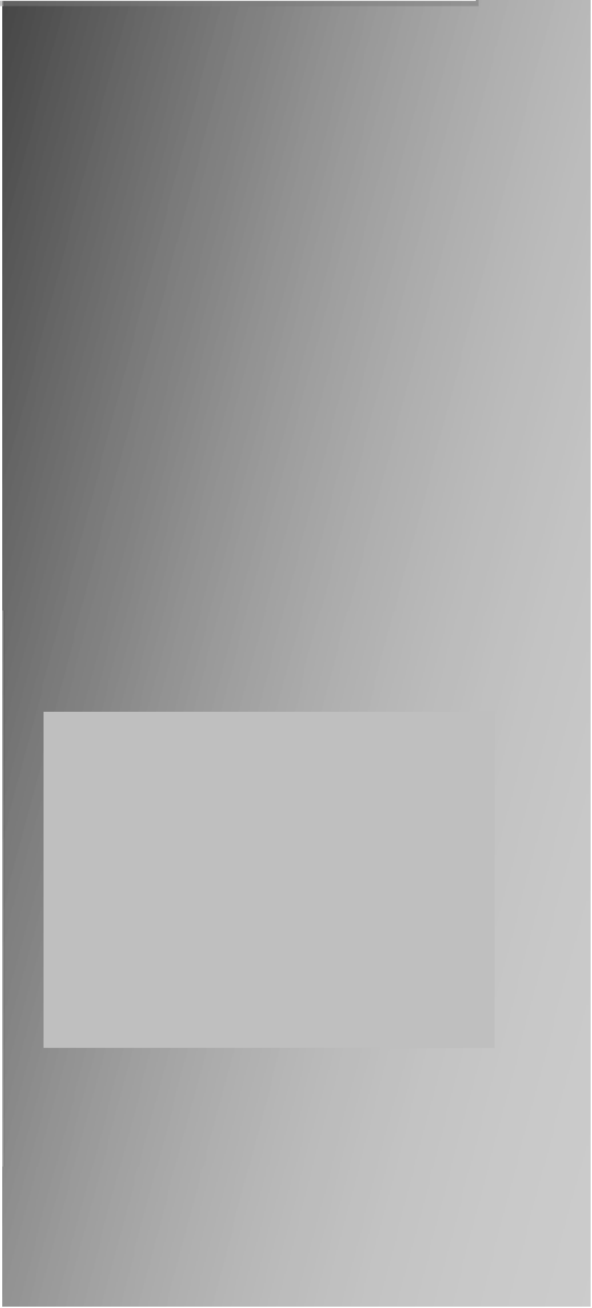
The ACT Government's translation and interpreter service runs 24 hours a day, every day of the week. Telephone 131 450



Building Consultants
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Building Investigations
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Expert Advice
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Scopes of Work

**SPECIAL PURPOSE INSPECTION
CAUSATION REPORT + RECOMMENDATIONS**

Inspector's Names:





Request for Service Details

[REDACTED] were engaged by the Strata Manager to conduct an inspection of the source of water ingress from [REDACTED] below.

We understand the purpose of this inspection was to determine the source and entry point of water ingress and provide a report with our findings, observations, conclusions and recommendations.

1. Assumptions / Information Received

The consultants assume, according to the information received that:

- 1.1 Ongoing water has been experienced within the courtyard area of [REDACTED] emanating from the upper balcony soffit junction.

2. Inspection Details

- 2.1 Access to the lower apartment of [REDACTED] was provided by the owner, [REDACTED]
- 2.2 Access to the upper apartment of unit 62 was provided by the resident, who was home during the extent of the inspection.
- 2.3 The inspection was confined to the following readily accessible areas:
 - 2.3.1 [REDACTED]
 - 2.3.2 [REDACTED]



4. Findings

- 4.1 Prior to the water test being performed, an evaluation and observation of the subject balcony was conducted. It was observed that no upturn termination of the waterproofing membrane was visible surrounding the penetrating stormwater pipe as is required. There is incorrect and unprofessional cutting of the floor tile immediately to the installed drainage provision for the condensation line from the air-conditioning unit, and incomplete rigid ducting to the air-conditioning piping.



4.2



4.3

- 4.4 From ground level and within the courtyard of [REDACTED] water stains were observed to the painted surface and retrospective grey sealant applied to the vertical wall and balcony soffit junction. This indicates previous retrospective attempt to control the ongoing water leakage. Based on our cursory assessment of other areas throughout the complex, water staining and grey sealant is not apparent to other apartment junctions as observed within the courtyard of [REDACTED] indicating this is unique to [REDACTED]



4.5



4.6



4.7 Introduction of water via a garden hose to emulate rainfall resulted in an immediate he
vertical wall and balcony junction viewed from the courtyard of [redacted].



4.8

4.9 Closer observation of the applied grey sealant revealed separation between the sealant and painted surfaces of the vertical wall and soffit. The application of the grey sealant has been ineffective to eliminate water leakage.






4.10






5. Conclusion

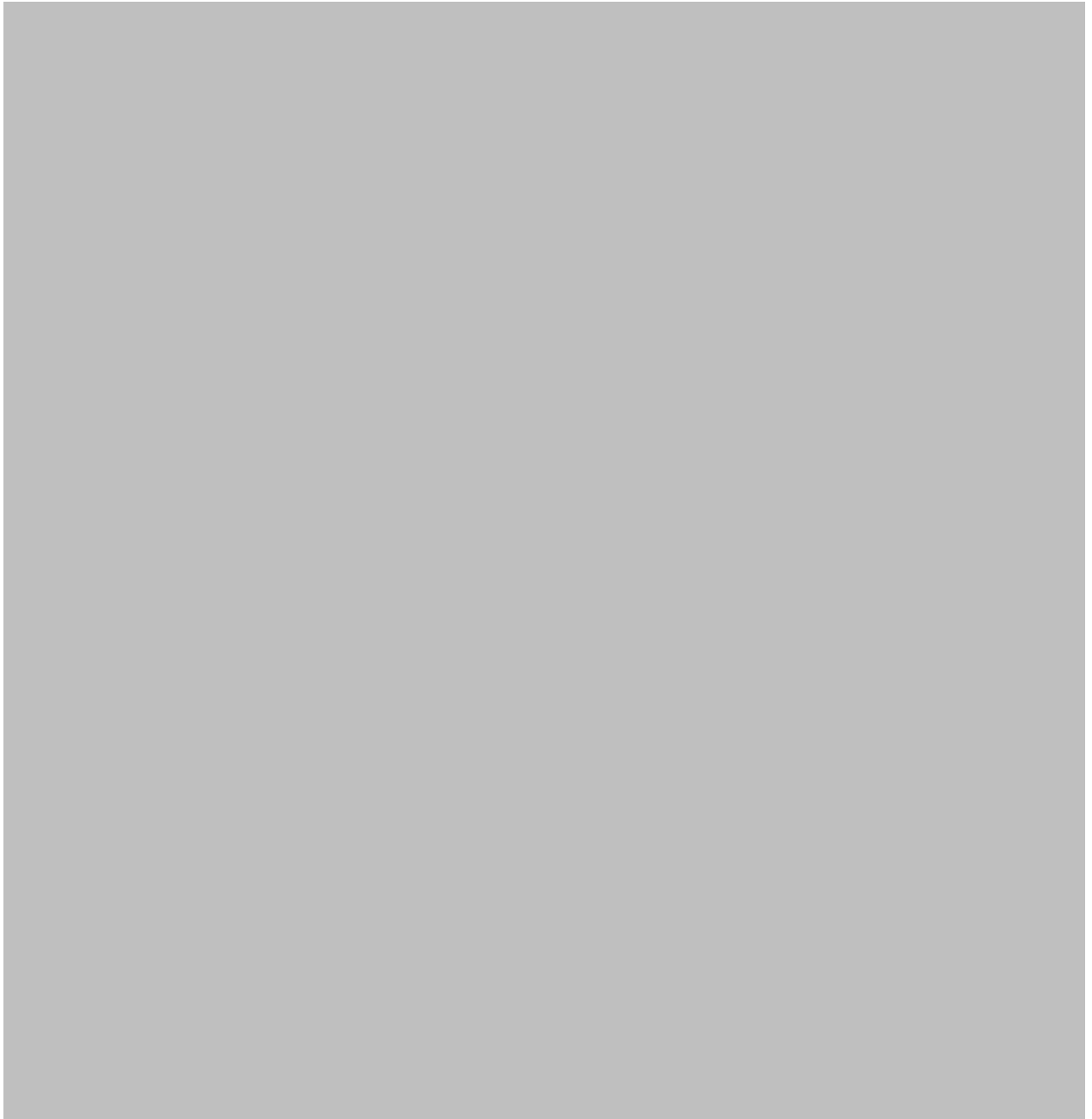
The consultants have formed the following opinion based on experience and the inspection of the accessible areas.

- 5.1 No water is entering the apartment of 
- 5.2 Water is freely falling down the face of the vertical wall within the courtyard of 
- 5.3 It appears building movement has occurred and resulted in the waterproofing membrane being torn or damaged at the balcony vertical wall junction.
- 5.4 Incomplete detailing and termination of the waterproofing membrane surrounding the stormwater pipe indicates poor execution and understanding of the Australian Standard 4651.2 – 2012 (Waterproofing membranes for external above ground use – Design and Installation) to provide the adequate waterproofing detailing as required to the balcony of 
- 5.5 The applied sealant at the vertical wall and soffit junction is counter-productive due to its position on the underside of the balcony surface.

6. Recommendations

- 6.1 A full balcony refurbishment of  is required including the use of sheet membrane (Ardex WPM 1000 or similar) to provide the necessary waterproofing detailing and the ability to absorb building movement.
- 6.2 Waterproofing membrane and detailing are required to be applied in strict accordance with AS 4654.2 – 2012 (Waterproofing membranes for external above ground use – Design and Installation).
- 6.3 Tiling is to be executed in accordance with AS 3958.1 – 2007 (Ceramic tiles). Surface tiles to match existing as close as practicable.
- 6.4 Removal of the applied grey sealant is required from the vertical wall and balcony soffit junction to provide ventilation and create a gap in an attempt to dry out the junction. Re-apply an exterior grade paintable polyurethane sealant to the subject junction once the upper balcony has been protected /refurbished and the created gap is dry.
- 6.5 Thoroughly clean the water stained vertical wall to remove stains, crystallised particles and laitance. Paint the subject vertical wall to match existing colour scheme to match as close as practicable.


END OF REPORT





The author is a licenced Builder . Copies of these licence

The opinions expressed in this report are that of the author and are based on the skills, traini
throughout 27 years licenced practice.

 trust the information included in this report, being impartial to any party is of assistance.

This report should not be relied upon 180 days from the date hereon.

rmation regarding this report please do not hesitate to contact the author.

