



Building Investigations Report



NOT DISCLOSED

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General Details

Client Details

Client Name: -
Client Phone: -
Client email: -
Client Reference No.: -

Inspector for Effective Building & Consultancy

Mr Elie Farah – Mr. Elie Farah has been in the building industry since 1995. His qualifications include -Building Foreman Clerk of Works, Building Certificate, Diploma in Structural Engineering, Statement of Attainment in Building Consultancy, Statement of Attainment in Pest Management, Statement of Attainment in Pest Inspection, Home Guard Certificate of Accreditation, Altriset termiticide Training Certificate, Statement of Attainment for Tool tagging, Statement of Attainment in Senior First Aid & Workplace Safety Certificate IV. He currently holds the following licenses- Building- No. 211722C, Building Consultant, Qualified Building Supervisor, Drivers Licence and OHS Green Card.

Report Provided by Effective Building and Consultancy

Location Level 3 419 Church St Parramatta NSW 2150	Phone: 02 9613 3353 Fax: 02 8088 4396
Postal Address PO Box 5009 Kingsdene NSW 2118	Email service@effectiveconsultancy.com.au
Builders License No: 211722C	ABN: 76 115 177 289 ACN: 115 177 289
Website:	www.effectiveconsultancy.com.au

1.0 INTRODUCTION

Background and Commission

- 1.1 This report has been prepared as a result of instructions received from [REDACTED] Lawyers representing the Applicant, [REDACTED] hereinafter referred to as "the Owner" against the Respondent [REDACTED] hereinafter referred to as "the Builder".
- 1.2 On 21 June 2018, the parties entered into an agreement for the construct the double storey dwelling at the site known as NOT DISCLOSED, hereinafter referred to as "the Site".
- 1.3 The Owner and the Builder signed a contract for the project for as sum of \$280,000.00 including GST.
- 1.4 The works had to comply with The Building Code of Australia in force as at 3 August 2018, being the date that the CDC Approval was provided by the Builder.
- 1.5 The Works commenced in or about September 2018.
- 1.6 During the period 21 June 2018 and January 2019, the Respondent issued Payment claims and carried on some work on and from September 2018. During this period, the Owner paid to the Builder, on account only, an amount of \$140,000.00 for progress claims and variations.
- 1.7 The Builder has not carried out any works on the site since about 10 January 2019.
- 1.8 On 19 March 2019, the private certifier that was responsible for the approval and certification of the works, informed the Applicant that he had been suspended by the Building Professionals Board.
- 1.9 By March 2019, the Owner had become concerned with the quality and progress of the works and notified the Builder of this.
- 1.10 The Owner' partner met with the Builder in late March 2019 and the Builder promised to restart the works within 3-4 weeks.
- 1.11 On 6 May 2019 the Builder sent an email to the Owner advising that the work had resumed.
- 1.12 The Owner lodged a complaint with NSW Fair Trading and on 19 July 2019, the Owner and Builder attended a mediation meeting and entered into a mediation agreement whereby the Builder agreed to complete all works, rectification and completion to be finalised and handover achieved within 4-5 months.
- 1.13 The Builder did not complete the works in accordance with the agreement and on 10 October 2019, the Owner issued a termination notice to the Builder.

2.0 PURPOSE OF REPORT

The purpose of this report is to identify:

- (a) Whether any of the Works are defective. For each part of the works that are defective:
 - i. Please identify the nature of the defect by reference to section 18B(1) of the Home Building Act 1989 (NSW) (the Act), the Contract, the Conditions and/or the Plans & Specifications.
 - ii. Please identify all material you rely on to establish that the Works are defective.
- (b) Whether the Builder is liable to rectify that defect. For each defect that the Builder is liable to rectify:
 - i. Please set out the reasons why the Builder is liable;

- ii. Please identify the reasonable and necessary rectification cost;
 - iii. Please specify the rectification method and why the rectification method you propose is reasonable and necessary.
 - iv. If necessary, please identify and comment on other rectification methods and why such methods are not the preferred method of rectification for each defect.
 - v. Please break down and itemise all costings that you provide for the proposed rectification methods.
- (c) Please identify all items of incomplete work. For each item of incomplete works, please set out:
- i. Please set out the reasons why the work is incomplete work as opposed to defective work.
 - ii. Please identify the reasonable and necessary completion cost.
 - iii. Please break down and itemise all costings that you provide for the completion costs.
- (d) Please identify what stage the works had reached at the date of your inspection. IN that regard:
- i. Please identify what works had been substantially complete by reference to the following stages of work:
 - 1. Footing/steel/plumbing/slab
 - 2. Framing;
 - 3. Lock up;
 - 4. Fit out; and
 - 5. Handover
 - ii. Please identify all material you rely on to establish what stage of the Works had reached substantial completion.
- (e) Please advise whether you consider the amounts that were charged for each state of the works were reasonable, having regard to the total contract price and the stage that the works had reached when the works ceased.
- (f) Please provide a Scott Schedule in the format usually adopted by NCAT setting out those matters referred to in your report.

3.0 QUALIFICATIONS

- 3.1 Annexed and labelled as Appendix A to this report is my short resume, which sets out my qualifications and experience in the building industry.

4.0 EXPERT WITNESS CODE OF CONDUCT

- 4.1 This report has been prepared in accordance with NCAT Procedural Direction 3 which includes the Expert Witness Code of Conduct. The Procedural Direction is made by the President under s 26 of the Civil and Administrative Tribunal Act 2013.

4.2 I have read and agree to be bound by this code and the terms of NCAT Procedural Direction 3 which is annexed in Appendix B of this report.

5.0 METHODOLOGY

5.1 A site inspection was conducted on Tuesday 21 July 2020 at 1:00 pm.

5.2 In compiling my observations/opinion I have commented on only the matters requested of me through my instructions by [REDACTED]

5.3 The purpose of this report is to identify a reasonable and necessary cost of the building works completed at NOT DISCLOSED.

5.4 Any reference to Fair Trading Standards and Tolerances is relevant to the New South Wales Fair Trading Guide to Standards and Tolerances 2017.

5.5 Where possible, published rates for the works listed have been adopted. However, where the published rate was inappropriate or not applicable, I have used my experience in the Building Industry to either adjust the published rate to suit the situation, or I have calculated an applicable rate.

5.6 Where I have made any assumptions in formulating my opinion I have included those assumptions or the body of the report at the relevant issue being discussed or I have made reference to the evidence without repeating these facts. I have adopted this practice so that any assumptions I have made are encapsulated in the matter being discussed, and therefore immediately obvious to the reader of this report.

5.7 In this report I refer to “competent Builder” or “acting competently”. In doing so I am referring to a contractor acting such that the works meet the standards in section 18B of the Home Building Act 1989.

5.8 This Report has been prepared on the basis of the information made available to me. I reserve the right to amend this Report and the opinions expressed in it in light of any additional information that might be received post the date of this report.

6.0 REFERENCE/DOCUMENTS INFORMATION

6.1 To assist me in forming my opinion, I have had regard to the following documents/information.

- (a) The Owners application filed 17 December 2019
- (b) Complying Development Certificate CDC-18215
- (c) Architectural Drawings by Roseland Projects dated 10/12/18
- (d) Emails from Pietro Scalise of NSW Fair Trading dated 28 May 2019 and 10 July 2019
- (e) Structural inspection report by Halina Consulting dated 3 June 2019
- (f) Home Building Contract signed 21 June 2018
- (g) Mediation agreement by Mark Kavanagh of Integrated Building – Engineering

Consultancy dated 19 July 2019

(h) Tender documentation by Roseland Projects

7.0 DESCRIPTION OF THE BUILDING

- 7.1 The subject building is located on [REDACTED] in the south-western suburb of Sydney being [REDACTED] and approximately 32 kilometres from Sydney's Central Business District
- 7.2 My inspection of, and this report, relates only to the building at [REDACTED]
- 7.3 Having regard to my instructions and my observations of the completed works, below is my opinion on the matter.
- 7.4 My inspection is based on having full and uninterrupted access to the building being [REDACTED]

8.0 ASSUMPTIONS

- 8.1 Following my inspection and the perusal of various documents made available to me I have made the following assumptions;
- 8.2 The building works were carried out by the Builder [REDACTED].
- 8.3 Complying Development Approval and conditions were applicable.
- 8.4 The use of the building is strictly for residential purposes.
- 8.5 Statutory Warranties are applicable to these works as the Builder was a licenced Builder at the time of the works and the works are residential building works.
- 8.6 All prices are exclusive of GST.

9 SUMMARY OF FINDINGS, OPINIONS AND CONCLUSIONS

9.1 Whether any of the Works are defective. For each part of the works that are defective:

- a) **Please identify the nature of the defect by reference to section 18B(1) of the Home Building Act 1989 (NSW) (the Act), the contract, the conditions and/or the plans and specifications**
- b) **Please identify all material you rely on to establish that the works are defective.**

From my inspection, the defects identified to the dwelling are a result of the breach of contract and terms of mediation by the Builder. These building defects has been a result of the non-compliance to the mediation agreement that was established to complete the works in "4-5 months" from the mediation meeting.

As a result of the Builders' failure to complete the construction of the dwelling, the timber frame structure of the building has been exposed to weather for 18 months since the Builder last carried out works on the site on or about 19 January 2019.

- 1) Figure 2.2 in the Halina Consulting report identified that the concrete in the garage area was not correctly constructed and that there are no supports underneath the timber stud wall between the garage and entry area/staircase. From my inspection, the concrete slab

was not rectified as part of the mediation agreement, and this is due to a lack of care or skill by the Builder. The failure to construct this area contravenes Part 2C – Section 18B (1) (a) of the Home Building Act as the building works have not been constructed in accordance with the contract drawings and with reasonable care and skill. Additional photographs of the defective concrete slab can be found in figures 14 and 35 in Appendix C. Whilst I have relied on the photos in the Halina Consulting report, the opinions I provide with respect to any defects are based on my own observations and expertise.

- 2) Figure 2.7 in the Halina Consulting report identified that the floor sheeting on the first floor has been exposed to weather for a few months, which has resulted in a reduction in structural capacity. From my inspection, the particleboard floor sheeting has since deteriorated further and has resulted in mould growth. The Builder's failure to cover the floor sheeting has resulted in water ingress into the particleboard floor. In my opinion, the water ingress into the floor sheeting will result in failure of the flooring structure when permanent and imposed actions are applied to the floor sheeting, which contravenes The Building Code of Australia Volume 2, Part P2.1.1 Structural stability and resistance to actions. Additional photographs of the damage can be found in figures 5, 6, 7, 18, 19, 20, 21, 22, 26, 27 and 28 in Appendix C.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 3) The timber wall frames on the ground floor and first floor have deteriorated and resulted in splitting of the timber beams and wall frames – see figures 8, 10, 11, 12, 23 and 34 in Appendix C. The splitting of the timber beams and wall frames will result in an adverse effect on the structural integrity of the structure. The failure to adequately support a structure contravenes The Building Code of Australia Volume 2 Functional statement F2.1, which states in part:

“A building or structure is to withstand the combination of loads and other actions to which it may be reasonably subjected.”

In my opinion, the splitting of the timber in the structure of the dwelling has impacted on the overall structural integrity of the dwelling.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 4) There is evidence of corrosion to the metal wall and floor fixings throughout the dwelling – see figure 3, 26 and 27 in Appendix C of this report. The corrosion of the nails adversely affects the bonding capacity between the timber framing, which can result in the structural failure of the dwelling. In my opinion, the corrosion in the nails contravenes The Building Code of Australia Volume 2, Part 2.1.1 Structural stability and resistance to actions.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 5) Water ingress into the timber frame on the ground floor and first floor has resulted in a reduced structural capacity of the timber. Images of the water damaged timber can be seen in figures 4, 8, 9, 13, 17, 23, 24 and 34 in Appendix C of this report. The exposure to weather has resulted in the construction of the timber wall frames to contravene The Building Code of Australia Volume 2, Part 2.1.1 Structural stability and resistance to

actions.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 6) The timber wall frame’s exposure to weather has also resulted in warping and distortion of the wall frames – see figures 30-33 in Appendix C. The distortion of the timber frame contravenes The Building Code of Australia Volume 2, Part 2.1.1 Structural stability and resistance to actions.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 7) The Builder has failed to correctly install the timber frame. Figure 25 in Appendix C shows that the timber frame has deviated 5mm in 50mm of wall. This contravenes the New South Wales Fair Trading Guide to Standards and Tolerances, Part 4.3 Straightness of steel and timber frame surfaces, which states

“Frames are defective if they deviate from plane by more than 4mm in any 2m length of wall.”

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 8) The termite barrier system installed around the perimeter of the dwelling has been impacted by weather. As the membrane used for termite protection has been exposed to weather for 18 months, it is not suitable for re-use upon resumption of construction of the dwelling. There is evidence of water entry to the membrane and the top and base layer of the membrane is flaking in various areas. Notwithstanding this, a termite protection notice has not been provided and therefore contravenes Part 2C – Section 18B of the Home Building Act. Figures 29 and 36 in Appendix C show images of the failed termite barrier.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 9) The Builder has failed to comply with the waste management plan provided as part of the Complying Development Application. There is excess spoil, debris and construction materials that has been stored at the front and rear of the dwelling which has not been removed as required on the contract. As per the site provisions on the tender documentation to the Owner, “waste management from commencement to completion” has been allowed, however the waste materials on site have not been removed. The failure to remove the excess spoil, debris and construction material contravenes Part 2C – Section 18B of the Home Building Act. Figures 1 and 15 in Appendix C show images of approximately 11m³ of excess construction waste that has not been removed as required in the building contract.

The matters referred to above contravenes Part 2C – Section 18B (1)(a) and (c) of the Home Building Act as the building works have not been carried out with reasonable care and skill.

- 10)

9.2 Whether the Builder is liable to rectify that defect. For each defect that the Builder is liable to rectify.

- a) Please set out the reasons why the Builder is liable;**
- b) Please identify the reasonable and necessary rectification cost;**
- c) Please specify the rectification method and why the rectification method you propose is reasonable and necessary.**
- d) If necessary, please identify and comment on other rectification methods and why such methods are not the preferred method of rectification for each defect.**
- e) Please break down and itemise all costings that you provide for the proposed rectification methods.**

In all cases, listed in section 9.1 above, the Builder should rectify the work or otherwise compensate the owner because it has failed to carry out the work in accordance with Part 2C – Section 18B (1) of the Home Building Act and the obligations imposed on it by the contract.

Construction of a concrete step is required in order to rectify item 1 in section 9.1 to allow for supports of the timber stud wall in the garage area. The construction of the step will be 200mm in width, 85mm in height and 5800mm in length. No alternative construction measures are recommended due to the load-bearing nature of the garage wall.

In my opinion, due to the compounded nature of the weather-damaged timber structure, it is most economical to remove and replace all timber structural members within the dwelling to ensure for compliance with The Building Code of Australia Volume 2, Part 2.1.1 Structural stability and resistance to actions. The rectification cost of these works are outlined as part of the Scott Schedule in Appendix D.

The reason why replacement of the entire timber structure is the most economical option is because:

- In order to facilitate to the replacement of the particleboard flooring identified in item 2 in section 9.1, the removal of the first floor wall and roof frames will be required.
- The water damaged timber identified in items 3-7 in section 9.1 will require replacement due to warping and a decreased structural stability and resistance to actions because the timber cannot be reused or treated in order to achieve a satisfactory standard that will be suitable for residential use.

It is recommended to remove and replace the termite barrier system as outlined in item 8 of section 9.1. Replacement of the termite barrier is required because a termite protection notice has not been provided by the Builder. Notwithstanding this, the exposure of the membrane to weather has resulted in deterioration of its components, this resulting in an inadequate termite protection system if the products are re-used. An alternate to the replacement of the termite membrane is through chemical injection or the installation of a termite baiting system, however these systems are not the most economical option in this situation.

The removal of excess spoil and materials is required as outlined in item 9 of section 9.1. The removal of waste materials is required to facilitate a clean site and to allow for construction works to resume.

The overall cost to rectify the defects is \$56,341.68 + GST. A breakdown of the cost of

repairs can be found in Appendix D of this report for items b) and e).

9.3 Please identify all items of incomplete work. For each item of incomplete works, please set out:

- a) Please set out the reasons why the work is incomplete work as opposed to defective work.**
- b) Please identify the reasonable and necessary completion cost.**
- c) Please break down and itemise all costings that you provide for the completion costs.**

At the time of my inspection of the dwelling, the dwelling had reached a framing completion stage. The documentation that I have been provided shows that the Owner has paid the Builder, on account only, up to the framing completion stage, and since terminating the contract no additional works have been conducted by any third parties.

As a result, stages 4-6 as outlined in Clause 12 of the building contract has not commenced/been completed.

9.4 Please identify what stage the works had reached at the date of your inspection. IN that regard:

- a) Please identify what works had been substantially complete by reference to the following stages of work:**

- Footing/steel/plumbing/slab
- Framing;
- Lock up;
- Fit out; and
- Handover

- b) Please identify all material you rely on to establish what stage of the Works had reached substantial completion.**

At the time of inspection, the dwelling was completed to a framing stage. My opinion of this is based upon the substantial completion of the timber structure of the dwelling and that the windows, brickwork and roof covering was not installed.

9.5 Please advise whether you consider the amounts that were charged for each state of the works were reasonable, having regard to the total contract price and the stage that the works had reached when the works ceased.

In my opinion, the amounts charged for each stage are reasonable because the percentage charged for each progress payment stage is in line with the industry standard. This is based upon my 15 years' experience in the industry.

The overall contract price is also considered reasonable because the contract price for the construction works was \$280,000.00. The overall construction area of the dwelling as indicated on the Drawing 002 on the Architectural drawings is 206m². This results in an average price for the construction to be \$1,359.22/m², which is lower than the average cost to construct a four bedroom double storey dwelling with budget finishes. This conclusion has been reached from my 15 years' experience in the construction industry.

9.6 Please provide a Scott Schedule in the format usually adopted by NCAT setting out those matters referred to in your report.

A copy of the Scott Schedule can be found in Appendix D of this report.

Yours faithfully,

Elie Farah
Building Consultant

A handwritten signature in black ink, appearing to read 'Elie Farah', with some scribbles underneath.

Effective Building & Consultancy Pty Ltd

APPENDIX A
CURRICULUM VITAE OF ELIE FARAH

ANNEXURE D – ELIE FARAH CURRICULUM VITAE



Elie Farah
Building Consultant

02 9613 3353 / 0404 850 007

 www.effectiveconsultancy.com.au

 20 Snowden Avenue, Carlingford, NSW 2118

Education

- ✓ Diploma of Structural Engineering 2003
- ✓ Workplace Safety Certificate IV 2004
- ✓ Statement of Attainment in Senior First Aid 2004
- ✓ Statement of Attainment in Building Consultancy 2008
- ✓ Statement of Attainment in Pest Inspection & management TAFE NSW 2009
- ✓ Statement of Attainment in Inspect and report on timber pests, Control timber pests and Apply pesticide to manage timber pests TAFE NSW 2011
- ✓ Certificate III in Asset Maintenance (Pest Management – Technical) 2012
- ✓ Certification Short Course University of Technology Sydney 2014
- ✓ Building Regulation Short Course University of Technology Sydney 2017
- ✓ Asbestos Awareness Course 2020

Accreditations & Affiliations

- ✓ Qualified Building Supervisor 55375S (Since 17/05/2005)
- ✓ Builders Licence 211722C (Since 13/12/2005)
- ✓ Building Consultant Licence BC2076 (on the 11/01/2010 has been discontinued)
- ✓ Workcover Pest Management Technician Licence
- ✓ Member of the Master Builders Association
- ✓ Member of the Housing Industry Associations
- ✓ WorkCover White Card: Card No. CGI0269870SEQ01
- ✓ Class C driver's license: License No. 13188260

Relevant Experience

- ✓ Building Defects and Rectification Management
- ✓ Construction Progress Inspections and Consultancy
- ✓ Dilapidation Surveys
- ✓ Building Diagnostic Assessment's
- ✓ Occupational Health and Safety Audits
- ✓ Building Inspector for Builders Home Warranty Claims for Major or Minor Defects and Incomplete Works (ICARE HBCF)
- ✓ Causation Building Reports for Fire Damaged Homes & Storm Investigations
- ✓ Pre-Purchase Building & Pest Inspections

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Company History

- ✓ Trading as a Sole trader since 2003 and as a Company since 2005

Construction Clientele

- ✓ Defence Housing Australia
- ✓ Diona Pty Ltd
- ✓ FDC Building
- ✓ Multiplex Pty Ltd
- ✓ Parramatta Light Rail
- ✓ Richard Crookes Constructions
- ✓ Service NSW/Roads and Maritime Services
- ✓ St Hilliers Pty Ltd
- ✓ Stephen Edwards Pty Ltd
- ✓ Sydney Trains
- ✓ Ward Civil Pty Ltd
- ✓ Wesley Mission
- ✓ Signature Builders Group

Legal Clientele

- ✓ Herald Legal
- ✓ BWT Legal
- ✓ Harish Prasad & Associates
- ✓ G&S Law Group
- ✓ Symmetry Legal
- ✓ Opara & Singh Lawyers
- ✓ Neil Lawyers
- ✓ Centurion Lawyers
- ✓ Ren Zhou Lawyers
- ✓ Logical Legal

Employment History**October 2013 to Current**

Effective Building & Consultancy trading as Rezoning Pty Ltd

Position: Building Inspector\Director

Building Consultancy Experience:

- ✓ Advice and interpretation of Building Regulations, National Construction Code (BCA "Building Code of Australia"), Australian Standards, and Industry Manufacture Specifications
- ✓ Assessing good building practice and issuing site instructions as required
- ✓ Assessment of contractor Variations and extension of times and reply as required under the building Payment Act
- ✓ Assistance in lodging Development Applications and Complying Development for complicated Development Sites including negotiations with Local Councils, and State Planning NSW for Property Rezoning applications
- ✓ Building Certificate Approvals for Non-compliance and Unlawful works rectification orders

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- ✓ Superintendent Client Consultancy Services to manage Project from Designs to handover including reviewing tender packages, management of tender process, and feasibility studies
- ✓ Contractor advice relating to Dispute resolution and Compliance approvals
- ✓ Consultancy Coordination by third party Consultant for Fire Reports, BCA Reports, Access Reports and alternative designs solutions in relation to Occupational Certificates
- ✓ Building Defects inspections to identify breaches or non-compliances in accordance with the Home Building Act and reporting non-compliance in accordance with NCAT requirements
- ✓ Scott Schedules in accordance with NCAT requirements
- ✓ Forensic Investigations for Remedial Building Issues in relations to Concrete Cancer, Water Proofing issues, Mould growth, Building Movements, Water Ingress and preparation of Technical solution and cost effective design methods
- ✓ Causation Report, Scope of works and Rectification supervision for Strata Complex
- ✓ Home Warranty Insurance Assessor for Icare HBCF major or minor defects reporting
- ✓ Building Defects negotiations with Contractors, Builders, Developers, Lawyers, Home Owners, the office of Fair trading, and other Expert Witness Consultants
- ✓ Preparation of maintenance schedule at handover for large developments

July 2005 to Current

Effective Building & Construction Pty Ltd

Position: Licenced Building Supervisor\Prior Director

Building Experience: Over 15 Years in a management and construction of Multi Story Dwellings, Commercial Office fit outs, Industrial Warehousing, New Homes, Additions and Alterations

January 2003 to August 2006

Taylor Projects Group Pty Ltd

Position: Project Contracts administrator

Location: 29H Wandella Road North Miranda

Project Description: 100 bed nursing home & 40 independent living units (ILU)

January 2000 to December 2002

Bellevarde Constructions Pty Ltd

Position: Building Cadet\ Junior Contracts administrator

Location: 570 Miller Street Cammeray NSW

Project Description: 40 High End luxury Residential Apartments

January 1998 to January 2000

NSI Group Pty Ltd

Position: Junior Contract Administrator \Site Labourer

Location: 4th Avenue Blacktown

Project Description: Construction of a multi-story residential unit complex comprising of 55 units over 7 levels.

APPENDIX B

UNIFORM CIVIL PROCEDURE RULES 2005 – SCHEDULE 7 EXPERT WITNESS CODE OF CONDUCT

Uniform Civil Procedure Rules 2005

Current version for 15 June 2018 to date (accessed 28 September 2018 at 09:59)

Schedule 7

Schedule 7 Expert witness code of conduct

(Rule 31.23)

1 Application of code

This code of conduct applies to any expert witness engaged or appointed:

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide:

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and
- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

- (1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide



to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3 (a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3 (f).

- (2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must:

- (a) confer with any other expert witness, and
- (b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and
- (c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must:

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report (hereafter provided), and must not act on any instruction or request to withhold or avoid agreement, and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

APPENDIX C

Photographs taken 4 May 2020



Figure 1. Residue debris that has been discarded in the rear yard. Approximately 1m3.



Figure 2. General condition of the southern elevation.



Figure 3. Corrosion noted to the nail fasteners throughout the dwelling.



Figure 4. Water damage to the ground floor timber frame in the stair void area.



Figure 5. Mould and water damage to the particleboard flooring to the first floor.

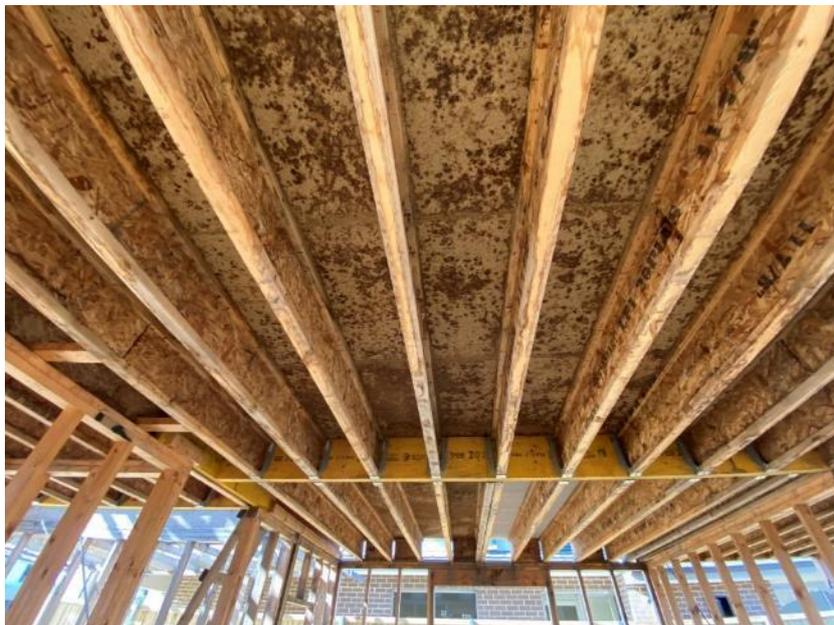


Figure 6. Mould and water damage to the particleboard flooring to the first floor.



Figure 7. Mould and water damage to the particleboard flooring to the first floor.



Figure 8. Water damage to the timber beam in the first floor northern bedroom.



Figure 9. Water damage to the timber wall structure on the first floor.



Figure 10. Splitting of the timber beam above the northern first floor bedroom.



Figure 11. Splitting of the timber beam supporting the eastern wall above the garage area. Approximately 5.8 linear metres.



Figure 12. Timber splitting to the timber beam on the eastern wall above the garage area. Approximately 5.8 linear metres.



Figure 13. Water damage to the ground floor timber frame near the powder room.

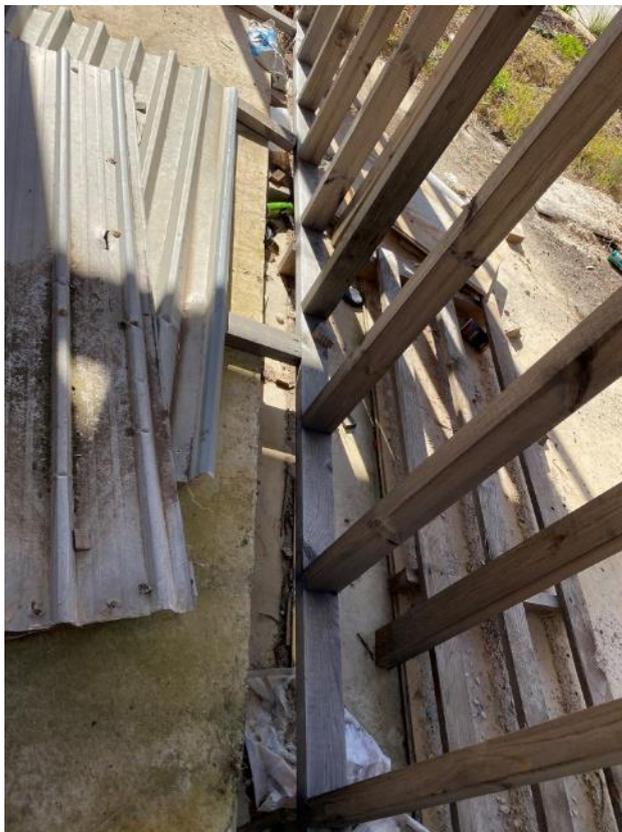


Figure 14. The timber frame to the garage wall has not been constructed on the rebate of the concrete slab.



Figure 15. Construction debris has been stock piled at the front of the dwelling. Approximately 10m³ in size.



Figure 16. The temporary support to the garage roof is weathered and the eave overhang is not constructed in accordance with the contract drawings.



Figure 17. Weathered timber in the garage roof area.



Figure 18. Mould and water damage to the particleboard flooring to the first floor.



Figure 19. Mould and water damage to the particleboard flooring to the first floor.



Figure 20. Moss growth found to the timber particleboard flooring to the first floor.



Figure 21. Moss growth to the timber particleboard flooring to the first floor.



Figure 22. Mould and water damage to the particleboard flooring to the first floor.

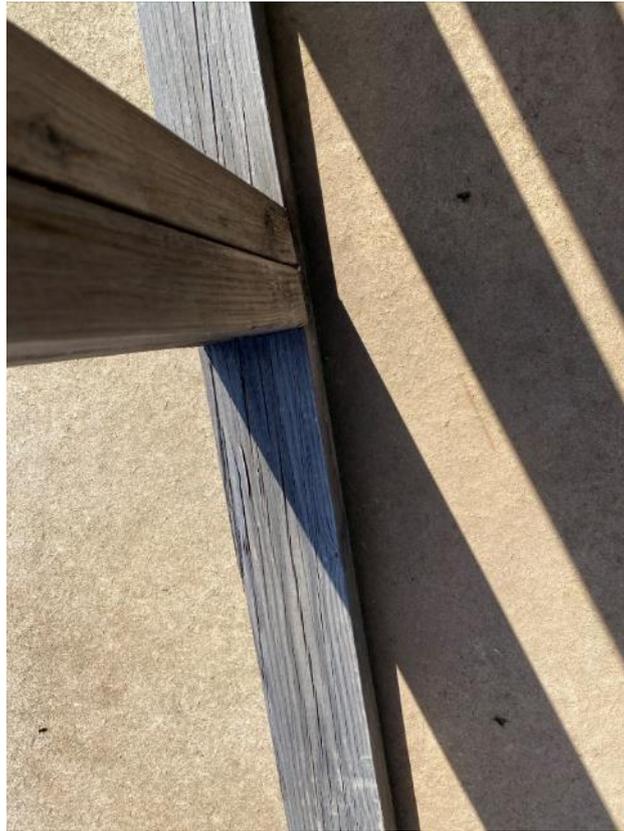


Figure 23. Water damage noted to the timber frame of the first floor wall structure.



Figure 24. Water damage to the timber frame of the first floor wall structure.



Figure 25. The timber frame has not been constructed square and has deviated 5mm in 500mm.



Figure 26. The nail fixings have corroded and require replacement.

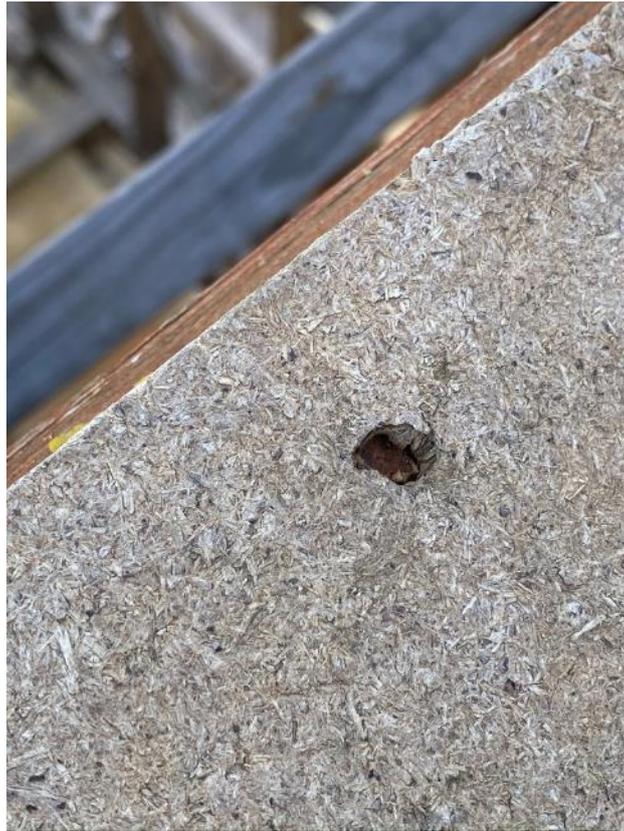


Figure 27. The nail fixings to the particleboard floor sheeting have corroded.



Figure 28. Water damage to the timber floor joists in the lounge room area.



Figure 29. The termite barrier is water damaged and requires replacement throughout the dwelling. Approximately 43 linear metres.



Figure 30. The timber wall frame in the garage area is not straight and has deflected 2mm from the vertical.

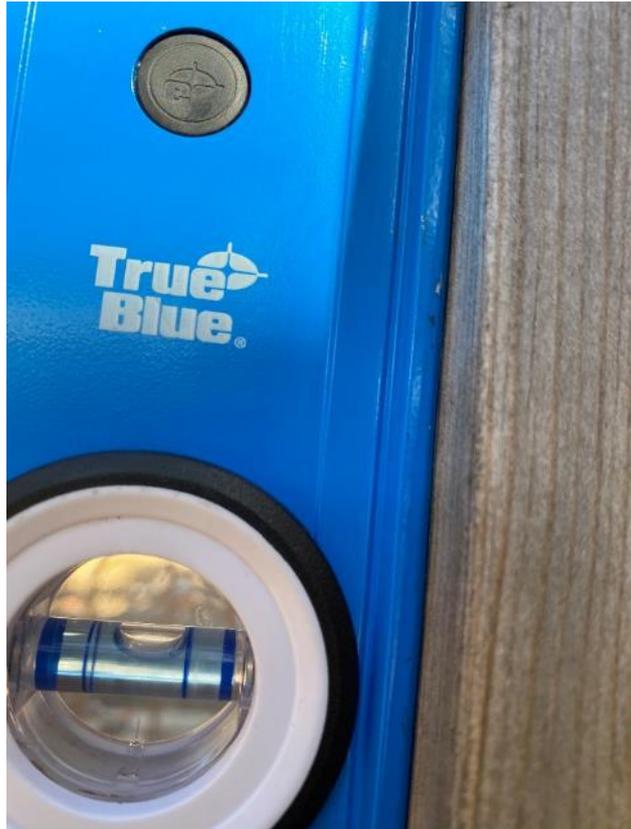


Figure 31. The timber wall frame is not straight and has deflected 2mm from the vertical.



Figure 32. The timber wall frame is not straight and has deflected 2mm from the vertical.



Figure 33. The timber wall frame is not straight and has deflected 2mm from the vertical.



Figure 34. The timber bottom plate is water damaged and requires replacement.



Figure 35. The concrete step down to the garage area has been constructed 200mm shorter than the architectural drawings.



Figure 36. The timber frame/concrete slab in the porch area has not been constructed in accordance with the architectural drawings. The termite barrier has been applied to the edge of the concrete slab, which does not sit directly underneath the timber frame.



Figure 37. The timber frame to the garage wall has not been constructed on the rebate of the concrete slab.



Figure 38. There is evidence of splitting to the timber base plate.



Figure 39. The wall opening in the entry area has not been constructed in accordance with the architectural drawings. There is a 100mm deviation from the plans.



Figure 40. General photo of the entry area.



Figure 41. The concrete slab to the porch area has been constructed 200mm from the building line, which is 800mm shorter than required in order for completion of the porch area.



Figure 42. The side panels to the temporary fence are missing and require reinstatement. Total length required is 10 metres.

APPENDIX D
Scott Schedule



**SCOTT SCHEDULE
WHERE DEFECTIVE WORKMANSHIP
OR MATERIAL CLAIMED**

FILE NO:

APPLICANT:

RESPONDENT:



KEY

Item No.	Item Number (for identification only)
Contract	Set out what should have been done to comply with contract either under specification of original work and variation or what should be done to complete in good and workmanlike manner (if quality not specified).
Applicant's Comments	Set out defect alleged
Applicant's Estimate of Loss	Cost of rectification of defect or diminution of value because of defect
Respondent's Comments	Comments should admit, deny, or not admit, or raise a point of law.
Respondent's Estimate of Loss	This should be completed even though the liability is denied
Tribunal Member's Comments	For use of the Tribunal Member

ITEM No.	CONTRACT	APPLICANT		RESPONDENT		TRIBUNAL MEMBER'S Comments
		Comments	Estimate of Loss	Comments	Estimate of Loss	
1	Stage 3 of the carpentry contract	The builder has failed to complete the carpentry works in a proper and workmanlike manner. The builder abandoned the works prior to the completion of the carpentry works. The carpentry works have significantly deteriorated due to exposure to the climatic conditions to a point where it will contravene The Building Code of Australia Volume 2 Part 2.1.1.	Supply & Install cost as per Rawlinsons Cost Guide 2019. Demolition: Timber wall removal – 432m2 @ \$9/m2 = \$3,456.00 Timber roof framing – 130m2 @ \$8.80/m2 = \$1,144.00 Timber floor board removal – 88m2 @ \$7.50/2 = \$660.00 Timber floor framing – 88m2 @ \$8.80/m2 = \$774.40 Scaffolding - \$1,500.00 Total cost = \$7,534.40			

		The scope of this work includes demolition of the timber wall, floor and roof frame to the dwelling.				
2	Item 1 identified in section 9.1 of the EBC Expert witness report. The builder has failed to construct the concrete slab in accordance with the architectural drawings.	An additional concrete hob is required in the garage area that is 200mm wide, 85mm high and 5800mm long.	Labour – 1 tradesman 8 hours to complete formwork, steel fixing, mix concrete and pour @ \$75/hr = \$600 Materials – steel fixings and concrete mix = \$250 Total cost = \$850.00			
3	Item 2 identified in section 9.1 of the EBC Expert witness report. The floor sheeting to the first floor has deteriorated.	Replacement of the floor sheeting is required. Note that it is assumed that the site is cleared from the existing timber structure to facilitate the installation of new particleboard floor sheeting.	Supply & Install cost as per Rawlinsons Cost Guide 2019. Timber engineered joists – 88m2 @ \$42.30 = \$3,722.40 19mm particleboard – 88m2 @ \$29.70 = \$2,613.60 Timber beam allowances - \$4,500.00 Total cost = \$10,836.00			
4	Item 3 identified in section 9.1 of the EBC Expert witness report. The timber wall frames have deteriorated and resulted in splitting in the timber beams and wall frames.	Supply and installation of all wall framing and roof framing.	Prices adopted from my 15 years' experience in the building industry. Supply and install cost of 90x45mm wall framing – total 160 linear metres of framing @ \$80/lin M = \$12,800.00			

			<p>Supply and install cost of 90x45mm roof framing – total 130m² @ \$80/m² = \$10,400.00</p> <p>Scaffolding to perimeter of first floor area for safe work - \$1,500.00</p> <p>Total cost = \$24,700.00</p>			
5	Item 4 identified in section 9.1 of the EBC Expert witness report. Corrosion to the metal wall fixings throughout the dwelling.	<p>This item will be rectified as a consequence of Item 3 in section 9.1 of the EBC Expert witness report.</p> <p>The scope required for the repairs will require the supply and installation of all wall framing and roof framing.</p>	<p>Prices adopted from my 15 years' experience in the building industry.</p> <p>Supply and install cost of 90x45mm wall framing – total 160 linear metres of framing @ \$80/lin M = \$12,800.00</p> <p>Supply and install cost of 90x45mm roof framing – total 130m² @ \$80/m² = \$10,400.00</p> <p>Scaffolding to perimeter of first floor area for safe work - \$1,500.00</p> <p>Total cost = \$24,700.00</p>			
6	Item 5 identified in section 9.1 of the EBC Expert witness report. Water ingress into the timber frame has	<p>This item will be rectified as a consequence of Item 3 in section 9.1 of the EBC Expert witness report.</p>	<p>Prices adopted from my 15 years' experience in the building industry.</p> <p>Supply and install cost of 90x45mm wall</p>			

	resulted in a reduced structural capacity.	The scope required for the repairs will require the supply and installation of all wall framing and roof framing.	framing – total 160 linear metres of framing @ \$80/lin M = \$12,800.00 Supply and install cost of 90x45mm roof framing – total 130m2 @ \$80/m2 = \$10,400.00 Scaffolding to perimeter of first floor area for safe work - \$1,500.00 Total cost = \$24,700.00			
7	Item 6 identified in section 9.1 of the EBC Expert witness report. The timber wall frame has warped and distorted.	This item will be rectified as a consequence of Item 3 in section 9.1 of the EBC Expert witness report. The scope required for the repairs will require the supply and installation of all wall framing and roof framing.	Prices adopted from my 15 years' experience in the building industry. Supply and install cost of 90x45mm wall framing – total 160 linear metres of framing @ \$80/lin M = \$12,800.00 Supply and install cost of 90x45mm roof framing – total 130m2 @ \$80/m2 = \$10,400.00 Scaffolding to perimeter of first floor area for safe work - \$1,500.00 Total cost = \$24,700.00			
8	Item 7 identified in section 9.1 of the EBC	This item will be rectified as a	Prices adopted from my 15 years'			

	Expert witness report. The timber frame has not been installed perpendicular to the adjacent wall.	consequence of Item 3 in section 9.1 of the EBC Expert witness report. The scope required for the repairs will require the supply and installation of all wall framing and roof framing.	experience in the building industry. Supply and install cost of 90x45mm wall framing – total 160 linear metres of framing @ \$80/lin M = \$12,800.00 Supply and install cost of 90x45mm roof framing – total 130m2 @ \$80/m2 = \$10,400.00 Scaffolding to perimeter of first floor area for safe work - \$1,500.00 Total cost = \$24,700.00			
9	Item 8 identified in section 9.1 of the EBC Expert witness report. The timber pest barrier that is currently installed is not fit for purpose and requires replacement.	Supply and install a new perimeter barrier to the edge of the slab and turned into the cavity wall.	Supply & Install cost as per Rawlinsons Cost Guide 2019. Laminated sheet barrier – 43 linear metres @ \$17/m = \$731.00 Total cost = \$731.00			
10	Item 9 identified in section 9.1 of the EBC Expert witness report. The removal of excess construction waste and spoil.	Removal of all excess spoil and materials on site.	Prices adopted from my 15 years' experience in the building industry. Labour – 2 labourers 1 day 8 hours @ \$50/hr = \$800.00 Rubbish removal – 12m3 skip bin hire = \$1500			

			Total cost = \$2,300.00			
		Please note that items 3 – 7 are all dependent items that will be rectified as a consequence of each other, and therefore the cost for repairs will only be taken once.				
		TOTAL	Subtotal = \$46,951.40 20% Builders Margin = \$9,390.28 Total = \$56,341.68 + GST	TOTAL	\$	