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BCR Framework Implementation Team  
Australian Building Codes Board  
GPO Box 2013  
Canberra ACT 2601 Australia

**Attention: Erica Sung**

### **BUILDING CONFIDENCE REPORT DISCUSSION PAPER**

Strata is the fastest growing form of residential property ownership in Australia. Over half the new dwellings to be built in our metropolitan areas over the next decades will be strata titled. The growth of this sector raises increasingly important questions over property ownership and governance.

The Owners Corporation Network of Australia Limited (OCN) is the independent peak consumer body representing residential strata and community title owners. As such, OCN is uniquely positioned to understand the impact that the legislative framework has on day-to-day machinations and community living. We have a lived experience and a practical hands-on approach to strata administration, issues management and resolution, and harmonious living.

The protection of consumers through the delivery of high quality, sustainable homes is of paramount public importance.

With urban consolidation the goal of successive Governments there has been a rapid expansion of the residential strata sector. The emphasis on increasingly tall and more complex apartment buildings to house a growing population demands that only the most suitably qualified professionals are permitted to undertake this work. And the new owners must be well equipped to maintain and manage their buildings.

Recommendation 20 of the Shergold & Weir *Building Confidence Report* - that a comprehensive building manual be lodged with the building owners and made available to successive purchasers - is therefore welcomed by OCN. We thank you for the opportunity to comment on the work of the ABCB BCR Framework Implementation Team. And we are happy to discuss any of the comments on the discussion paper that follow.

Sincerely



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## **Proposed Approaches to Addressing Building Confidence Report Recommendation #20**

### **Building Manual Content and Development Process**

#### **Introduction**

The Owners Corporation Network congratulates the author and contributors to the Australian Building Manual Guideline (“Manual Guideline”) which is a thoughtful and comprehensive analysis for the implementation of Recommendation #20 in the Shergold Weir Report (“Building Confidence Report”).

The Building Confidence Report sets out the problem to be solved by the provision and maintenance of a complete and up to date Building Manual from a best-case position but does not include any process for the practical implementation of the intent of Recommendation #20.

This OCN response raises:

1. The issues that need to be addressed by the Manual, including those identified by the Building Confidence Report,
2. How the proposed content of this manual required to address these issues faced by residential strata owners, will be adequately addressed,
3. How the proposed processes for ensuring the issues faced by residential strata owners, will be adequately addressed.

The perspective provided is from that of the Owners Corporation of residential building where the individual apartment owners make up the Owners Corporation and, as such, collectively and individually have the rights and obligations associated with strata title as set out in the Strata Schemes Management Act 2015.

Remembering that lot owners, by and large, are individual homeowners or small-scale property investors this is very much a consumer protection issue. The Building Manual represents another modest but essential piece in establishing much needed much stronger consumer protection for apartment owners.

#### **The Problem to be Solved**

Crucially the provision of an appropriate Building Manual at the commencement of the control of the Owners Corporation by individual lot owners is essential to ensuring that the Owners Corporation can meet its statutory and other obligations and to have its legal entitlements met.

The Owners Corporation needs information about the building that would enable it to:

1. Identify building defects in a timely fashion during building warranty periods
2. Have building defects addressed under warranty in a timely fashion
3. Develop accurate and meaningful asset registers covering every element of the building construction and operation
4. Develop and implement maintenance plans for the building based on those asset registers to ensure the economic life of all assets is achieved and to maintain the building in a safe state including, in particular, meeting fire safety requirements
5. Develop and implement asset replacement plans for all elements in the asset register based on the asset life expectancies provided by suppliers and builders
6. Develop long term capital spending forecasts based on asset replacement plans to set capital fund levies sufficient to meet asset replacement needs over time

7. Be able to undertake major repairs to restore the building to a proper standard of construction following major events affecting the building's integrity e.g. fires, earthquakes, subsidence caused by third parties among other matters

While the WebFM, SCA and Engineers Australia proposal appears to propose delivery of sufficient information to meet these needs there is a major gap in how Owners Corporations can ensure that this is indeed the case, in practice. Under current proposals it seems that the Owners Corporation is entirely dependent on the judgement of the Project Certifier ("Certifier") or Building Surveyor ("Surveyor") responsible for issuing the Occupation Certificate. Importantly there seems to be little practical recourse for an Owners Corporation that subsequently finds the manual to be inadequate to address the requirements set out above.

This issue is exacerbated by the known existing problems with the transfer of responsibilities for a residential strata building from a developer to the newly formed Owners Corporation. Indeed, the Owners Corporation Network considers the lack of opportunity for the newly formed Owners Corporation to assess the adequacy of its proposed Building Manual to be the single biggest issue in ensuring the adequacy of the manual to meet the needs of Owners Corporations.

Clearly there were many case studies presented to the Enquiry which gave rise to the Building Confidence Report and in particular Recommendation #20. If any more were needed, the OCN has information from a new build in the Sydney CBD approaching occupation where the developer and builder have sophisticated systems for data recording, however the prospective Facilities Manager is still working to ensure that all of the detailed information has been provided.

This is a situation where a developer has taken steps to employ an arm's length Facilities Manager who has experience and sophisticated knowledge of the documentation required to address the issues in subparagraphs 1-7 above. For many smaller, less exclusive developers do not have the incentive to take even this step, leaving the nascent Owners Corporation either completely in the dark or having to employ another specialist to go through any material provided to ensure accuracy and sufficiency.

## **Content**

The Owners Corporation Network proposes that the adequacy of the Building Manual for a given residential strata building, and any mixed-use site that includes residential strata plans, be determined against two key sets of criteria as follows:

1. A comprehensive reference list setting out in specific detail the required content of these manuals. While the SCA – Engineers Australia proposal goes some way to addressing this issue some further specific areas of concern that should be addressed are set out in Attachment A to this submission. The reference list provided by StrataPlus in Attachment B is also useful in this regard.
2. The reasonable information needs of the Owners Corporation of the relevant building to meet its ongoing statutory obligations and to manage the building over time in an efficient and safe manner.

The latter addition is potentially helpful to all parties in that it provides a practical reference point for matching the detail and sophistication of the Building Manual with the specific nature of the building concerned. By way of example the information needs of an Owners Corporation of an 8-lot villa scheme would be very different to that of a 200-lot high rise apartment block on a site shared with other commercial, retail and residential strata schemes.

Crucially, too, the Strata Schemes Management Act 2015 sets out higher statutory requirements for large residential strata schemes (i.e. schemes with 100 lots or more) than for smaller schemes (i.e. with less than 100 lots).

The differing needs of each building situation can, at least in part, be addressed by providing a reasonable opportunity for a newly established Owners Corporation to have effective representation in the formulation and approval of the Building Manual.

This also ensures much greater assurance that the Owners Corporation involved does get a Manual that really addresses its reasonable needs. This role could be reinforced by requiring formal sign off by the Owners Corporation before the Developer recovers a defined amount of defect bond held in trust on behalf of the Owners Corporation.

The OCN proposes that the Guideline include a system of check boxes for a simple guide to ensure the necessary information has been provided.

This brings us to the process for ensuring that the ultimate users of the Building Manual, apartment owners, primarily via their Owners Corporation, have their specific reasonable needs properly addressed.

### **Manual Development and Approval Process**

The proposal for the Certifier or Surveyor to sign off on the adequacy of the Building Manual prior to the issuing of the Occupation Certificate is a necessary but not sufficient step in the development and approval process of the Building Manual.

There is no doubt that a competent Surveyor with appropriate incentives is well placed to review the adequacy of documentation against a content check list. For this reason an Occupation Certificate should not be issued without the Surveyor signing off on the adequacy of the Building Manual. This part of the process could also be included in the detailed audits carried out on behalf of the Building Commissioner from time to time prior to the issuing of an Occupation Certificate and failure to provide an adequate Building Manual could be grounds for withholding the issuing of an Occupation Certificate.

However, this process, of itself, is inadequate to ensure that the needs of a newly formed Owners Corporation are met. The Building Commissioner audits do not apply to every new building and there are good reasons as to why the Surveyor may not approve an adequate manual:

1. The Surveyor is not expert in the ongoing management needs of an Owners Corporation for each and every form of residential strata building.
2. The Surveyor is not the ultimate user of the Manual and does not have to live with his/her assessment. He/she does not have an inherent stake in whether or not the Manual truly meets the needs of an Owners Corporation. Put simply the incentive is not really there to deliver this as he/she is only indirectly accountable to the Owners Corporation via Statutory Duty of Care requirements. These requirements would be challenging to enforce by an Owners Corporation too given the likely challenges associated with monetising the damages resulting from an inadequate Manual.
3. There are frequent examples of Certifiers/Surveyors certifying defective buildings for occupation. There are many reasons for this some of which even extend, in extreme situations, to corrupt relationships between the Certifier/Surveyor and the Developer. If the Surveyors are certifying defective buildings for occupation, then there is a reasonable prospect of them certifying defective Building Manuals too. Most notably the very situation that requires a comprehensive Building Manual is when the building has design and construction defects and this is also the situation in which the Certifier/Surveyor, for one reason or another, is also most likely to sign off on an inadequate Building Manual.

The OCN has one case study of a large building where the fire dampers were “certified” year after year by the fire service provider and when that provider was dismissed and proper investigation undertaken, it was revealed that not only were there no fire dampers but there were no access panels for inspections. The Owners Corporation had no original plans or specifications and the process for identifying the problem was expensive and time consuming. Strata owners are, by and large, dependant on the services of “professionals” and cannot of their own accord ensure that they have all of the information required for the proper maintenance and safety of their homes.

In determining when and how the newly formed Owners Corporation is incorporated into the development and approval process it is worth discussing the inherent challenges of establishing an effective Owners Corporation for a new building.

The overall Governance of an Owners Corporation in New South Wales is determined by the Strata Schemes Management Act 2015. Major decisions of the Owners Corporation are made at properly convened General Meetings of lot owners and the ongoing management of the Scheme between meetings is overseen by an elected Strata Committee.

It is not usually possible for either of these crucial Governance elements to be fully effective until sometime well after the issuing of an Occupation Certificate. Settlement of lot sales and subsequent occupation occurs progressively and, in some cases, can take years to complete. This means that the early General Meetings of owners are not representative of all eventual lot owners and the elected Strata Committee may be more a matter of who was first to settle their lot purchase rather than being truly representative of the eventual lot owners.

The responsibilities facing the newly formed Owners Corporation are quite considerable and the ability of the owners making up the fledging Owners Corporation is variable and often not up to the task. They rely instead on advice provided by the Developer, and the Developer appointed Strata Manager and Building Manager. Put simply the new owners are almost invariably in a very weak position to represent themselves and subsequent owners, particularly in the first year after the issuing of the Occupation Certificate.

### **Proposal for the Addition of a Methodology for Ensuring the Intent of Recommendation #20 is Implemented**

The OCN proposes that the intent of Recommendation #20 is to ensure that Owners Corporations have a comprehensive Building Manual which is provided by the developer as a condition of, in layman’s terms, the completion of the build.

This could be achieved by the inclusion in the *NSW Home Building Act 1989* a provision that:

1. The failure to provide a compliant Building Manual should be considered to be as important as a Major Defect as the absence of information may lead to the inability to inspect for the types of issues which are a major defect as defined in the legislation; and
2. The Occupation Certificate should not be issued until the Building Manual is completed and certified as adequate for the nature of the building; and
3. The Developer should be required to lodge an additional Bond of 1% of the building contract cost which will only be released once the adequacy of the Building Manual at a properly convened General Meeting of owners has been approved.

### **Responses to the Draft Building Manual dataset questions**

OCN considers that the questions posed in the draft discussion paper will elicit responses which will lead to the finalisation of the Building Manual Guideline.

OCN looks forward to the circulation of the discussion paper at which time it will be pleased to be involved in the process by making a submission.

The only further comments which OCN makes is that the reference to glass replacement as an example of a “conditions of use item” (page 5 of the Building Manual Guideline paragraph 4) could be unnecessarily problematic. To OCN’s knowledge glass in most buildings, other than high rise commercial buildings with complex glass facades, is not an item which requires replacement in the same way as hot water tanks or chillers.

OCN is particularly concerned to ensure that all fire dampers are expressly identified and that this is highlighted as a requirement in the Building Manual Guideline as this has become increasingly important given the changes to the way fire services are now assessed.

Floors and Walls: Given the complaints about noise transfer and potential changes from soft to hard surfaces over time – a reference to the calculated (design) and then measured (user manual) noise transfer specifications is particularly important for use by Owners Corporations in the effective ongoing management of their building.