

BUILDING PRACTITIONERS INQUIRY BOARD

Reasons for Decision

Building Practitioner:	GT Projects Australasia Pty Ltd
Building Practitioner Category:	Building Contractor Residential (Unrestricted)
Referred By:	Director of Building Control
Proceedings:	Referral of Inquiry to the Building Practitioners Board in accordance with s 34F(2)(b) of the <i>Building Act (1993)</i> NT
Inquiry Board:	Maria Savvas (Presiding Member) Paul Nowland (Member) Robert Cox (Member)
Date of Hearing:	20 April 2021
Date of Decision:	7 August 2022

Background

1. On 30 July 2020 the Director of Building Control (**the DBC**) referred GT Projects Australasia Pty Ltd (**the Practitioner**) to the Building Practitioners Board for Inquiry pursuant to section 34F(2)(b) of the Act (**the Referral**).
2. The Referral related to the following breaches of the *Building Act (1993)* NT (**the Act**) and the Building Regulations (**the Regulations**) by the Practitioner:
 - (a) Section 54AC(1)(a) & (b) of the Act – the Practitioner carried out prescribed residential building work at 15 De Julia Court, Katherine East, Northern Territory, when no authorised RBI policy or fidelity certificates were in force (s54AC(1)(a)). Consequently, the Practitioner failed to provide a copy of either an RBI policy or fidelity certificate to the other party to the residential building contract (Natalie Sarney) (s54AC(1)(b)).
 - (b) Section 55 of the Act - the Practitioner carried out building work at 15 De Julia Court, Katherine East, Northern Territory, without a building permit in respect of the work having been granted and being in force under the Act.

(the Alleged Offences)

3. This is the decision of the Inquiry Board convened pursuant to s34J of the Act to hear and determine whether the Practitioner is guilty of the Alleged Offences, and the appropriate action to take in respect of such conduct.
4. By way of a statement of agreed facts provided on 11 March 2021 (the Agreed Facts), the Practitioner has admitted that it is guilty of professional misconduct for committing the alleged offences against the *Building Act 1993*.
5. Accordingly, the Board is satisfied on the balance of probabilities that the Practitioner has committed the Alleged Offences and is therefore guilty of professional misconduct in accordance with s34S(a) of the Act.
6. The relevant Agreed Facts are as follows.
7. The Practitioner was registered as a Building Contractor Residential (Unrestricted) on 8 December 2015 (registration number 218464CU).
8. At all relevant times in 2018 and 2019 the Building Practitioner was, and continues to be, a registered building practitioner.
9. The Practitioner, through its Nominee and Director Troy Glover, entered into a residential building contract with a property owner on 19 March 2018 for prescribed building works at 15 De Julia Court, Katherine, Northern Territory (**Works**).
10. Section 40 certificates of structural design were produced on 19 March 2018 and for plumbing design on 18 April 2018.
11. On 6 June 2018 an application for a building permit was submitted with the building certifier Tick of Approval Building Certification (**Tick of Approval**). Section 4 of the application was completed and required the Practitioner to provide an Evidence of Residential Building Cover (Fidelity Certificate) with the application.
12. The evidence of residential building cover check box was ticked on the application, purporting to indicate that such cover had been obtained. No application for residential building cover had in fact been made by the Practitioner for the Works at the time.

13. On 7 and 8 June 2018 the building certifier indicated by letter, provided by email correspondence to the Practitioner that a certificate of residential building cover, evidence of building contract and progress payment agreement still needed to be provided as part of the initial documentation for the building permit application to be processed.
14. No application for residential building cover was subsequently made by the Practitioner, with the result that the Works are now not protected by any residential building cover (either a residential building insurance (**RBI**) policy or a fidelity certificate).
15. The Practitioner commenced building works at 15 De Julia Court, Katherine without the building permit being issued and without an RBI policy or fidelity certificate in force.
16. An invoice for progress claims 1 and 2 was issued by the Practitioner to the property owner on 14 June 2018.
17. The Works were completed on 10 November 2019.
18. On 2 December 2019 the Practitioner, by its Nominee and Director Troy Glover, signed an evidence of building contract form for the Works and on 5 December 2019 the building permit for the Works (425/2610/3) (**Building Permit**) was retrospectively issued by Tick of Approval.
19. On 18 December 2019 the Practitioner, by its Nominee and Director Troy Glover, signed the Builders Declaration for the Works certifying they had been completed in accordance with the Building Permit.
20. Consequently, the Practitioner carried out and completed all of the Works under the residential building contract without an authorised RBI policy or fidelity certificate in force and without providing such a certificate to the property owner (contrary to section 54AC(1)(a) & (b) of the *Building Act 1993*) and without a building permit being granted and in force (contrary to section 55 of the *Building Act 1993*).
21. At the hearing of the Inquiry, the Inquiry Board queried how the building permit came to be granted by Tick of Approval after the Works were completed in circumstances described

above. Submissions were subsequently provided to the Practitioner and the Board on behalf of the DBC to address this query (**Supplementary Submissions**).

22. In summary, as no building permit was granted prior to the commencement of the Works, it would not be possible for a certificate of occupancy to be issued to the property owner under the Act. The *Occupancy Certification Guidelines* of 2016, permit a certification pathway which allows a building certifier to obtain a building permit to allow an occupancy certificate to issue for existing and unapproved building works completed after 1 May 2016. This process was adopted by Tick of Approval which subsequently resulted in the issuing of the building permit and certificate of occupancy.
23. It should be noted that the *Occupancy Certification Guidelines* of 2016 do not supersede the statutory obligations prescribed by s59(1B) of the Act. Consequently, the issuing of the building permit in the circumstances, while done so for the benefit of the property owner, may have been a breach of the Act.
24. That said, the offences for which the Board has been convened relate to the Practitioner and the Board must now determine the appropriate action.

Decision on Inquiry

25. Section 34P provides as follows:
 - (1) On completion of an inquiry, the Inquiry Board must:
 - (a) decide, in accordance with section 34S, whether or not a building practitioner the subject of the inquiry is guilty of professional misconduct; and
 - (b) if the practitioner is guilty – decide the action to be taken under section 34T and whether or not to take additional action under section 34U.
26. The Inquiry Board has determined that the Practitioner has breached the provisions of the Act as stated herein and finds that the Practitioner is guilty of professional misconduct for the reasons as stated above.
27. Section 34T of the Act provides as follows:

If, on completion of an inquiry, the Inquiry Board decides under section 34P(1)(a) that a building practitioner is guilty of professional misconduct, the Board may take

any of the following actions in relation to the practitioner:

- (a) reprimand the practitioner;
- (b) require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry;
- (c) require the practitioner to give an undertaking to do, or not to do, a specified thing:
 - (i) at any time or during any period; or
 - (ii) at a specified time or during a specified period;
- (d) require the practitioner to pay to the Territory a civil penalty not exceeding 40 penalty units;
- (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);
- (f) cancel the practitioner's registration.

28. The objective of disciplinary proceedings are to promote the objects of the Act and to ensure adherence with the legislative framework by all building practitioners. The Inquiry Board endeavors to communicate to building practitioners its concerns regarding industry practices that don't comply with the Act. In particular, any intentional, reckless or negligent disregard of the statutory requirements of the Act is not acceptable and will likely attract serious penalties.
29. The Board agrees with the submissions of the DBC that any disciplinary action taken should have regard to the protection of the public, and to achieve specific and general deterrence of such conduct by practitioners.
30. The Board notes that the conduct of the Practitioner had not, as yet, resulted in an adverse outcome to the property owner. However, the loss of the property owner's statutory protection of residential building cover for any future defect claim is a serious matter.
31. The statutory protections afforded by s54AC (1) and s55 benefit the consumer by ensuring that the consumer is afforded a level of financial protection in the event of a relevant building dispute. It also benefits practitioners by affording them a level of confidence that

their customers are protected in the event that there are subsequent defects ascertained in the future.

32. Clearly the obligation to obtain a building permit prior to the commencement of building works (as required by s55) is also of great importance to the consumer and practitioners. Sidestepping this requirement is obviously fraught with numerous risks, including the risk that there were design issues which were not subject to independent review by the certifier.
33. In relation to the Practitioner's breach of section 54AC(1), the Board notes that the Practitioner, by its director/nominee Mr Glover, states that he does not know whether his administrative staff made an application for a fidelity certificate prior to the Works commencing as his administrative officer's emails were deleted on her leaving his employment. In a subsequent submission by email received from Mr Glover on 12 May 2021 (in response to the DBC's Supplementary Submissions) he submits that "*This all started from a clerical and communication error within our office*". Further, there is evidence that the Practitioner was approached by the certifier on 2 occasions before the Works commenced in relation to the requirements which were acknowledged.
34. Regardless, there was a lack of oversight of fundamental obligations by the Practitioner at the outset, or subsequently upon enquiry by the certifier, and certainly at the time the Works commenced without a building permit and without residential building cover. It is clear that the Practitioner lacked appropriate systems to ensure that residential building cover was in place, and a building permit.
35. The Practitioner's decision to proceed with the prescribed building work without certainty as to the existence of a fidelity certificate demonstrates and reckless disregard of its statutory obligations. Similarly, it commenced building works without having a building permit, an obligation which was, or should have been known, to the experienced Practitioner. The Board has formed the view that the Practitioner's conduct falls below the professional standard expected of a building practitioner who should have ensured there was a building permit.
36. The Practitioner is entitled to consideration in its favour for:
 - (i) its early admissions in relation to his offending and its cooperation with the DBC during the investigation and inquiry process, which has reduced the time and costs that would have been incurred had the Inquiry proceeded to a contested hearing.

- (ii) the fact that the Practitioner has no known history of breaching the Act.
 - (iii) its implementation of systems to track projects requiring a building permit after the audit;
 - (iv) investing in obtaining certification in ISO90001 Quality Management System; and
 - (v) Mr Glover's submission that a strong message has been received by the Practitioner and staff members.
37. The Board is encouraged by the Practitioner's steps to implement systems to avoid a reoccurrence of such conduct.
38. However, it is imperative that practitioners are aware of their statutory obligations under the Act to ensure that there is a building permit and residential building cover in place prior to beginning prescribed building works. It is also important that practitioners appreciate the seriousness of such breaches as such failings should not occur for the reasons set out above.
39. In considering the appropriate action under section 34T, the Board has had regard to the seriousness of the breaches and mitigating factors submitted by the Practitioner. The Board has had regard to the DBC's submissions on penalty and the submissions made by the Practitioner.
40. The Inquiry Board had determined that the appropriate action to be taken pursuant to section 34T is as follows:
- a. The Practitioner is reprimanded and this reprimand is to be published.
 - b. The Practitioner is to pay a civil penalty of 15 penalty units for the offence against s 54AC of the Act.
 - c. The Practitioner pay is to pay a civil penalty of 15 penalty units for the offence against section 55 of the Act.
41. The Inquiry Board has determined that no further action be taken by the Director pursuant to s34U of the Act.
42. The Inquiry board directs that a copy of this determination be published and distributed to the parties.

Rights of Appeal and Procedure for Commencing an Appeal under Division 4 of the Act

43. Section 35(d) of the Act states that a decision under s. 34P that a building practitioner is or is not guilty of professional misconduct is an appealable decision.
44. Under s. 36 of the Act, an appeal is to be made to the Local Court within 30 days of being notified of the decision.
45. Under s. 36A of the Act, subject to s. 36A (2), the appeal is to be a re-hearing of the evidence, or review of the information, before the Practitioners Board.
46. Section 36A (2) states that the Local Court may admit evidence or information that was not before the Practitioners Board only if the Court is satisfied there were special circumstances that prevented its presentation before the Board.
47. Section 36B states:
 - a) in determining the appeal, the Local Court may:
 - b) confirm the appealable decision; or
 - c) vary the appealable decision; or
 - d) set aside the decision and substitute another decision that could have been made instead of the appealable decision.
48. The Court may give orders it considers appropriate to give effect to its decision under subsection (1).
49. Section 36C states that the decision of the Local Court is final and is not subject to appeal.
50. Section 36D states:
 - (1) Commencing an appeal does not affect the operation or implementation of the appealable decision.
 - (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the appealable decision as the Court considers appropriate to effectively hear and decide the appeal.
 - (3) The order:
 - (a) is subject to the conditions specified in the order; and
 - (b) has effect:
 - (i) for the period specified in the order; or
 - (ii) if no period is specified – until the Local Court has decided the appeal.

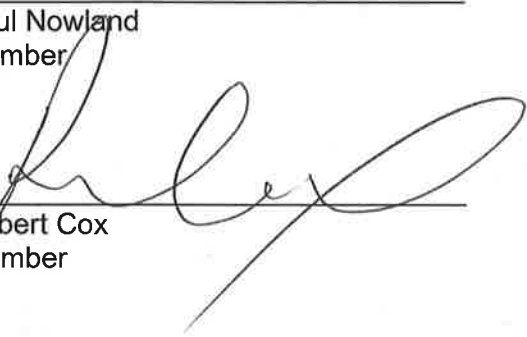
Dated 7 August 2022



Maria Savvas
Presiding Member



Paul Nowland
Member



Robert Cox
Member