

Clear as MUD

PAT MCGOVERN discusses how the Multi-Unit Development Bill will affect building surveyors, and presents some suggestions to improve it.

The recent IPFMA conference, 'Seeing through the MUD', examined the proposed Multi-Unit Development (MUD) Bill and its implications for residents' associations, managing agents and building surveyors. My particular area of interest is that of snagging and making good defects ahead of handover of a development from the developer to the owners' management company (OMC). Snagging problems can be divided into the following headings:

- genuine snagging items – must do snagging;
- desirable snagging items – negotiable with the builder/developer; and,
- breaches of building regulations due to:
 - ▶ poor workmanship; or,
 - ▶ inherent design issues.

At present snagging and the completion of developments, and in particular common areas, is a nightmare for the building surveyor, developer and management company agent. Problems with the current system of snagging and how it impedes completion of snagging and handover include:

- snags are currently carried out one to two years after a development is fully occupied;
- there is confusion as to whether the 'snag' falls into the category of:
 - ▶ design;
 - ▶ workmanship; or,
 - ▶ management company issue;
- the building control system of self-certification is not working;
- there is generally no professional

supervision on site during construction;

- certificates of compliances are often issued carelessly; and,
- Homebond is not adequate in terms of multi-unit developments.

So when the building surveyor gets to the site he is not welcomed with open arms; the builder has had an 18- 24-month professional-free period. The building surveyor is faced with what the builder has perceived to be compliant, or 'the way we always did it', or 'it's done in accordance with good building practice'.

When a snag list is prepared by the building surveyor, the builder completes about 20-30% of it. No amount of revisits and/or discussions with the builder will improve that. Eventually, both management company and the building surveyor are worn down and in time the transfer takes place with a hugely onerous outstanding snag list. That sets the stage for early expenditure of any sinking fund and very often 10 years into a development, residents are finding out the cost to re-roof a block in a development or in some cases a complete development.

The developer has no respect for the building surveyor, no respect for the management company agent, is not afraid of the local authority, and will not retain his own architect to do supervision.

We as building surveyors wholeheartedly welcome this Multi-Unit Development Bill 2009. However, we see room for improvement in the following areas:



Pictured at the recent conference were (from left): Toal O'Muir, architect; Siobhan O'Dwyer, IPFMA; and, Pat McGovern, McGovern Surveyors.

Section 2 – Transfer prior to sales

This concept is good but concerns remain about the mechanism for completion of the snags. We would call for an agreed snag list to form part of any handover/legal documentation. This should go further to include a 'cost to complete' and a 'duration to complete the works'. Perhaps the first round of snagging should be completed prior to transfer and this could open the way for a Scott schedule to be prepared in terms of snagging – where both sides include comment. That way potential problems are highlighted early on in the process.

Section 9 – Determination of developer's beneficial interests

The bill proposes "as soon as is

practicable" – well we are not going to be much further on! It is also to be made with the consent of any mortgagee. Does this mean it can be made without the consent of the OMC? No conditions are imposed on the developer regarding snagging, certification, etc.

Section 11 – Right of management company to effect essential repairs

We welcome this provision but would be concerned about recovering costs from the developer going forward. Often, the cost of repair works are significant and the LRC's recommendation that the OMC would hold back a percentage of the purchase money for each apartment in trust for the developer until complete is a good idea.