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RE: TARION CONSULTATION – IMPROVEMENTS FOR NEW CONDO PROJECTS

Thank you for the opportunity to provide feedback on proposed changes to Registrar Bulletins 18, 19, and 2, including the direct engagement session on August 28, 2024. Ontario Home Builders' Association (OHBA) membership has engaged with these proposals and identified a range of concerns.

We look forward to the opportunity to further discuss these proposals with you and to continue to identify solutions and outcomes of greatest benefit to homeowners.

RB18 and RB19

We note the proposed changes to RB18 and RB19, as set out in your discussion guide:

- *Creating a new requirement for a third-party commissioning report on mechanical and plumbing equipment to better protect Condominium Corporations from possible issues after registration.*
- *Addressing potential risks about the building envelope and internal containment by increasing Scope of Work (SOW) requirements, and additional reporting requirements on Field Review Consultants (FRCs) to improve the quality of new condominium construction.*
- *Clarify the FRCs role and mandate by creating a governance agreement for FRCs, new reporting and documentation requirements, and removing areas of interpretation and vagueness in the bulletin to enhance the FRC's ability to have concerns addressed sooner and reduce possible defects.*
- *Improve FRC qualifications and performance by better defining FRC qualifications, what types of projects they can work on, and changing how Tarion grants and reviews FRC status.*
- *Develop a modified RB19 process to better define project types under Part 9 of the*

Ontario Building Code (OBC), reflecting their possible complexity, and improve protection for purchasers of those types of homes.

- *Build flexibility into the bulletin to allow Tarion to adjust risk areas and ensure homeowners continue to receive well built homes as technology, building materials, and/or practices change.*
- *Enhancing RB18 to address gaps in the current bulletin including new testing and surveys during construction, and clear language for requirements for condominium conversion projects.*

The majority of the proposed RB19 changes seek to address a perceived deficiency in the current effectiveness of the bulletin and the responsibilities, scope, and operations of FRCs. According to the consultation discussion guides, these proposals are based on analysis of claims data and review of the 2019 Claims Experience Workbook.

On multiple occasions, OHBA has sought data on the frequency, nature, and scale of problems and concerns that Tarion is experiencing and observing in relation to the effectiveness of RB19 but have been advised this data remains unable to be shared. OHBA continues to believe this information is critical to assessing the type and level of response required to effectively address these problems.

With that caveat, OHBA member feedback has included the following themes and concerns:

- The proposed changes to RB19 risk introducing inefficiencies, stretching the limited FRC resources currently available, and introducing further tasks for FRCs which we are concerned are beyond their scope of capabilities.
- Any advancement of scrutiny and oversight will involve more work for builders. Increased scrutiny should come to the problem builders or projects, not the entire section of the industry. Feedback was clear and consistent on this point.
- Many of the proposed changes are redundant as most Type D builders have these systems in place; for these to be enforced with even more oversight will create increased administrative and building cost which will affect overall duration and cost of the building with no real evidence that it benefits any stakeholders involved.
- In particular, the requirement for third-party commissioning reports (i.e. involving mechanical and plumbing equipment and related systems; the building envelope and window systems, and the internal containment of the building structure) will impact on the ultimate affordability of the end product. The impact of increasing the cost of construction via the proposed changes to RB19 processes should be given more weight in this discussion. OHBA cannot support regulatory changes that will ultimately add cost to the homeowner, for no demonstrable value or added protection.
- Separately, commissioning agents already prepare very detailed reports for high risk/complex buildings; it is unclear what value the second opinion will provide.
- To assist OHBA in contributing to more effective reporting, it would be helpful for Tarion to identify items they would expect a third-party to verify: this could help determine if it

- is appropriate for a third-party to be hired, or if additional reporting from the existing consultants would suffice e.g. labels on pipes, riser clamps, equipment operation, integrated testing of fire equipment, mockups.
- Should this be an option, OHBA would be pleased to coordinate expertise to assist in the development of templates or matrices which set out comprehensive requirements for the field review report, drawing on greater detail/reporting from existing consultants. This would help reduce the potential redundancy of experts/reporting that the new changes would introduce.
 - Concerns have also been raised that confusion over responsibility and decision-making has implications for professional insurance for architects and engineers. From the engagement session on August 28, we understand that insurance changes introduced by Pro-Demnity in April 2024 have not been incorporated into the discussion. Further development of these proposals should include clarification that additional 3rd party envelope reviews would not be required if the insurance industry already requires architects to hire a 3rd party.
 - It will be difficult to ensure that a 3rd party envelope specialist is involved in all meetings and emails for everything that involves the building envelope. There are simply too many trades and materials involved.
 - OHBA has also identified concerns with the specific proposal for mandatory FRC involvement from design stage. Increased involvement of the FRC will not have any positive impact on reducing the number of deficiencies, especially at the design stage, and may even create confusion amongst consultants regarding responsibility which in turn can further delay a project with major financial implications.
 - A better working relationship between the developer and FRC would improve submission rates and times, not adding more steps or requirements.
 - Several members also noted that life safety systems and smoke control measures are already tested and verified by design engineers to pass occupancy. To add another layer of oversight from another FRC is wasting resources and time for all stakeholders involved and does not achieve any positive benefits.
 - Member feedback has also included the need for manufacturer validation and review of designs for condominium towers in relation to hot water systems, and the benefits of monitoring system pressures, temperatures and velocities to proactively address risk of leaks. The benefits of manufacturer-assisted inspections and onsite training and installation for plumbing systems have also been advocated.

Further specific feedback:

- **Part 2 – Building Envelope and Internal Containment, p8**
 - A greater understanding of fire penetration inspections is required. At times a pre board inspection is best but at others an inspection when the unit perimeter is boarded is more beneficial. Further, inspecting every unit will not be feasible; 'spot' inspections such as 1 per floor should be sufficient.
- **Part 3 – FRC Role and Timing:**

- “The FRCs scope of work will be due to Tarion 90 days before the start of construction instead of 45” (p9) – this approach penalizes all builders with earlier, unrealistic timelines to submit reports, as a way to reign in bad builders.
- Requiring “photos of completed repairs” (p9) – the practicalities of being asked to photograph every repaired deficiency may in reality lead to move deficiencies being undocumented. Again, implementation of this ideal is not feasible.
- **Role of condominium corporations**
 - Many issues that arise during the lifespan of a condominium building are due to a lack of experience and knowledge about the complex systems that are used to construct these buildings.
 - Condominium corporations are not equipped to deal with the operation and maintenance of these complex buildings; there is a very high demand for property managers but only so many that are experienced and qualified to deal with these buildings.
 - Corporations hire maintenance companies that are unable to maintain the buildings as per the design consultants’ design due to unique design concepts, which can place more strain on operating costs.

RB2

We note the proposed changes to RB2, as per your descriptions:

- *Improved the Emergency Process reflecting the goal of expediting the warranty process for health and safety related matters by adding a clear process, including abridging timelines if required, and the addition of a meeting with all parties to review the emergency after Tarion is notified.*
- *Provide new information on decision letters, repair agreements, and claims processing to ensure all parties understand the warranty process.*
- *Additions to explain how a warranty claim should be submitted and identified, and the condominium corporation's warranty responsibilities to help streamline the warranty claim process and better support the condominium corporation.*
- *Include guidelines for updating the Performance Audit Tracking Summary (PATS), specifically a regular 90-Day update to encourage collaboration and communication between all parties.*
- *Clearly define the process after a warranted item is resolved by a builder and help address ambiguity around expectations when Tarion is settling a claim for the Condominium Corporation.*

Itemized feedback to detailed questions is provided below:

Part 1-Emergency Process

1. Do you think this new process will allow condominium corporations and builders to better handle emergency issues?

Guidance that provides clear direction to the builder and peace of mind to the condo corporation is appreciated.

Issues that may arise here are that condo corporations could have multiple trades they have hired to address items or systems that may fail afterwards, causing these emergency situations. The builder is not made aware of the maintenance reports from these contractors who might have different processes and not be aware of how to properly maintain the various systems. Often mechanical systems are not used as intended to be used (i.e. a 4 pipes HVAC system used as 2 pipes only) by corporations trying to reduce cost either before or especially after the 2 year warranty period.

2. Are there any concerns about the new CE Emergency process, or required CE Meeting and form?

Yes. Main concern is that the new proposed changes indicate that an emergency can be reported at any time during the seven-year warranty period. The seven-year warranty period has always strictly been for major structural defects. An emergency can be several things, likely often times flood/leak related, mechanical, electrical, etc. and not a major structural defect, therefore we firmly believe that an emergency should only apply within the builder warranty period (2 years).

3. Do you have any other feedback on the proposed changes?

More clarity in the process is always welcome, however clarity on the responsibility is also very important.

Part 2-Document and Process Updates

4. Do you think this new information about Decision letters will help condominium boards and/or builders?

Yes.

5. Do you think this new information about Repair Agreements will help condominium boards and/or builders?

The request for conciliation timeline should be kept in the repair agreement, to allow the builder/condo corp the ability to extend the repair agreement if needed. Some issues may require longer than the given extension due to climate, scheduling or other causes that are out of the builder's control and may need to extend longer to complete the work.

6. Do you have any other feedback on the proposed changes?

Will the conciliation also be automatically canceled if the builder and condo corporation enter a new repair agreement?

Part 3-Clarity in Reporting Deficiencies

7. Do you have any concerns with more clear reporting requirements?

No. We agree with this as information regarding scope of an item is in fact often times vague requiring builders to ask several questions, ask for proof, etc. from the corporation just to understand what they are reporting.

Some items are too generalized, without proof of actual deficiencies ie drywall in the hallways have damage, but no pictures accompanied, or locations identified. The builder does not receive the first-year audit report until months after the inspection is done and after interim occupancies/closings have occurred. There is no way to differentiate what is a builder repair and what is damage caused by use.

8. Do you have any other feedback on the proposed changes?

Sometimes condominium corporations and their hired engineers make suggestions on how a system should work, without stating an actual deficiency. We have to keep in mind that a system (mechanical, electrical, etc.) can run/work in different ways even if it is not the most efficient or current way of doing so.

Part 4-Performance Audit Tracking Summary (PATS)

9. Are there challenges to regularly updating the PATS?

The challenge with the PATS reporting is that the lines of communication are broken by having the PATS system as the mandatory avenue of correspondence. Some condo boards, property managers, or engineers will only correspond through the PATS system. The builder is then waiting up to 90 days for a response, which significantly impacts scheduling and being able to address deficiencies in a timely manner. As an example, a member has waited 9 weeks for a response from the condo's engineer, on an issue which otherwise would have been a 5 minute phone call or simple email correspondence. For some items, this can decrease the window of opportunity for resolving the issue in a timely manner.

10. Do you have any suggestions for how Tarion could facilitate better updates and communication from condominium corporations and builders?

Possibly having a mandatory 6 month PATS review with the Condo Corp, Builder, and Tarion to discuss which items are actually warrantable and which deficiencies need to be resolved. Many items may be thrown into the First Year Assessment Report to justify the costs that the engineers are charging the Condo Boards. By having Tarion review these items with all parties, only actual deficiency items will be addressed, saving time and energy for all parties.

11. Do you have any other feedback on the proposed changes? Tarion should notify or directly contact the party that is not respecting the 90 day updates. Some condo corporations tend to update the PATS only close to the deadline, which is not fair for the developer as it gives us no time to respond with our feedback, address items, etc. There should be a timeline that is mandatory to follow by both parties involved -condo corporation and builder.

Part 5-Claim Resolution

12. Do you have any concerns with Tarion putting more structured timelines in place for claim inspections?

No concerns. We agree this would be beneficial for all parties involved.

13. Do you have any other feedback on the proposed changes?

Claims should be within the builder warranty period (2 years). Again, as per Part 1, it should not be extended to a seven-year warranty.

Thank you again for the opportunity to provide comment on the comments on Improvements for New Condo Projects consultation. OHBA looks forward to continued collaboration on this and other issues in the future.

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