

98.

19 April 2012

[REDACTED]  
McCabe Partners Lawyers  
PO Box 2114  
Taren Point NSW 2229

Dear [REDACTED]

Re: [REDACTED]

Thank you for your letter dated 9 March 2012 regarding [REDACTED] property located at [REDACTED] which is under lease to Defence Housing Australia (DHA). I apologise for the delay, but given the nature of your letter it was essential that a full investigation be completed before responding.

As indicated in your letter, DHA provides an extensive range of repair and maintenance services as part of our management fee. However, I draw your attention to clauses 13(d)(i) and 13(d)(x), which state that DHA's responsibilities do not extend to structural defects, pest inspections or treatments required to protect the property or to pest infestations.

DHA agree that the damage is of structural nature and it is therefore covered under clause 13(d)(i); responsibilities that shall not be included under the DHA repair and maintenance function.

DHA is happy to facilitate pest inspections on behalf of our lessors, upon request and at the lessor's expense. In these instances DHA arranges for a qualified contractor to complete these inspections. The cost and the report is passed on to the lessor and is deducted from their monthly rental income.

In December 2010 a pest inspection was conducted following advice from the tenant of suspected termite activity. Termites were found and a quote for treatment from the pest inspection provider (Sherlock) was provided to and accepted by your client. [REDACTED] was kept informed regarding this event, and all subsequent termite related inspections and treatments.

In relation to compensation should the rent be ceased whilst the property is undergoing repairs, I draw your attention to clause 14(b) and 19(d) that outlines DHAs position with holding of rents and the landlords insurance responsibilities.

Please be advised that DHA, as property manager, is happy to assist with the facilitation of the works on [REDACTED] behalf, however I must reiterate that the investigation and subsequent repair will be your client's responsibility.

I trust this response provides clarification in regard to the lease and responsibilities. If you require any further assistance, please feel free to contact me on 02 8836 5781.

Yours sincerely

[REDACTED]  
Shauna Ramrakha

**SYDNEY HOUSING  
MANAGEMENT CENTRE**

Level 13 Jessie Street Centre  
2-12 Macquarie Street Parramatta NSW 2150  
Locked Bag 5033 Parramatta NSW 2124  
Telephone: 139 DHA Fax: 02 6222 2223  
Email: info@dha.gov.au Internet: www.dha.gov.au

ABN 72 968 504 934



**McCABE PARTNERS**  
Lawyers

**RECEIVED**

12 MAR 2012

SYDNEY ( )

Our Ref: Sydney Office/ROR:mw:120021

9 March 2012

The Director  
Property Department  
Defence Housing Australia  
Level 13  
2-12 Macquarie Street  
Jessie Street Centre  
Parramatta NSW 2150

**FAXED**

By Fax: 6222 2223

Dear Sir/Madam

**RE: [REDACTED] LEASE TO DEFENCE HOUSING  
AUSTRALIA – PROPERTY [REDACTED]**

We act for the Lessor, [REDACTED] and refer to the Lease between our client and Defence Housing Australia commencing on 28 May 2004.

We note that Clause 5 of the Lease provides as follows:

***“Management/Maintenance***

- (a) *DHA has responsibility for*
- (i) *management of the Property in accordance with the terms of this Lease, and*
  - (ii) *certain aspects (but not all) of repair and maintenance of the Property.*

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*(b) The nature and scope of these obligations are set out in clause 12 (Management) and clause 13 (Maintenance)."*

We further note that in consideration for assuming the above obligations DHA is paid a management/maintenance fee equivalent to a percentage of the rent payable.

Clause 12 of the Lease sets out DHA's management functions and we note that at Clause 12(b) those management functions include:

*"(v) Carrying out inspections of the Property at periodic intervals to identify repair and maintenance needs".*

Clause 13(a) of the Lease provides as follows:

*"(a) The intent of this Lease is that, except for those items which are specifically excluded from the area of DHA's responsibility by clause 13(d), DHA will carry out at its expense, in consideration of the Fee*

- (i) all repair and maintenance requirements for the Property, and*
- (ii) repair, and replacement where necessary, of fixed appliances forming part of the Property, such replacements to be of a standard no lower than the original item."*

We note that Clause 13(d) of the Lease provides that the responsibilities under the abovementioned Clause 13(a) do not include repair of structural damage unless the primary cause of the damage is a negligent or malicious act by DHA or its employees or agents or any occupant of the property.

We are instructed that DHA has from time to time arranged for Sherlock Pest Control to conduct pest inspections of the subject property and a pest inspection in November/December indicated the presence of termites and in December 2010 visible activity by termites was noted by the tenant. Subsequent investigations in January this year revealed further live termite damage.

Our client has been greatly concerned by these developments and arranged for her own building inspector, Acclaimed Building Consultancy to inspect the premises on 5 March 2012. The consultant has determined that repair of the damage will cost in the vicinity of \$80,000.00 to \$100,000.00.

He recommends an invasive inspection of the property with a carpenter present to provide an accurate quote of the likely cost of repairs.

It would appear that the damage that has been caused to our client's property falls within the ambit of Clause 13(d)(i) of the Lease. Consequently we respectfully submit that the cost of investigations and repairs should be borne by the Defence Housing Authority and our client should be compensated for loss of rent suffered by her as a consequence of the property being unsuitable for occupation during the carrying out of repair works.

As this is an urgent matter we look forward to receiving your response within 7 days.

Yours faithfully

**McCABE PARTNERS**

**Roslyn O'Reilly**  
**Solicitor**

99.



**McCABE PARTNERS**  
Lawyers

Our Ref: Sydney Office/ROR:mw:120021

26 April 2012

**E-MAILED**  
Date \_\_\_\_\_  
By \_\_\_\_\_

Ms Shauna Ramrakha  
Property & Tenancy Manager (North)  
Defence Housing Australia  
Level 13  
2-12 Macquarie Street  
Jessie Street Centre  
Parramatta NSW 2150

By email: shauna.ramrakha@dha.gov.au  
cc: david.boxwell@dha.gov.au

Dear Madam

**RE: [REDACTED] LEASE TO DEFENCE HOUSING  
AUSTRALIA – PROPERTY [REDACTED]**

We refer to your letter dated 19 April 2012 and in particular the second paragraph of your letter.

Please find attached our client's authority addressed to DHA and faxed on 15 December 2004 authorising DHA to pay insurance on our client's behalf and for regular termite inspections to be carried out. We are instructed that this authority was initiated by your Department. With respect, we are of the view that this action varies the terms of Clause 13.

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Our client is presently seeking Counsel's advice and we will be in touch with you again shortly.

Yours faithfully,

**McCABE PARTNERS**

  
**Roslyn O'Reilly**  
**Solicitor**

RECEIVED  
15 DEC 2004  
RICHMOND

**Advise of Change of Details**  
(Please complete relevant section details only)

Leased property address: [Redacted]

Lessor Name: [Redacted]

Home Address: [Redacted]

Mailing Address: [Redacted]

Telephone No. (w) [Redacted] (h) [Redacted]

(mobile) [Redacted] (fax) [Redacted]

(e-mail) [Redacted]

**Bank Details:**

Account Name: ..... *No change*

Organisation Name: .....

Branch: .....

Account Number: ..... BSB .....

**Insurance Details:**

Building ..... *No change* ..... Contents

Company .....

Policy No. ....

Due Date ..... *Aug 2005* .....

Would you like DHA to pay Insurance on your behalf?  Yes / No

If Yes, please advise your insurance company to send future accounts to DHA at: Accounts Payable, Defence Housing Authority, 26 Brisbane Ave Barton ACT 2600. *I will write and request this.*

**Instructions for termite inspections:**

Do you wish regular termite inspections to be carried out:  Yes / No

If Yes, would you like DHA to arrange a regular inspection for you and deduct this from your rent:  Yes / No

[Redacted]

RECEIVED  
11 DEC 2004  
RICHMOND

To: Kia Hologneau

From: [REDACTED]

Fax: [REDACTED]

Re: [REDACTED]



100.



**McCABE PARTNERS**  
Lawyers

**URGENT**

Our Ref: Sydney Office/ROR:mw:120021

2 May 2012

**E-MAILED**  
Date \_\_\_\_\_ By \_\_\_\_\_

Ms Shauna Ramrakha  
Property & Tenancy Manager (North)  
Defence Housing Australia  
Level 13  
2-12 Macquarie Street  
Jessie Street Centre  
Parramatta NSW 2150

By email: shauna.ramrakha@dha.gov.au  
cc: david.boxwell@dha.gov.au

Dear Madam

**RE: [REDACTED] LEASE TO DEFENCE HOUSING  
AUSTRALIA – PROPERTY [REDACTED]**

We refer to your letter dated 19 April 2012 and again in particular the second paragraph of your letter and now enclose a copy of your letter dated 20 June 2011 to our client. You will note that the third paragraph of that letter states as follows:

*"It is noted that DHA has not fulfilled its obligation to conduct the requested inspections annually and as a result 4 years were missed (2004, 2005, 2006 & 2008). As an act of good faith DHA will conduct the next 4 annual inspections at our cost and supply you with a copy of the report."*

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In your letter of 19 April 2012 you state *inter alia* that DHA's responsibilities do not extend to pest inspections. Would you please explain the reason why DHA is now denying responsibility to carry out pest inspections.

We refer to our previous correspondence and request that you provide us with copies of all correspondence between DHA and the pest inspector engaged by DHA, Sherlock Pest Control Pty Limited in relation to our client's property at [REDACTED]  
[REDACTED]

Further, we advise that our client is now making arrangements for her building expert to carry out an inspection of the property to itemise those parts of the property requiring repair as a consequence of the pest damage and further to provide a costing for the carrying out of those repairs. Please advise if DHA would like to have a representative attend that inspection. If so, please contact our client on 0412 283 593 as a matter of urgency.

Yours faithfully,

**McCABE PARTNERS**

[REDACTED]  
Roslyn O'Reilly  
Solicitor

20<sup>th</sup> June 2011

[REDACTED]

Dear [REDACTED]

**Re: Termite activity found at [REDACTED]  
2155**

We write to you regarding the recent termite activity identified at [REDACTED]  
[REDACTED] This activity was identified on 22nd  
December 2010 during one of our pest inspections.

This inspection found evidence of termite workings and/or damage to walls in the kitchen and bedroom 2. Upon detection of the termite activity DHA immediately contacted you with the recommendation from our contractor on treating the affected areas.

The recommended baiting system was installed on 8<sup>th</sup> January 2011. This system has been effective in eradicating the visible termite activity.

As noted from the termite report the following works will need to be considered as this may have been the termite entry point:

**Rear patio areas need to be accessed to ensure no termite activity. Non structural timbers within Slab edge is concealed and where possible the slab edge should be exposed at least 75mm as this can allow undetected termite entry.**

DHA will provide you with the costing to conduct the above bore scope investigations.

As the pending repair works are intrusive the current tenant will be relocating to another residence. DHA is currently assisting the tenant in locating another residence and once they have secured a property we intend to investigate the areas known to be affected as identified by the thermal imaging. This will involve the removal of the plasterboard wall sheets to expose the extent of the damage. This will enable our contractors to provide accurate costing on the work involved for rectification.

**PARRAMATTA HOUSING  
MANAGEMENT CENTRE**

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ABN 72 968 504 934

DHA is aware that a termite protection barrier was installed by Granitgard at the time of construction in February 2003. A copy of the warranty certificate is enclosed. The barrier had a warranty of five years and unfortunately as this expired before the detection of the termites in December 2010 there is no recourse against Granitgard.

During the course of the investigation it has been found that DHA were to conduct annual termite inspections on your behalf. Our records and the records supplied by yourself show that inspections have been conducted firstly in 2007 by the strata corporation and then by DHA from 2009 through to 2011.

It is noted that DHA has not fulfilled its obligation to conduct the requested inspections annually and as a result four years were missed (2004, 2005, 2006 & 2008). As an act of good faith DHA will conduct the next four annual inspections at our cost and supply you with a copy of the report.

As mentioned previously DHA will contact you once the tenant has relocated to determine the best way forward in repairing the current termite damage.

Should you wish to discuss the information above I may be contacted on 02 88365715.

Yours sincerely



**MATT ADAMS** | Property & Tenancy Manager  
Sydney East | Defence Housing Australia

Level 13, 2-12 Macquarie Street, Parramatta NSW 2150  
Tel: 02 88365715 | Fax: 02 6222 2223  
matthew.adams@dha.gov.au | [www.dha.gov.au](http://www.dha.gov.au)

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ABN 72 968 504 934



**McCABE PARTNERS**  
Lawyers

FAXED

Our Ref: Sydney Office/ROR:mw:120021

16 May 2012

**Matthew Adams**  
Defence Housing Australia  
Level 13

2-12 Macquarie Street  
Parramatta NSW 2150

**Fax: 6222 2223**

Dear Mr Matthew Adams

**RE: [REDACTED] LEASE TO DEFENCE HOUSING**  
**AUSTRALIA – PROPERTY [REDACTED]**  
**[REDACTED]**

We act for the Lessor [REDACTED]

Pursuant to *Section 11 of the Freedom of Information Act 1982*, our client requests access to, or a copy of Defence Housing Australia's file in relation to management of the above property, pursuant to the lease to Defence Housing Australia commencing 28 May 2004. Our request is made having regard to our client's dispute with Defence Housing Australia in relation to substantial pest damage to the above property.

Yours faithfully,  
**McCABE PARTNERS**

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**Roslyn O'Reilly**  
**Solicitor**



A Accredited Pest Control Pty Ltd T/As Mr PEST  
 PO Box 142 Edensor Park 2176  
 P 02 8783 8833 • F 02 8783 8811  
 E info@mrpest.com.au • W www.mrpest.com.au  
**PROMPT • PERSONAL • PROFESSIONAL**

May 10, 2012

Dave Boxwell  
 Maintenance Contract Manager/Technical Officer  
 Property & Tenancy  
 Defence Housing Australia  
 Locked Bag 5033  
 PARRAMATTA NSW 2150

Dear Dave,

RE: [REDACTED]

Further to your request and meeting with Joe at the property on Monday May 7, 2012, please find here our professional opinion regarding the termite damage sustained at this property between December 2010 to January 2012.

Regarding this property you have advised us:

1. Termites were detected originally in Dec 2010 in upstairs bedroom above window.
2. One above ground baiting station installed in Dec 2010 at upstairs bedroom where originally detected as original proposal given to owner to install external baiting stations which was rejected.
3. Baiting station monitored Jan 2011 which showed no activity. Monitored again for several months and in May 2011 Pest Control Co gave approval for investigative works to commence.
4. Further Termite Inspection report conducted October 2011 where no termites were detected.
5. Investigate works could not commence until Jan 2012 where live termites were detected. Entry point of termites was detected at garage slab junctions behind tiles and sub nest located in garage wall. All termite damage appears to emanate from these points.

In our opinion, from this information and our inspection of the property, it appears that adequate measures were not taken to:

- a) Inspect for further areas and/or the source of the termite infestation/entry into the home and
- b) Control the termite infestation.

*Regarding Point 1:*

The initial finding of the termites was at almost the highest point on the property being in an upstairs bedroom, above the window. Without the original inspection report we are unaware of the species located however, termites species present in NSW are predominately subterranean. **This means that the termites located in the upstairs bedroom had to come from below ground into the lower level of the home and then up to this location.** Finding termites this high up in a property indicates to any competent inspector that they **must** be in other areas below this level. There is no other way for them to access this location in the property.

*Regarding Point 2:*

After the inspection you advised us that only one above ground station was installed adjacent to the termite workings. Our inspection of the station (still available in the property) indicated that there was no feeding on this station. Whether the station was not placed in an optimum position, or the live termites (depending on species) had been disturbed too much and retreated from this area is hard to say without further evidence. We can state our opinion though that the placement of only one station with no further investigations to find the entry point or further workings was inadequate.

The rejection of the baiting system by the owner is unfortunate. Rejecting further treatment with such a serious infestation is questionable. This makes us doubt that the seriousness of finding the termites in this location was understood by the inspector and explained thoroughly to the owner of the property. However,

despite this rejection even installation of an external baiting system may not have been of any use. There termites were already within the property and not correctly located and baited. The chances of them finding the bait stations around the external perimeter of the property cannot be measured, but if this colony has an abundant food supply established within the property structure they may not forage around other grounds for other sources. Therefore they may not have located any of the external bait stations.

*Regarding Point 3:*

The monitoring of one station which was continually inactive is, in our opinion, inadequate. In our experience and procedures if we have a station located in an area where we have found extensive evidence of live termites (and we would consider this extensive evidence being located on the second level) we could not declare the baiting as successful. We would be questioning either the location of the bait, the number of bait stations used and/or the baiting method. We have had locations where bait stations have not been very successful and we have switched procedures to applying dust (Termidor) to the live termites and have then had success.

We would state again, in our opinion, finding live termites at this high point in the property indicated that they **must** be elsewhere in the property, later evidenced by the extensive damage located after January 2012. Lack of feeding on the station would indicate to us a problem with the baiting methods, **not** an indication that they have been successfully treated and investigative works could commence.

*Regarding Point 4 & 5:*


In light of the extensive damage and activity located in January 2012, our opinion would be that the inspection completed in October 2011 (and possibly previous inspections) was not thorough enough.

The entry point was finally located at the garage slab junction. As stated previously the location of the termites upstairs indicated they had to be elsewhere in the property as shown when the investigative works commenced. The correct use and placement of a moisture meter along this wall would have indicated a problem in this area and other areas downstairs such as the kitchen and lounge room. The extensive amount of workings in the walls, especially of the garage, and other areas in the property should have been picked up with a moisture meter and thorough inspection.

Overall after review of the supplied property history and inspection of the property and damage, we would conclude that in our professional opinion more detailed inspections and further effort/measures to locate and treat the active termites should have been exercised with this property. Should this property have been inspected and treated by our company we can confidently say that we would have questioned and evaluated the lack of bait uptake and pursued further investigative works to determine the location and entry point of the termites from the date of the original finding and would definitely have not declared the baiting successful after the use of only one station which had no further activity after placement.

Should you require any clarification or further information please contact myself on 0407 009 033 or the office on 8783 8833.

Thank you.



Joseph Roppolo

**Director**

A Accredited Pest Control Pty Ltd T/As Mr PEST

Licence No: 15-007049-003

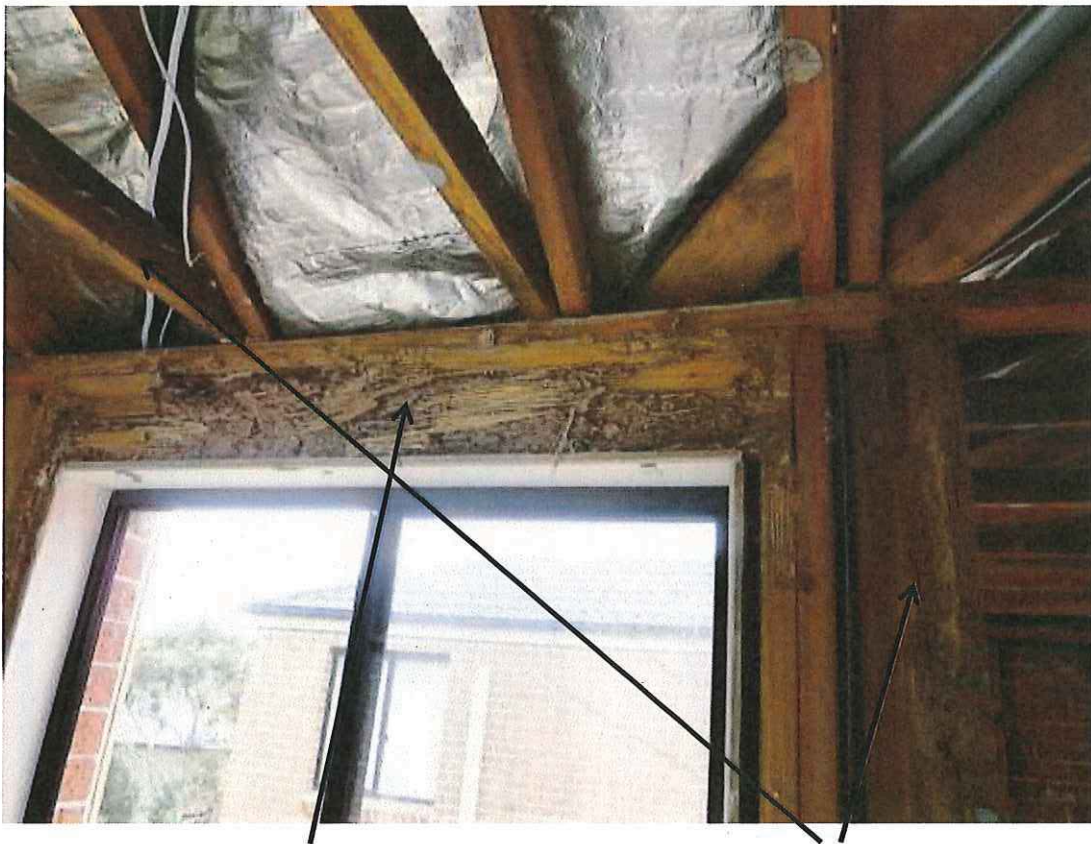
Pacific International Inspection Accreditation Number: 04319





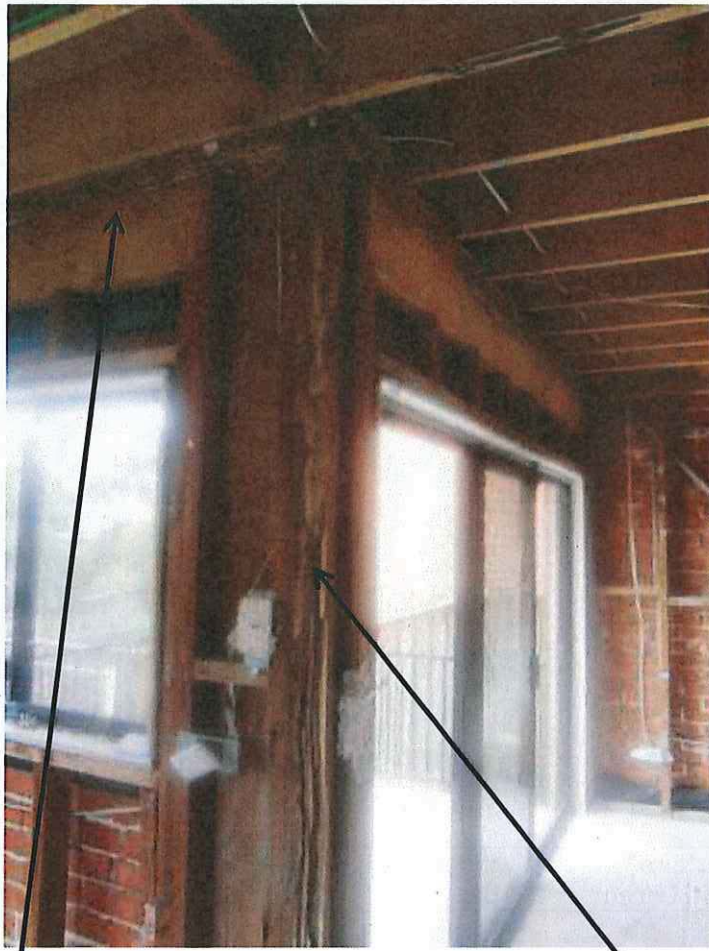
Damage to lintel above upstairs bedroom window, as originally located in December 2010

Damage located in studs and joists adjacent to areas where termites were originally located.



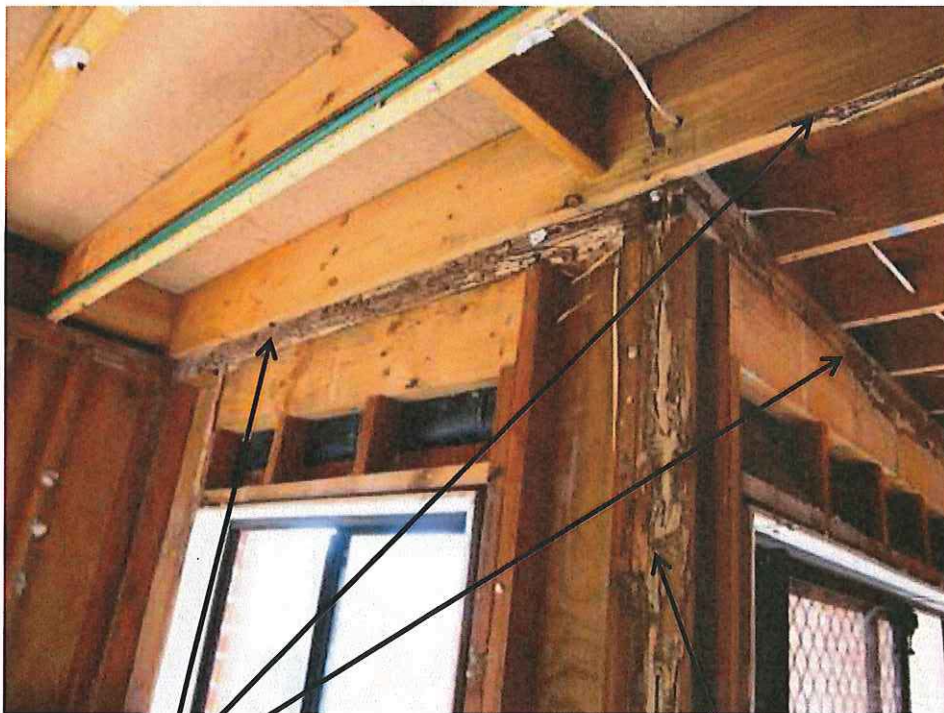
Damage to lintel above upstairs bedroom window, as originally located in December 2010

Damage located in studs and joists adjacent to areas where termites were originally located



Damage to top plate and beams below upstairs bedroom

Damage to studs below upstairs bedroom

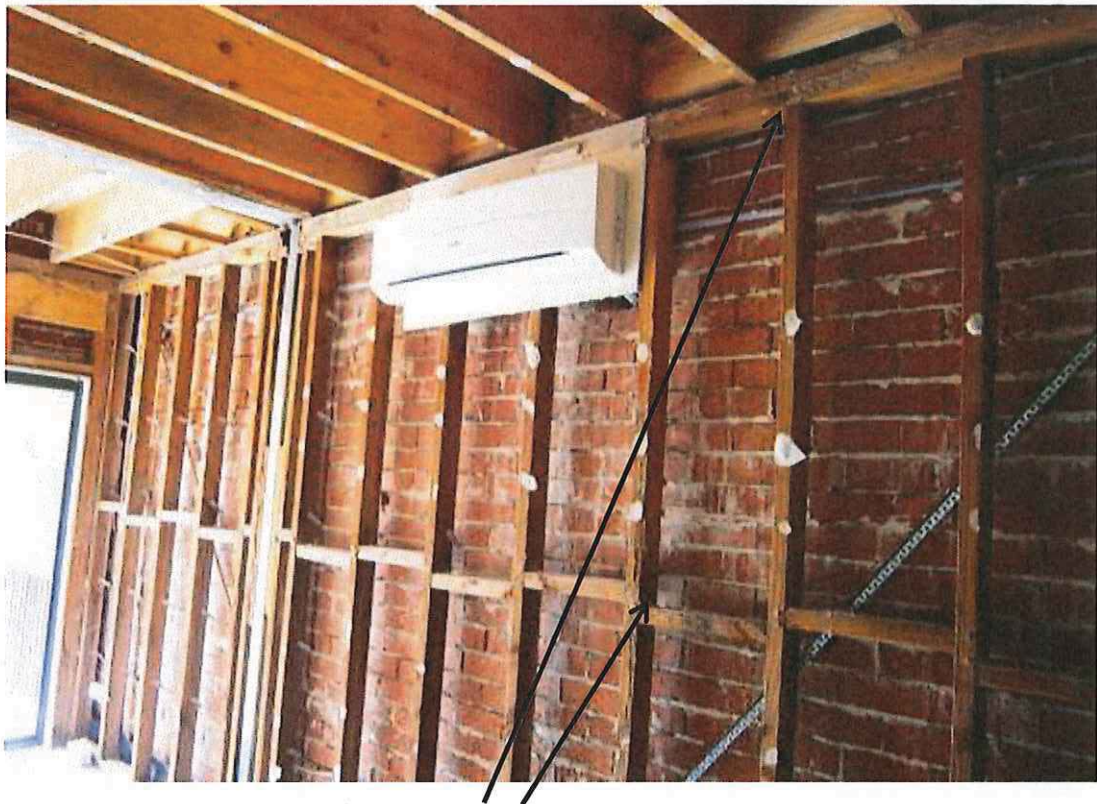


Damage to top plate and beams below upstairs bedroom

Damage to studs below upstairs bedroom



Damage to beam/window lintel on ground floor level      Damage to studs on ground floor level



Damage to studs and top plate in ground floor lounge room



Location of entry point at slab joint in garage



Closer view of location of entry point at slab joint in garage



Damage to studs close to entry/sub nest location point on ground floor

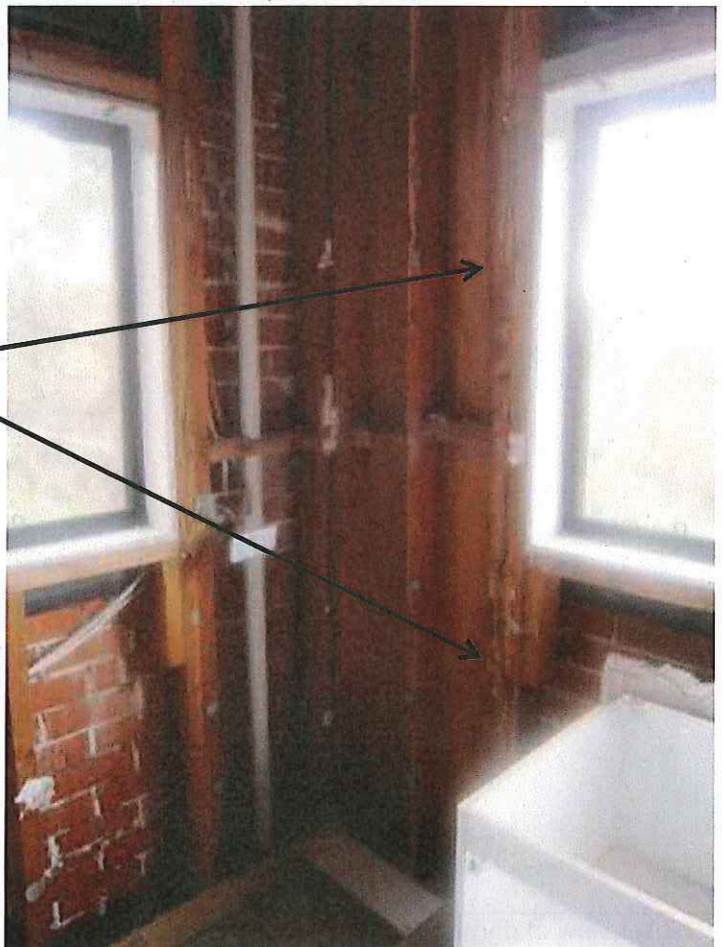
Location of sub nest showing easy access for inspection with moisture meter



Closer view of damage to studs close to entry/sub nest location point on ground floor. Shows travel up the stud and along the top beam.



Closer view of location of sub next adjacent to entry point in garage with evidence of damage in adjoining stud.



Damage to studs in kitchen on ground floor.



View of bushlands surrounding property, showing the close proximity of large trees to the property, making it high risk for termite infestation.

