



Customer
Service

Attn: Proper Officer
442 Petersham Pty Ltd (ACN 646 253 232)
18 Kingscott Place,
CASTLE HILL NSW 2154

Service: By Express Post and by email to george@premiercapital.com.au,
mohamed@premierconstruction.com.au and aadams@millsoakley.com.au

30 October 2023

Building Work Rectification Order

Section 33 of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020

442 Petersham Pty Ltd (ACN 646 253 232) is being given this Building Work Rectification Order (Order) in relation to **442 Parramatta Road, Petersham NSW 2049 (Lot 1, DP60786)** (the Development).

442 Petersham Pty Ltd is required to cause building work to be carried out to remediate the potential serious defect as set out in below in this Order.

Failure to comply with the requirements in this Order is a criminal offence.

Background

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious defect.
3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines the term “building element” by reference to the *Design and Building Practitioners Act 2020* (**DBP Act**). Section 4 of the Act defines the term “developer”. Section 6 of the Act provides the building work to which the Act applies. Relevant excerpts from sections 3, 4 and 6 of the Act and section 6 of the DBP Act are included as **Attachment A** to this order.

4. Matthew Press, Executive Director, Compliance & Dispute Resolution, is an authorised delegate of the Secretary of the Department.
5. **442 Petersham Pty Ltd** (ACN 646 253 232) are the developer of the residential apartment building known as **442 Parramatta Road, Petersham NSW 2049** (Lot 1, DP60786) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development comprises of the *erection of a 4-part, 5 storey mixed use development containing a ground floor commercial tenancy & 21 boarding rooms on the upper floors with associated parking.*
7. On 15 September 2023 authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matthew Press, under section 33 of the Act, require you **442 Petersham Pty Ltd** to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each respective serious defect described in columns 1, 2 and 3 of Table 1. Each requirement must be complied with by the time set out in column 5 of Table 1:

Table 1: Requirements in respect of Serious Defects

Serious Defect Reference No.	Location of Serious Defect	General description of Serious Defect	Requirement under section 33(2)(a) & (b) to carry out the following specified building work	Time for compliance with Requirement (commencing from the date this order is given)
1.	All wet areas (bathrooms)	The floor wastes in the wet areas are higher than parts of the wet area floor level which will prevent water from draining to the floor waste.	The falls in the wet area substrates and the falls in the wet area floor finishes are required to be constructed in accordance with clauses 2.3.1, 2.3.2 and 2.3.3 of AS 3740:2021.	3 months
2.	The steel beams which are externally exposed above the existing building and extend horizontally from the existing building to the new boarding houses.	The external steel beams are exposed to the weather and have been encased with a fire-resistance plasterboard which is not weatherproof. The fire-resistant plasterboard has not been installed in accordance with the manufacturer's tested system.	The external steel beams are required to comply with Specification C1.1 of the National Construction Code Building Code of Australia Volume One (NCC) and/or be fire-rated with a building product which satisfies the evidence of suitability requirements of Part A5 the NCC.	3 months
3.	The outside of the western wall of the building where the existing building meets the new building.	A large vertical crack was observed in the masonry and the masonry wall no longer appears to be plumb.	The masonry is required to comply with AS3700:2018.	3 months
4.	Fire doors throughout the building.	The gaps between the fire door frames and the internal walls have been filled with expandable foam.	Fire doors are required to be installed in accordance with AS 1905.1.	3 months

9. I, Matthew Press, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you **442 Petersham Pty Ltd** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

Table 2: Requirement in relation to specified standard.

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work	Requirement	Time for compliance with Requirement from the date of issue of this order
1.	All wet areas (bathrooms)	The floor wastes in the wet areas are higher than parts of the wet area floor level which will prevent water from draining to the floor waste.	Provide adequate damp and weatherproofing to maintain the amenity of the occupants.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit regulated designs and design compliance declarations for all wet areas via email to michael.hall@customerservice.nsw.gov.au.</p> <p>The regulated designs must be prepared and certified by persons authorised under the <i>Design and Building Practitioners Act 2020</i>.</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the regulated designs and make good any resultant consequential damage.</p>	<p>Stage 1 1 month</p> <p>Stage 2 3 months</p>

2.	The steel beams which are externally exposed above the existing building and extend horizontally from the existing building to the new boarding houses.	The external steel beams are exposed to the weather and have been encased with a fire-resistance plasterboard which is not weatherproof. The fire-resistant plasterboard has not been installed in accordance with the manufacturer's tested system.	Provide the structural stability required during a fire and ensure the building has the elements to avoid the spread of fire.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a report from a fire engineer and a structural engineer to detail how the steel beams will satisfy the requirements of the National Construction Code Building Code of Australia Volume One.</p> <p>The report is to be prepared by a fire engineer who is authorised under the <i>Design and Building Practitioners Act 2020</i>. A copy of the report is to be emailed to michael.hall@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the regulated designs and make good any resultant consequential damage.</p>	<p>Stage 1 1 month</p> <p>Stage 2 3 months</p>
3.	The outside of the western wall of the building where the existing building meets the new building.	A large vertical crack was observed in the masonry and the masonry wall no longer appears to be plumb.	The building, during construction and use, is to be provided with appropriate degrees of reliability.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a report from a structural engineer to detail how the masonry wall will be rectified to meet the requirements of Section B of the NCC.</p> <p>The report is to be prepared by a structural engineer who is authorised under the <i>Design and Building Practitioners Act 2020</i>. A copy of the report is to be emailed to michael.hall@customerservice.nsw.gov.au</p>	<p>Stage 1 1 month</p>

				Stage 2 Carry out the work to rectify the serious defect in accordance with the engineer's report and make good any resultant consequential damage.	Stage 2 3 months
4.	Fire doors throughout the building.	The gaps between the fire door frames and the internal walls have been filled with expandable foam.	Provide elements to avoid and resist the spread of fire.	The fire-resistant doorsets are to be installed in accordance with clause 3.4 of the National Construction Code Building Code of Australia Volume One and AS 1905.1.	3 months

Duration of this Order

10. This Order remains in force until it is revoked by the Secretary
11. This Order is given on the date that is listed above in accordance with section 67 of the Act.

Matthew Press
**Executive Director Compliance & Dispute Resolution,
BRD Compliance & Dispute
Resolution, NSW Department of
Customer Service**

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to this Order issued to **442 Petersham Pty Ltd** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020)* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Matthew Press, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - a) Construction Certificate number 20/0596-01 dated 27 May 2021 issued by Maurice Frexias of DixGardner Group Pty Ltd.
 - b) Modified Construction Certificate number 20/0596-02 dated 29 June 2023 issued by Helen Daskalakis of East Coast Building Approvals Group Pty Ltd,
 - c) The inspection carried out by authorised officers on the 15 September 2023.
4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

Table 3 – Basis of reasonable belief as to serious defects

Serious Defect Reference No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
1.	Waterproofing	Falls in the substrate and floor finishes have not been provided.	To protect the structure of the building and to maintain the amenity of the occupants, water must be prevented from penetrating behind fittings, linings and into	FP1.7 and F1.7 of the National Construction Code Building Code of Australia Volume One and AS3740.

			concealed spaces.	
2.	Fire Safety, Structure	Steel beams are not structurally reliable.	<p>A building, during construction and use, must be provided with the appropriate degrees of reliability.</p> <p>A building must have elements to maintain structural stability during a fire and to avoid the spread of fire.</p>	BP1.1, BP1.2, CP1, CP2 and Specification C1.1 of the National Construction Code Building Code of Australia Volume One.
3.	Structure	Masonry is not structurally reliable.	A building, during construction and use, must be provided with the appropriate degrees of reliability.	BP1.1 and BP1.2 of the National Construction Code Building Code of Australia Volume One and AS3700.
4.	Fire safety	Fire doorsets have not been installed in accordance with a tested system.	A building must have elements which will avoid and resist the spread of fire.	CP2, CP8, C3.4 and Specification C3.4 of the National Construction Code Building Code of Australia Volume One.

Consideration of written representations

- I have considered the representations pursuant to section 47 of the Act made for **442 Petersham Pty Ltd** dated 13 October 2023 by Messrs Mills Oakley Solicitors including the attachments.

Why is it appropriate to give the Building Work Rectification Order?

- Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defects and I find that it is appropriate, in the

exercise of my discretion, to make the Order to carry out the specified actions in the Order within the time specified in the Order.

7. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly and cause time delay; and I note further that 442 Petersham Pty Ltd is undertaking certain works in relation to some of the serious defects. I give these considerations moderate weight. However, the cost to the developer and impact on the programme must be balanced against the benefit to the eventual occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.
8. I am of the view that the periods above for Defect 1 through 4 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.

Attachment A

Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

3 Definitions

(1) In this Act —

approved plans, in relation to building work, means the following —

- (a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,
- (b) regulated designs under the *Design and Building Practitioners Act 2020*,
- (c) any other plans prescribed by the regulations for the purposes of this definition.

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

Building Commissioner means the Building Commissioner referred to in section 61.

building element has the same meaning as in the *Design and Building Practitioners Act 2020*, and includes any element of a building that is prescribed by the regulations for the purposes of this definition.

building product means any product, material or other thing that is, or could be, used in a building.

building work — see section 5.

building work rectification order — see section 33.

class of building means a building of that class as recognised by the *Building Code of Australia*.

completion, in relation to building work, means the date that the occupation certificate for the building or part of a building to which the building work relates was issued.

Department means the Department of Customer Service.

developer — see section 4.

expected completion amendment notice — see section 8.

expected completion notice — see section 7.

expected date — see section 7(2).

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

occupation certificate means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*.

owners corporation for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

prohibition order — see section 9.

rectification bond — see section 28.

residential apartment building means a class 2 building within the meaning of the *Building Code of Australia*, and includes any building containing a part that is classified as a class 2 component, but does not include any building or part of a building excluded from this definition by the regulations.

Secretary means the Secretary of the Department.

serious defect, in relation to a building, means —

- (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
- (b) a defect in a building product or building element that —
 - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
 - (ii) causes or is likely to cause —
 - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
- (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (d) the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

stop work order — see section 29.

strata building means a building containing a lot or part of a lot that is the subject of a strata scheme.

strata plan has the same meaning as in the *Strata Schemes Development Act 2015*.

strata scheme has the same meaning as in the *Strata Schemes Development Act 2015*.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

4 Meaning of “developer”

For the purposes of this Act, a **developer**, in relation to building work, means any of the following persons, but does not include any person excluded from this definition by the regulations —

- (a) the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out,
- (b) if the building work is the erection or construction of a building or part of a building — the owner of the land on which the building work is carried out at the time the building work is carried out,
- (c) the principal contractor for the building work within the meaning of the *Environmental Planning and Assessment Act 1979*,
- (d) in relation to building work for a strata scheme — the developer of the strata scheme within the meaning of the *Strata Schemes Management Act 2015*,
- (e) any other person prescribed by the regulations for the purposes of this definition.

6 Act applies only to residential apartment building work

- (1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that —
 - (a) is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, or is required to be authorised by a construction certificate or complying development certificate, and
 - (b) has not been completed or has been completed within the period of 10 years before the exercise of that function.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the *Building Code of Australia*).

Design and Building Practitioners Act 2020.

6 Building elements

- (1) For the purposes of this Act, building element means any of the following —
 - (a) the fire safety systems for a building within the meaning of the Building Code of Australia,
 - (b) waterproofing,
 - (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),

- (d) a component of a building that is part of the building enclosure,
 - (e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the Building Code of Australia,
 - (f) other things prescribed by the regulations for the purposes of this section.
- (2) The regulations may exclude things from being building elements for the purposes of this Act.
- (3) In this section —

above grade wall means a wall above the level of the ground surrounding a building.

below grade wall means a wall below the level of the ground surrounding a building.

building enclosure means the part of the building that physically separates the interior environment of the building from the exterior environment, including roof systems, above grade and below grade walls (including windows and doors).