

Attn. Proper Officer
AB Developments (Australia) Pty Ltd (ACN 150 398 235)
Shop 2, 128-132 Woodville Road, Merrylands
NSW 2160

CAS Ref: 11173927

Via email:

21 December 2023

Stop Work Order

Section 89 of the *Design and Building Practitioners Act 2020*

AB Developments (Australia) Pty Ltd (ACN 150 398 235) (**AB Developments**) is issued with this Stop Work Order (the **Order**) in relation to a Class 2 and Class 7a residential development located at 40-42a Park Road, Auburn NSW 2144 (Lot 30 DP 75014, Lot 4 DP 440764 & Lot 1 DP 798616) (the **Development**).

AB Developments is required to ensure all work at the Development stops by **5.00 p.m. on 21 December 2023**.

Please read the Stop Work Order carefully and comply with the conditions; and also make the Development site safe.

Failure to comply with this Order is an offence and may result in criminal proceedings.

Background

1. The Department of Customer Service (the **Department**) administers the *Design and Building Practitioners Act 2020* (the **Act**) and the *Design and Building Practitioners Regulation 2021* (the **Regulations**).
2. The Development, located at 40-42a Park Road, Auburn NSW 2144 (Lot 30 DP 75014, Lot 4 DP 440764 & Lot 1 DP 798616), is a Class 2/7a 6-storey building and contains 34 residential units over 2 level of basement car parking (the **Building**).
3. Two Construction Certificates have been issued in relation to Development and relevant building work has commenced under each:

- a. The *Construction Certificate CC202242PAR-ST1* under application CFT-124329 (22 September 2022) for stage 1- bulk excavation and earthwork (piling) only (the **CC1**); and
 - b. The *Construction Certificate CC202242PAR-ST2* under application CFT-266510 (2 March 2023) for stage 2- Construction of 5 storey residential flat building comprising 34 units above 2 levels of basement carparking (the **CC2**).
4. AB Developments is the building practitioner in respect of the Development pursuant to section 7 of the Act and is the principal contractor and a person carrying out the work at the Development for the purposes of section 89(1)(a) of the Act.

Power to Stop Work

5. Under section 89(2) of the Act, the Secretary of the Department or their authorised delegate may order a person carrying out building work, professional engineering work or specialist work (**the Work**) or the owner of the land on which the Work is being carried out to ensure that work stops at the Site if the Secretary forms the opinion that:
- a. the Work is, or is likely to be, carried out in contravention of this Act, and
 - b. the contravention could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates or significant damage to property.
6. I, Matthew Whitton, Director Building Practitioner Compliance, Building Commission NSW, Department of Customer Service, am a duly authorised delegate of the Secretary for the purposes of section 89 of the Act.

Requirements of the Act

7. Under section 4 of the Act, the term “building work” relevantly means work involved in, or involved in coordinating or supervising work involved in, the construction of a building of a class or type prescribed by the Regulations for the purposes of this definition. Clause 12 of the Regulations states that a building is prescribed for the purposes of section 4 of the Act if the building, or part of the building, is a class 2 building or class 3 building or class 9c building.
8. Under section 5(1) of the Act, a regulated design is a design that is prepared for a building element for building work, a design that is prepared for a performance solution for building work (including a building element), or any other design of a class prescribed by the Regulations that is prepared for building work.
9. Clause 3A of the Regulation defines the term ‘*construction issued regulated design*’:
- (1) *In this Regulation, construction issued regulated design means a regulated design for which a design compliance declaration is provided that —*
 - (a) *contains the necessary detail to produce building work that would achieve compliance with the Building Code of Australia, and*

- (b) can be used by a building practitioner to carry out the work in accordance with the regulated design and the Building Code of Australia.*
- (2) In subclause (1)(a), the necessary detail includes —*
- (a) the proposed dimensions of the completed building, and*
 - (b) the characteristics and materials comprising the proposed building, and*
 - (c) the location of the building elements and systems proposed to be built.*
- (3) However, a reference in subclause (2)(a) or (b) to a building is, in relation to a construction issued regulated design for building work carried out under more than 1 construction certificate, a reference to a part of the building to which the construction certificate relates.*
- Note —*
See the Act, section 4(3), which provides that a reference to a building includes a reference to part of a building.
- (4) In addition to subclauses (1)(a) and (2), a construction issued regulated design for building work carried out under more than 1 construction certificate must, as far as reasonably practicable, integrate details of other aspects of the building work to which the design relates.*

10. Under section 6(1)(a) of the Act, a building element includes:
- a. the fire safety systems for a building within the meaning of the *Building Code of Australia* (the **BCA**);
 - 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 BCA;
 - f. other things prescribed by the Regulations for the purposes of this section.
11. Under section 19 of the Act, a building practitioner must not, except with reasonable excuse, carry out any part of building work for which a regulated design is to be used unless
- a. the practitioner has obtained a design from a registered design practitioner for the work and a design compliance declaration for the design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
 - b. the declaration states that the design complies with the requirements of the BCA and other applicable requirements prescribed for the purposes of section 8(1) of the Act.
12. Section 20(2) of the Act relevantly states:

- (2) *A building practitioner who does building work must take all reasonable steps to ensure that, if the building work (in relation to a building element or performance solution) is to be varied from a regulated design for the building element or performance solution, before the varied building work commences-*
- (a) *a design with the variation is prepared by a registered design practitioner, and*
 - (b) *...*
 - (c) *a design compliance declaration is obtained for the varied design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates*
13. Under section 107(2)(e) of the Act, the regulations may make provision with respect to the lodging of copies of designs and compliance declarations electronically or otherwise with the Department or another person approved by the Minister.
14. Under section 107(2)(f) of the Act, the regulations may make provision with respect to the notice to registered practitioners of matters affecting the circumstances when compliance declarations are to be provided.
15. Under clause 16 of the Regulations, for the purposes of section 107(2)(e) of the Act, a building practitioner must provide required documents for the building work to which the construction certificate relates to the Secretary in the approved way before commencing building work. Required documents means:
- a. copies of the construction issued regulated designs for the building work,
 - b. copies of the design compliance declarations, made by a suitably authorised registered design practitioner for each of the construction issued regulated designs.
16. The *Regulated Design Guidance Material*, approved by the Secretary of the Department pursuant to cl 9(1)(c) of the Regulations, is material that is required to be complied with by registered design practitioners when designing relevant Building Element(s) for relevant Building Work and therefore forms part of the Construction Issued Regulated Design.
17. The Dictionary to the Regulations defines the term ‘*approved way*’:
- ‘*approved way*’ as lodgement on the NSW planning portal or, if the registered practitioner is unable to access the portal, provision of the document to the Secretary

Work occurring or likely to be carried out at the Development

18. The following building work is occurring or likely to be carried out at the Development:
- a. Building works under the CC1
 - b. Building works under the CC2
- (the **Works**)

Documents for the Development

19. Beginning 17 October 2023, authorised officers under section 73 of the Act inspected the

CC1 and CC2 that had been issued and were available on the NSW Planning Portal and observed that:

- a. No Construction Issued Regulated Designs (**CIRDs**) and Design Compliance Declarations (DCDs) were lodged on the NSW planning portal in accordance with the Regulation for any works relating to CC1 as required by the Act and Regulation.
- b. No CIRDs and DCDs were lodged on the NSW planning portal in accordance with the Regulation for any works relating to CC2 as required by the Act and Regulation.
- c. No CIRDs and DCDs for passive fire protection, including protection of penetrations, were lodged on the NSW planning portal in accordance with the Regulation.
- d. No structural post-tensioning CIRDs and DCDs were lodged on the NSW planning portal in accordance with the Regulation.
- e. No balustrades CIRDs and DCDs were lodged on the NSW planning portal in accordance with the Regulation.
- f. No wall framing CIRDs and DCDs were lodged on the NSW planning portal in accordance with the Regulation.
- g. The following documents relating to Architectural designs have not been uploaded with DCDs as required by the Act and Regulation:

<i>Drawing no.</i>	<i>Drawing title</i>	<i>Revision</i>	<i>Date</i>
CC - 000	Cover Page	L	01.02.2023
CC - 110	Site Plan	L	01.02.2023
CC - 200	Basement 2 - Over All	L	01.02.2023
CC - 201	Basement 1 — Over All	L	01.02.2023
CC - 202	Ground Floor Plan — Over All	L	01.02.2023
CC - 203	First Floor Plan - Over All	L	01.02.2023
CC - 204	Second Floor Plan - Over All	L	01.02.2023
CC - 205	Third Floor Plan — Over All	L	01.02.2023
CC - 206	Fourth Floor Plan — Over All	L	01.02.2023
CC - 207	Fifth Floor Plan - Over All	L	01.02.2023
CC - 208	Roof Floor Plan - Over All	L	01.02.2023
CC - 209	Basement 2 — Dimension	L	01.02.2023
CC - 210	Basement 1 — Dimension	L	01.02.2023
CC - 211	Ground floor plan - Dimension	L	01.02.2023
CC - 212	First Floor Plan - Dimension	L	01.02.2023
CC - 213	Second Floor Plan - Dimension	L	01.02.2023
CC - 214	Third Floor Plan — Dimension	L	01.02.2023
CC - 215	Fourth Floor Plan — Dimension	L	01.02.2023
CC - 216	Fifth Floor Plan - Dimension	L	01.02.2023
CC - 217	Roof Floor Plan - Dimension	L	01.02.2023
CC - 218	Basement 2 - Setout	L	01.02.2023
CC - 219	Basement 1 — Setout	L	01.02.2023
CC - 220	Ground Floor Plan — Setout	L	01.02.2023
CC - 221	First Floor Plan - Setout	L	01.02.2023
CC - 222	Second Floor Plan - Setout	L	01.02.2023
CC - 223	Third Floor Plan — Setout	L	01.02.2023
CC - 224	Fourth Floor Plan — Setout	L	01.02.2023
CC - 225	Fifth Floor Plan - Setout	L	01.02.2023
CC - 226	Roof Floor Plan - Setout	L	01.02.2023
CC - 227	Basement 2 - RCP	L	01.02.2023
CC - 228	Basement 1 - RCP	L	01.02.2023
CC - 229	Ground Floor Plan — RCP	L	01.02.2023
CC - 230	First Floor plan - RCP	L	01.02.2023
CC - 231	Second Floor Plan - RCP	L	01.02.2023

Drawing no.	Drawing title	Revision	Date
CC - 232	Third Floor Plan – Setout	L	01.02.2023
CC-233	Fourth Floor Plan – RCP	L	01.02.2023
CC-234	Fifth Floor Plan - RCP	L	01.02.2023
CC -235	Roof Floor Plan	L	01.02.2023
CC-300	Elevations 01	L	01.02.2023
CC-301	Elevations 02	L	01.02.2023
CC-400	section AA	L	01.02.2023
CC-401	Section BB	L	01.02.2023
CC-402	Section CC	L	01.02.2023
CC-500	Details - Adaptable Units	L	01.02.2023
CC-501	General Wet Area Details	L	01.02.2023
CC-502	Construction Details 1	L	01.02.2023
CC-503	Construction Details 2	L	01.02.2023
CC-504	Core Setout 1	L	01.02.2023
CC-505	Core Setout 2	L	01.02.2023
CC-506	Romps Details / sections	L	01.02.2023
CC-507	Doors and Windows Schedule	L	01.02.2023
CC-508	Acoustic General Notes	L	01.02.2023
CC-509	BASIX Requirements	L	01.02.2023

(Architectural Designs)

- h. The following documents related to Structural designs have not been uploaded with DCDs as required by the Act and Regulation:

Drawing no.	Drawing title	Revision	Date
S000	GENERAL NOTES	D	26.07.2022
S010	SHORING NOTES	C	26.07.2022
S100	SHORING AND BULK EXCAVATION PLAN AND DETAILS	D	26.07.2022
S101	CAPPING BEAM PLAN AND DETAILS	D	26.07.2022
S102	SHORING DETAILS SHEET 1 OF 2	C	26.07.2022
S103	SHORING DETAILS SHEET 2 OF 2	C	26.07.2022
S104	SHORING ELEVATIONS SHEET 1 OF 2	C	26.07.2022
S100	SHORING ELEVATIONS SHEET 2 OF 2	C	26.07.2022
S106	SHORING SECTIONS SHEET 1 OF 6	C	26.07.2022
S107	SHORING SECTIONS SHEET 2 OF 6	C	26.07.2022
S108	SHORING SECTIONS SHEET 3 OF 6	C	26.07.2022
S109	SHORING SECTIONS SHEET 4 OF 6	C	26.07.2022
S110	SHORING SECTIONS SHEET 5 OF 6	C	26.07.2022
S111	SHORING SECTIONS SHEET 6 OF 6	C	26.07.2022
S202	COLUMN DETAILS AND TYPICAL TYPES	C	23.09.2022
S203	COLUMN SCHEDULE	C	23.09.2022
S204	STAIRS AND TYMCAL WALLS DETAILS	C	23.09.2022
S205	LIFT DETAILS	E	16.12.2022
S206	RAMP 1 SLAB AND REINFORCEMENT PLAN AND SECTION DETAILS	D	16.12.2022
S300	BASEMENT 1 PLAN AND DETAILS	F	16.12.2022
S301	BASEMENT 1 SECTIONS AND DETAILS	C	05.12.2022
S302	BASEMENT 1 BOTTOM REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S303	BASEMENT 1 TOP REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S304	RAMP 2 SLAB AND REINFORCEMENT PLAN AND SECTION DETAILS	D	16.12.2022
S400	GROUND FLOOR PLAN AND DETAILS	F	16.12.2022
S401	GROUND FLOOR LOADING PLAN AND DETAILS	E	16.12.2022
S402	GROUND FLOOR SECTION PLAN AND DETAILS SHEET 1 OF 2	E	16.12.2022
S403	GROUND FLOOR SECTION PLAN AND DETAILS SHEET 2 OF 2	D	16.12.2022
S410	OSD TANK BASE SLAB AND REINFORCEMENT PLAN	E	16.12.2022

Drawing no.	Drawing title	Revision	Date
S000	GENERAL NOTES	F	23.09.2022
S010	SHORING NOTES	F	16.12.2022
S100	SHORING AND BULK EXCAVATION PLAN AND DETAILS	F	16.12.2022
S101	CAPPING BEAM PLAN AND DETAIL	E	12.08.2022
S102	SHORING DETAILS SHEET 1 OF 2	D	12.08.2022
S103	SHORING DETAILS SHEET 2 OF 2	D	12.08.2022
S104	SHORING ELEVATIONS SHEET 1 OF 2	F	16.12.2022
S100	SHORING ELEVATIONS SHEET 2 OF 2	F	16.12.2022
S106	SHORING SECTIONS SHEET 1 OF 6	F	16.12.2022
S107	SHORING SECTIONS SHEET 2 OF 6	F	16.12.2022
S108	SHORING SECTIONS SHEET 3 OF 6	F	16.12.2022
S109	SHORING SECTIONS SHEET 4 OF 6	F	16.12.2022
S110	SHORING SECTIONS SHEET 5 OF 6	F	16.12.2022
S111	SHORING SECTIONS SHEET 6 OF 6	F	16.12.2022
S200	BASEMENT 2 PLAN AND DETAILS	F	16.12.2022
S201	BASEMENT 2 SLAB DETAILS	D	16.12.2022
S411	OSD TANK LID SLAB AND REINFORCEMENT PLAN	D	16.12.2022
S412	OSD TANK SECTIONS AND DETAILS	D	16.12.2022
S500	LEVEL 1 SLAB PLAN AND DETAILS	F	16.12.2022
S501	LEVEL 1 SLAB SECTION PLAN AND DETAILS	E	16.12.2022
S502	LEVEL 1 BOTTOM REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S503	LEVEL 1 TOP REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S600	LEVEL 2 SLAB PLAN AND DETAILS	F	16.12.2022
S601	LEVEL 2 SLAB SECTION PLAN AND DETAILS	E	16.12.2022
S602	LEVEL 2 BOTTOM REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S603	LEVEL 2 TOP REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S700	LEVEL 3 SLAB PLAN AND DETAILS	F	16.12.2022
S701	LEVEL 3 SLAB SECTION PLAN AND DETAILS	E	16.12.2022
S702	LEVEL 3 BOTTOM REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S703	LEVEL 3 TOP REINFORCEMENT PLAN AND DETAILS	C	05.12.2022
S800	LEVEL 4 SLAB PLAN AND DETAILS	F	16.12.2022
S801	LEVEL 4 SLAB SECTION PLAN AND DETAILS	E	16.12.2022
S802	LEVEL 4 BOTTOM REINFORCEMENT PLAN AND DETAILS	B	23.09.2022
S803	LEVEL 4 SHEAR REINFORCEMENT PLAN AND DETAILS	B	23.09.2022
S804	LEVEL 4 TOP REINFORCEMENT PLAN AND DETAILS	B	23.09.2022
S900	LEVEL 5 SLAB PLAN AND DETAILS	F	16.12.2022
S901	LEVEL 5 SLAB SECTION PLAN AND DETAILS	E	16.12.2022
S902	LEVEL 5 BOTTOM REINFORCEMENT PLAN AND DETAILS	B	23.09.2022
S903	LEVEL 5 TOP REINFORCEMENT PLAN AND DETAILS	B	23.09.2022
S1000	ROOF SLAB PLAN AND DETAILS	F	16.12.2022
S1001	ROOF SECTION PLAN AND DETAILS	E	16.12.2022
S1002	ROOF BOTTOM REINFORCEMENT PLAN AND DETAILS	B	23.09.2022
S1003	ROOF TOP REINFORCEMENT PLAN AND DETAILS	B	23.09.2022

(Structural Designs)

- i. The following documents relating to Stormwater designs have not been uploaded with DCDs as required by the Act and Regulation:

Drawing no.	Drawing title	Revision	Date
SW100	GENERAL NOTES	03	16.01.2023
SW101	SPECIFICATION SHEET	03	16.01.2023
SW200	BASEMENT 2 FLOOR PLAN	03	16.01.2023
SW201	BASEMENT 1 FLOOR PLAN	03	16.01.2023
SW202	GROUND FLOOR PLAN	03	16.01.2023
SW300	DETAILS SHEET 01 of 02	03	16.01.2023
SW301	DETAILS SHEET 02 of 02	03	16.01.2023
SW400	EROSION AND SEDIMENT CONTROL	03	16.01.2023

(Stormwater Designs)

- j. The following documents relating to Mechanical designs have not been uploaded with DCDs as required by the Act and Regulation:

Drawing no.	Drawing title	Revision	Date
M1	TITLE SHEET, LEGEND, NOTES AND SCHEDULES	1	31.01.2023
M2	SCHEDULES	1	31.01.2023
M3	BASEMENT 2 PLAN	1	31.01.2023
M4	BASEMENT 1 PLAN	1	31.01.2023
M5	GROUND FLOOR PLAN	1	31.01.2023
M6	LEVEL 1 PLAN	1	31.01.2023
M7	LEVEL 2 PLAN	1	31.01.2023
M8	LEVEL 3 PLAN	1	31.01.2023
M9	LEVEL 4 PLAN	1	31.01.2023
M10	LEVEL 5 PLAN	1	31.01.2023
M11	ROOF PLAN	1	31.01.2023
M12	DETAILS	1	31.01.2023
M13	DETAILS AND EXTRACT FROM FIRE ENGINEERING REPORT	1	31.01.2023
M14	DETAILS	1	31.01.2023
M15	MECHANICAL SWITCHBOARD SUMMARY AND DETAILS	1	31.01.2023
M16	MECHANICAL SWITCHBOARD DETAILS	1	31.01.2023

(Mechanical Designs)

- k. The following documents relating to Facade engineering designs have not been uploaded with DCDs as required by the Act and Regulation: documents comprising of the following:
- Façade – Wind Report (Report dated 4 March 2022)*
 - Façade – BCA performance solution (Report dated 31 May 2022)*
 - Design Compliance Declaration – Façade (dated 31 May 2022)*

(Facade Engineering Designs)

20. On 7 November 2023, authorised officers under section 73 of the Act commenced an audit pursuant to section 92(4) of the Act. The audit is ongoing as of the date of this Notice.

Inspection of Development

21. On 17 October 2023, an authorised officer inspected the Development and observed that the building work was being carried out at the Development.

Architectural Design Documents

22. The Architectural Design documents do not satisfy the definition of a CIRD under clause 3A of the Regulations as they do not contain the necessary detail to produce building work that would achieve compliance with the BCA and are not in accordance with the Regulated Design Guidance Material as approved by the Secretary of the Department pursuant to clause 9(1)(c) of the Regulations for the following reasons:
- No CIRDs and DCDs have been provided for set out details of shoring piles, columns,

structural walls, penetrations, and the concrete slab in the Architectural documents for CC1.

- b. No CIRDs and DCDs have been provided for the passive fire safety system.
- c. Not all the required details on the waterproofing of the wet areas, namely the characteristics and materials comprising the proposed building, have been provided.
- d. Not all the required details on weatherproofing of the external walls, namely construction sections and details in accordance with Hebel and Axon manufacturers technical guide, have been provided.
- e. No detail in relation to thermal requirements of walls, roof, and window assemblies have been provided.

Structural Design Documents

23. The Structural Design documents do not satisfy the definition of a CIRD under clause 3A of the Regulations as they do not contain the necessary detail to produce building work that would achieve compliance with the BCA and are not in accordance with the Regulated Design Guidance Material as approved by the Secretary of the Department pursuant to clause 9(1)(c) of the Regulations for the following reasons:
- a. Capping beam bracing struts construction, including spacing and connection details were not in accordance with the Act and Regulation because they have not been constructed in accordance with the relevant regulated design from the registered design practitioner in the class of structural engineering.
 - b. Construction of the spoon drainage system along basements perimeter walls including hob details, spacing between basement wall and basement slabs, Dish Drain Outlet (DDOs) sizes are not in accordance with the Act and Regulation.
 - c. The document titled *Capping beam plan and details, S101 – Revision E, dated 12/08/2022*, specified details of a block wall connecting capping beam to slab in some arrangements. However, a variation has taken place (in-situ concrete wall been constructed as the substitute) without a variation plan lodged as required under the Act and Regulation.
 - d. Ground level slab details including the slab edge construction and stairs which had to be poured by the slab on the north side of the Building are in accordance with the Act and Regulation.

Stormwater Documents

24. The Stormwater Design documents do not satisfy the definition of a CIRD under clause 3A of the Regulations as they do not contain the necessary detail to produce building work that would achieve compliance with the BCA and are not in accordance with the Regulated Design Guidance Material as approved by the Secretary of the Department pursuant to clause 9(1)(c) of the Regulations for the following reasons:
- a. not all necessary details in relation to the grated drains in the Building, namely it did not contain the dimension and invert level required for each grated drain, have been

provided.

Mechanical Documents

25. The Mechanical Design document titled “Basement 2 plan, M3 – Revision 1, dated 31/01/2023”, which forms part of the Mechanical documents, does not satisfy the definition of a CIRD under clause 3A of the Regulations as it does not contain the necessary detail to produce building work that would achieve compliance with the BCA for the following reasons:
- a. The make-up air for occupiable toilet on basement 2 has been provided through door grills and drawn from an enclosure (carpark) ventilated by a required exhaust system in contravention of the BCA 2019 amendment 1 part F4.5 and clause 3.8.1 of the AS 1668.2.

Integration of Design

26. The following design do not satisfy the requirement of under clause 8 of the Regulations as they do not, as far as reasonably practicable, integrate details of other regulated designs for the work including designs prepared by other registered design practitioners for building work for the following reasons:
- a. The Structural Design and Stormwater Design have inconsistencies and lack of coordination in waterproofing/below-ground water management in relation to the basement external walls. The document titled “Basement 2 floor plan, SW200 – Revision 03, dated 16/01/2023”, which forms part of the Stormwater documents, indicates 150 mm gap between wall and the slab provided 100x100 mm hob along basement; however, the document titled “Shoring details sheet 1 of 2, S102 – Revision D, dated 12/08/2022”, which forms part of the Structural documents, indicates 100 mm gap and no hob along the basement perimeter.
 - b. The Architectural Design and Stormwater Design have inconsistencies and lack of coordination in waterproofing/below-ground water management in relation to lift pit. The document titled “Construction details, CC-502 – Revision L, dated 01/02/2023”, which forms part of the Architectural documents, indicates an AG line to perimeter of the lift pit shaft; however, the document titled “Basement 2 floor plan, SW200 – Revision 3, dated 16/01/2023”, which forms part of the Stormwater documents, doesn't indicate such design and connection

Grounds for issuing this Order

27. Based on the information set out above, the work is, or is likely to be, carried out in contravention of the Act and Regulations for the following reasons:
- a. No CIRDs and DCDs have been provided for works relating to CC1, works relating to CC2, for passive fire protection, for structural post tensioning, balustrades and wall framing in contravention of section 19 of the Act.
 - b. the Architectural Designs, Structural Designs, Mechanical designs and Stormwater designs for the Building at the Development do not contain the necessary details to produce building work that would achieve compliance with the BCA and therefore, do not satisfy the definition of a CIRD under clause 3A of the Regulations.

- c. Part of the building work for CC1 and CC2 was commenced without obtaining regulated designs from registered design practitioners authorised to provide the relevant declarations in contravention of section 19 of the Act.
 - d. No CIRDs and DCDs have been lodged under the Act and Regulation for the structural and stormwater regulated designs with variations for the Building at the Development to the Secretary in the approved way before the varied building work commenced in contravention of section 20 of the Act and clause 17 of the Regulations in relation to the structural design with variation in the basement including the varied shoring wall, capping beam, bracing struts construction, ground level slab edge details, ground level north elevation stairs and basement drainage system.
28. I am of the opinion that carrying out building works at the Development in the absence of regulated designs and DCDs for the passive fire safety, structural post-tensioning and building enclosure including balustrades and wall framing designs and where the CIRD provided did not contain all the necessary detail is a contravention of:
- a. **Section 19 of the Act:** A building practitioner must not, except with reasonable excuse, carry out any part of building work for which a regulated design is to be used unless (a) the practitioner has obtained a design from a registered design practitioner for the work and a design compliance declaration for the design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates and (b) the declaration states that the design complies with the requirements of the BCA.
 - b. **Section 20 of the Act:** A building practitioner who does building work must take all reasonable steps to ensure that, if the building work (other than in relation to a building element or performance solution) is varied after commencement of the work from a regulated design for the work, the variation is recorded in the form and manner prescribed by the regulations for the purposes of this section
29. I am of the opinion that engaging and continuing in the Works without CIRDs and DCDs for key building elements, such as the regulated designs for passive fire protection, for structural post tensioning, balustrades and wall framing, could significantly impact the actual performance of those building elements, as these building elements are critical to the safety and integrity of the Development that is under construction, and thereby could result in significant harm or loss to the occupiers or potential occupiers at the Development.
30. I am of the opinion that failing to have CIRDs and DCDs for key building elements for the Development, such as the regulated designs for passive fire protection, for structural post tensioning, balustrades and wall framing, could result in the need for further designs, variations and rectification/remediation work which increases the risks associated with that work, as well as requiring the work to be rectified/remediated, resulting in significant loss to the potential occupiers of the building or significant damage to property.
31. I am also of the opinion that engaging in any further building works at the Development, in circumstances where Works have already been carried out in the absence of CIRDs and DCDs could result in significant harm or loss to the occupiers or potential occupiers at the Development.
32. I have considered all of the circumstances and I accept that the Order may have financial

consequences for AB Developments, and I give this consideration moderate weight. However, the cost to AB Developments must be balanced against the risk of non-compliant work and potential harm to the occupiers or potential occupiers of the Development and their interests in having the building constructed in a manner which is compliant with the BCA.

33. Considering these potential consequences, I give greater weight to the seriousness of the failure to have CIRDs for key building elements, and I find that it is appropriate, in the exercise of my discretion, to require AB Developments to stop work.

Consideration of written representations

34. On 8 December 2023 a notice of intention to issue a stop work order, including a draft copy of the Order, was served on AB Developments, who were invited to provide written representations in response by 18 December 2023.
35. On 11 December 2023, AB Developments provided submissions in response by including comments on the draft version of the Order.
36. In summary, AB Developments agreed there were no CIRDs and DCDs for CC1 or CC2, and indicated that those documents would be updated and submitted to the NSW Planning Portal. In relation to CIRDs and DCDs for fire protection, structure and architecture, it was likewise agreed that these would be updated and submitted to the NSW Planning Portal. A number of other documents were said to be in progress to complete the relevant drawings and would be submitted to the NSW Planning Portal.
37. AB Developments sought an extension to coordinate, update, redeclare and resubmit on the NSW Planning Portal until 19 January 2024 on the basis of the availability of consultants over the break.
38. I have considered the representations provided by AB Developments and the request that an extension of time be provided. In circumstances where the building practitioner has completed work without CIRDs and DCDs for key building elements, and where those CIRDs and DCDs may not be uploaded until mid-late January, I consider it appropriate to issue the Order. The issue of this Order will prevent building work being completed without required regulated designs.

Order to ensure that building work stops

39. I, Matthew Whitton, Director Building Practitioner Compliance, Building Commission NSW, Department of Customer Service, am a duly authorised delegate of the Secretary for the purposes of section 89 of the Act.
40. I, Matthew Whitton, order AB Developments to ensure that all building work (as defined by section 4 of the Act) at the Development stops by **5.00 p.m. on 21 December 2023**.

Duration of this order

41. This Order remains in force until it is revoked by the Secretary or their authorised delegate or the period of twelve months from the day on which the order takes effect ends.

A handwritten signature in black ink, appearing to read "M. Whitton".

Matthew Whitton
Director Building Practitioner Compliance
Building Commission NSW

Notes

- It is an offence to fail to comply with this order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this order pursuant to s 90 of the Act within 30 days of the notice of the order being given. Lodging an appeal does not stop the order taking effect, unless directed by the Court.