



Customer
Service

Attn. the Proper Officer
Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust
(ACN 932 168 925)
Suite 106, 155 Avoca Street,
Randwick NSW 2031

Service: to registered address/ by email

9 June 2021

Building Work Rectification Order

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

Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust (ACN 932 168 925) is being given this Building Work Rectification Order (Order) in relation to Green Hub at 417 – 419 Pacific Highway, Asquith NSW 2077 (Lot 10 DP 658184, Lot 11 DP 666335).

Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust (ACN 932 168 925) is required to cause building work to be carried out to eliminate, minimise, or remediate the serious defect or potential serious defect as set out in Schedule A to this Order.

Please read this Order carefully. You must comply with the Order by 5pm on the 7 July 2021. This Order remains in force until it is revoked by the Secretary.

Failure to comply with 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. Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust (ACN 932 168 925) is the developer of the residential apartment building known as Green Hub at 417 – 419 Pacific Highway, Asquith NSW 2077 (Lot 10 DP 658184, Lot 11 DP 666335) (the Building) for the purposes of the Act.
3. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.
4. On 21 April 2021, notices of a proposed prohibition order were given to the Developer, Private Certifier, Local Council and Registrar General. At the date of this Order, representations were received from the Developer by email dated 9, 14 April, 12, 13, 17, 20, 24, 31 May and 2 June advising that the way in which the defects were to be remediated. The remediation work was inspected by authorised officers from the Department on 31 May 2021 and the serious defects identified in Schedule A have not been rectified. The Building Commissioner has considered these representations and an authorised officer responded by way of email dated 2 June 2021 advising that the remediation works are still non-compliant and incomplete. To date, no written

representations have been received from the Private Certifier, Local Council or the Registrar General.

Power to order rectification

5. Under s 33 of the Act, if the Secretary of the Department or their authorised delegate has a reasonable belief that building work is being carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to cause building work to be carried out to remediate the serious defect or potential defect.
6. 'Serious defect' is defined in s 3 of the Act as follows.
 - (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.*

Grounds for issuing this Order

7. On 16 February 2021 and 31 May 2021, authorised officers from the Department conducted inspections of the Building.
8. During the inspections, the observed that building work was carried out in a manner that could result in serious defects in relation to the following building element(s):
 - 7.1 Fire safety systems,
 - 7.2 Waterproofing, and
 - 7.3 A component of a building that is part of the building enclosure, and
9. Further details of the building work and the nature of the serious defects and/or potential serious defects are provided in **Schedule A** to this Order.

Order

10. I, Matthew Whitton, an authorised delegate of the Secretary, reasonably believe that the building work was or is being carried out in a manner that could result in a serious defect and make the following orders:
 - 9.1 The developer must engage a suitably qualified expert within 7 days of receiving this Order to prepare a plan to carry out building work to remediate the serious defects and/or potential serious defects in **Schedule A**. The plan must specify how the potential serious defects in **Schedule A** will be remediated, and how long the remediation is expected to take.

9.2 The plan must be provided to the Secretary so that it is received within 28 days of the date of this Order, and can be served via email to ocaudits@customerservice.nsw.gov.au.

11. The Developer must notify Sean O'Hara in writing, by email sent to ocaudits@customerservice.nsw.gov.au within 2 business days of the work required by this Order being completed.

Duration of this Order

12. This Order remains in force until it is revoked by the Secretary.



Matthew Whitton
Director Consumer, Building and Property
NSW Fair Trading
Department of Customer Service

Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- 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 within 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.
- You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.
- The Secretary has given the following persons notice of the making of this building work rectification order:
 - o the relevant local council,
 - o if the local council is not the certifier in relation to the building work—the principal certifier,
 - o if you are not the owner of the land concerned—the owner of the land concerned,
 - o the Registrar-General,
 - o if the order relates to a strata building—the relevant owners corporation,
 - o any other person prescribed by the regulations.
- This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.

Schedule A

Building work and serious or potential serious defects

Defect number	Building element	Building work	Observations	What is the defect that could result?	Why is it a serious/potential serious defect?
1.	Waterproofing	Construction of balcony door thresholds.	On 16 February 2021 and 31 May 2021, authorised officers inspected the Building and observed waterproofing on the balconies and observed insufficient height termination, being a height of between approximately 48mm and 50mm, of the waterproof membranes under all main entrance and internal and external balcony subsills.	<p>The height termination in relation to the waterproofing is insufficient to prevent penetration of water that could lead to:</p> <ul style="list-style-type: none"> (a) water pooling in the balcony, thereby reducing structural integrity; (b) unhealthy or dangerous conditions, or loss of amenity for occupants; and; (c) undue dampness or deterioration of building elements. 	<p>The defect in the waterproofing that could result is attributable to a failure to comply with:</p> <p>The following performance requirements of the Building Code of Australia</p> <p>NCC2019 BCA Volume 1 Part FP1.4 states:</p> <p>A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause—</p> <ul style="list-style-type: none"> (a) unhealthy or dangerous conditions, or loss of amenity for occupants; and (b) undue dampness or deterioration of building elements. <p>Australian Standard AS4654.2 (2.8.1 Upward terminations; Appendix A) states a vertical upward termination of no less than 70mm is required in relation to the finished height of the membrane above the finished surface level because the building has adopted a N3 classification (given the ultimate limit state wind speed at the building is 48m/s).</p> <p>Australian Standard AS4654.2 (2.8.3 Doors and windows onto external waterproofed areas) states where the internal and external finished floor levels do not allow an upturn, the membranes shall be fixed under the sill and terminate in the stormwater system.</p>

					No other performance solution is in place to satisfy NCC2019 BCA Volume 1 Part FP1.4.
2.	Basement level car park – a component of a building that is part of the building enclosure	Construction of basement level car parks.	On 16 February 2021 and 31 May 2021, Authorised Officers inspected the basement of the Building and observed inadequate drainage, namely, the non-installation of spoon drains within the basement level carparks.	The absence of spoon drains has resulted from the building works. Lack of spoon drains could lead to: <ul style="list-style-type: none"> (a) The accumulation of stormwater causing flooding within the basement floors; and (b) The inability to use the basement for car parking and storage. 	The defect in the building element (basement level car park) is attributable to a failure to build in accordance with the relevant approved plans being, the stormwater drainage plan issued by Stronghold Engineers Pty Ltd dated 10/2019, drawing number ST01, revision F; the typical shoring details issued by Stronghold Engineers Pty Ltd dated 08/2019, drawing number S1.08, revision A; the basement 3 slab sections issued by Stronghold Engineers Pty Ltd dated 08/2019, drawing number S8.01, revision A and the basement 2 and basement 1 slab sections issued by Stronghold Engineers Pty Ltd dated 08/2019, drawing number S8.03, revision B.
3.	Fire Safety System – fire isolated stairway	Installation of stormwater Services in fire isolated stairway	On 16 February 2021 and 31 May 2021, Authorised Officers inspected the Building and observed that there was a stormwater downpipe installed in the basement fire isolated stairway.	The construction of the stormwater pipe within the fire isolated stairway has resulted from the building works. The pipe has caused services other than services to fire fighting or detection equipment to be provided from the fire isolated stairway thereby interfering with the safe evacuation of occupants in the event of a fire.	The defect in the building element (Fire safety system) is attributable to a failure to comply with: <p>The following performance requirements of the Building Code of Australia:</p> <p>NCC2019 BCA Volume 1 Part DP5 states:</p> <p>To protect evacuating occupants from a fire in the building <i>exits</i> must be fire-isolated, to the degree necessary, appropriate to—</p> <ul style="list-style-type: none"> (a) the number of <i>storeys</i> connected by the <i>exits</i>; and (b) the <i>fire safety system</i> installed in the building; and (c) the function or use of the building; and

					<p>(d) the number of <i>storeys</i> passed through by the <i>exits</i>; and</p> <p>(e) <i>fire brigade</i> intervention.</p> <p>NCC2019 BCA Volume 1 Part D2.7(a) states:</p> <p>(a) Access to services other than to fire-fighting or detection equipment as permitted in the deemed to satisfy provisions of Section E, must not be provided from a fire isolated stairway, fire isolated passageway or fire isolated ramp.</p> <p>No other performance solution is in place to satisfy NCC2019 BCA Volume 1 Part DP5.</p>
4.	External façade cladding- a component of a building that is part of the building enclosure	External façade cladding.	<p>On 16 February 2021 and 31 May 2021, Compliance Officers observed the following key issues in relation to the external cladding interface to the Building:</p> <p>(a) No vapour barrier installed behind the Scyon Matrix cladding system and not installed in compliance with the James Hardie Installation Guide and (Australia, June 2020) Figure 3 Preparation.</p>	<p>The absence of the vapour barrier in relation to the external cladding could allow water to penetrate such that it could:</p> <p>(a) cause unhealthy or dangerous conditions, or loss of amenity for occupants;</p> <p>(b) undue dampness or deterioration of building elements; and</p> <p>(c) the inability to inhabit or use the building (or part of the building) for its intended purpose due to the integrity of the</p>	<p>The defect in the external façade cladding that could result is attributable to a failure to comply with:</p> <p>The following performance requirements of the Building Code of Australia</p> <p>NCC2019 BCA Volume 1 Part FP1.4 states:</p> <p>A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause—</p> <p>(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</p> <p>(b) undue dampness or deterioration of building elements.</p> <p>No performance solution to satisfy NCC2019 BCA Volume 1 Part FP1 was observed.</p>

				waterproofing system being compromised by water penetrating the cladding system.	
5.	Windows - a component of a building that is part of the building enclosure	Installation of windows	<p>On 16 February 2021 and 31 May 2021, Compliance Officers observed the following key issues in relation to the external facing windows to the Building:</p> <p>(a) The complete absence of waterproofing elements that were not installed in accordance with the Scyon Matrix James Hardie Installation Guide and (Australia, June 2020);</p> <p>i) Windows were absent of window head flashing, joint sealant, and flexible flashing lapped over cavity batten</p>	<p>The absence of waterproofing elements in relation to the external facing windows to the Building could allow water to penetrate such that it could:</p> <p>(a) cause unhealthy or dangerous conditions, or loss of amenity for occupants; and</p> <p>(b) undue dampness or deterioration of building elements.</p>	<p>The defect in the external facing windows to the Building that could result is attributable to a failure to comply with:</p> <p>The following performance requirements of the Building Code of Australia</p> <p>NCC2019 BCA Volume 1 Part FP1.4 states:</p> <p>A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause—</p> <p>(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</p> <p>(b) undue dampness or deterioration of building elements.</p> <p>No performance solution to satisfy NCC2019 BCA Volume 1 Part FP1 was observed.</p>

			<p>in accordance with Figure 24 Window Head/Sill Detail and Figure 25 Window Jamb Detail.</p> <p>ii) External corner details and Internal corner details were absent and not constructed in accordance with Figure 26 External corner detail and Figure 29 Internal corner detail.</p>		
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