

Attention: Proper Officer
PIETY CONSTRUCTIONS PTY LTD (ACN 631 885 491)
129 Fairford Road,
PADSTOW NSW 2211

Via Express Post and email:

Date: Original issued 28 February 2024 Modified on 3 April 2024

Modified Stop Work Order

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

PIETY CONSTRUCTIONS PTY LTD (ACN 631 885 491) is issued with this Modified Stop Work Order (the **Order**) in relation to building work associated with the development generally described by Wollongong City Council's consent number DA-2006/1698 and subsequent modifications as the "*Construction of two tower buildings consisting of Building A (Ground floor shops and parking, three storeys of commercial premises and 16 storeys of residential flats comprised of 109 units) and Building B (10 storeys consisting of ground and upper ground floor commercial area and 8 storeys of residential units comprised of 40 units over four (4) levels of basement parking)*" at **373 Crown Street & 2 Parkinson Street, Wollongong NSW 2500** (the **building**).

Please read this Modified Stop Work Order carefully, comply with the conditions and make the building 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 **Regulation**).
2. The building contains a class 2 part as defined by the Building Code of Australia, being a prescribed type of building under clause 12 the Regulation.
3. Building work is being carried out as defined by section 4 of the Act.
4. On 21 March 2023 the building practitioner entered into an Undertaking with the Secretary of the Department under section 28 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* which required the appointment of an independent undertaking manager who is required to report directly to the Secretary.

5. On 12 February 2024 a Building Work Rectification Order and a Prohibition Order was issued to the Developer, PSR Crownview Investment Pty Ltd.
6. On 28 February 2024 the Secretary issued a Notice of Intention to Issue a Stop Work Order to the person carrying out building work because the Secretary's delegate was of the opinion that the work is, or is likely to be, carried out in contravention of this Act, and 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.
7. On 2 April 2024 the Developer PSR Crownview Investment Pty Ltd wrote to the Secretary providing authorisation for a representative of Piety Constructions Pty Ltd to submit an application to vary the stop work order conditions to enable PT Ducts grouting to be completed to secure the structural adequacy of the building and agreeing to indemnify the Department or its agent for varying the conditions under the stop work order and taking full responsibility for the consequence of varying the stop work order conditions.

Power to Stop Work

8. Under section 89 of the Act, the Secretary of the Department, or authorised delegate, may order a person carrying out building work, professional engineering work or specialist work, or the owner of the land on which the work is being carried out, to ensure that work stops if the Secretary is of the opinion that:
 - a. the work is, or is likely to be, carried out in contravention of the 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.
9. I, Mr David Chandler OAM, NSW Building Commissioner, am a duly authorised delegate of the Secretary of the Department for the purposes of section 89 of the Act.

Requirements of the Act

10. Under section 4 of the Act, the term "building work" means work involved in, or involved in coordinating or supervising work involved in, one or more of the following:

- (a) the construction of a building of a class or type prescribed by the regulations for the purposes of this definition,
- (b) the making of alterations or additions to a building of that class or type,
- (c) the repair, renovation or protective treatment of a building of that class or type.

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.

11. 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.

12. 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.*

13. 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.*

14. 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.

15. 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.

16. 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.*

17. 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.

18. The Dictionary to the Regulations relevantly defines the following terms:

‘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

‘construction issued regulated design’ as 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 BCA, including detail specifying –
 - (i) the proposed dimensions of the completed building, and
 - (ii) the characteristics and materials comprising the proposed building, and
 - (iii) the location of the building elements and systems proposed to be built, and
- (b) can be used by a building practitioner to carry out the work in accordance with the regulated design and the BCA.

Work occurring or likely to be carried out at the Building

19. Building work, professional engineering work and/or specialist work is occurring or likely to be carried out at the building.

Documents for the Building

20. Construction Certificates have been issued for various building elements by East Coast Approvals Group Pty Ltd which are also the Principal Certifier for the development.

21. The Principal Certifier has issued a Written Directions Notice for the defects in the building under section 6.31 of the *Environmental Planning and Assessment Act*

1979.

Inspection of the Building

22. On the 15 February 2024 the NSW Building Commissioner, Mr David Chandler OAM, and authorised officer, Mr Michael Hall, carried out an inspection of the building.

Grounds for issuing this Order

23. A Building Work Rectification Order and a Prohibition Order was issued to the Developer, PSR Crownview Investment Pty Ltd, in relation to serious defects,
24. The Principal Certifier has issued a Written Directions Notice in relation to serious defects under section 6.31 of the *Environmental Planning and Assessment Act 1979*.
25. Structural elements within the building consist of unauthorised building work and requires regulatory approval.
26. The additional defects discovered require rectification work and this is defined as building work which requires regulated designs under the *Design and Building Practitioners Act 2020* and a Construction Certificate under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
27. Regulated Designs and a Construction Certificate for the rectification building work have not been lodged on the NSW Planning Portal contrary to the *Design and Building Practitioners Act 2020*,
28. The work is, or is likely to be, carried out in contravention of the Act, and
29. The contravention of the Act 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.

Order to ensure that building work stops

30. I, Mr David Chandler OAM, NSW Building Commissioner, order that, subject to the conditions set out below, all building work stops by **5.00 p.m. on 28 February 2024**.

Conditions of this Order

31. Investigative professional engineering work and/or investigative specialist work which, subject to numbered paragraph 32 of this Modified Stop Work Order, does not involve building work may be carried out.
32. May carry out grouting of post tensioning ducts to secure the structural adequacy of the building, in reliance on the authorisation and indemnity provided by the Developer, PSR Crownview Investments Pty Ltd.

Duration of this order

33. In accordance with Section 89 of the Act, a stop work order remains in force until one of the following occurs—

- (a) the order is revoked by the Secretary,
- (b) the term (if any) of the order ends,
- (c) the period of 12 months from the day on which the order takes effect ends.

Mr David Chandler OAM
NSW Building Commissioner,
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.

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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 **Regulation**).
2. The building contains a class 2 part as defined by the Building Code of Australia, being a prescribed type of building under clause 12 the Regulation.
3. Building work is being carried out as defined by section 4 of the Act.
4. On the 21 March 2023 the building practitioner entered into an Undertaking with the Department under section 28 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* which required the appointment of an independent undertaking manager who is required to report directly with the Department.

5. On the 12 February 2024 a Building Work Rectification Order and a Prohibition Order was issued to the Developer, PSR Crownview Investment Pty Ltd, in relation to the discovery of additional defects which were reported to the Department by the appointed undertaking manager.
6. On the 13 February 2024 the Principal Certifier issued a Written Directions Notice for serious defects in the building under section 6.31 of the *Environmental Planning and Assessment Act 1979*.
7. On the 15 February 2024 the NSW Building Commissioner carried out an inspection of the building to observe the additional defects in response to the Building Work Rectification Order and the Prohibition Order issued by the Department.
8. On the 19 February 2024 the Department of Customer Service issued a Notice of Intention to Issue a Stop Work Order to the person carrying out building work because the Department was of the opinion that the work is, or is likely to be, carried out in contravention of this Act, and 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.
9. On the 20, 26 and 27 February 2024 the Department received representations from the building practitioner which have been considered prior to issuing this Order.

Power to Stop Work

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 - a. the work is, or is likely to be, carried out in contravention of the 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.
11. I, Mr David Chandler OAM, NSW Building Commissioner, am a duly authorised delegate of the Secretary of the Department for the purposes of section 89 of the Act.

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- (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.

15. 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.
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31. The contravention of the Act 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.

Order to ensure that building work stops

32. I, Mr David Chandler OAM, NSW Building Commissioner, order that all building work stops by **5.00 p.m. on 28 February 2024.**

Conditions of this Order

33. All destructive and non-destructive site investigative professional engineering work and/or site investigative specialist work which does not involve building work may be carried out.

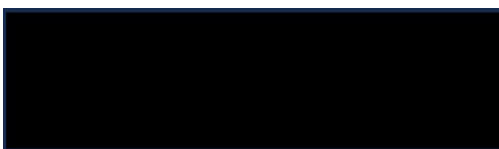
34. Only the crack injection in the basement relating to the first bullet point at “*Item 259 Radial Cracking in Basement*” on page 4 of the written representations submitted by Piety Group dated 27 February 2024 may be carried out,

35. Investigations into the deficient construction of the stair landings at “*Item 264 Deficient Construction of Stair Landings*” on page 4 of the written representations submitted by Piety Group dated 27 February 2024 may be carried out.

Duration of this order

36. In accordance with Section 89 of the Act, a stop work order remains in force until one of the following occurs—

- (a) the order is revoked by the Secretary,
- (b) the term (if any) of the order ends,
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**Mr David Chandler OAM
NSW Building Commissioner,
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