

## Appeal

Building Act 1993

VICTORIA

### DETERMINATION OF THE BUILDING APPEALS BOARD

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<b>Municipality</b>	City of Melbourne
<b>Subject Address</b>	Lacrosse Docklands 673-683 La Trobe Street Docklands Vic 3008
<b>Appellants</b>	1. Shireen Bangah 2. Owners Corporation No 1 PS613436T (Unlimited Owners Corporation) ( <b>OC 1</b> ) C/- CLP Lawyers 3. Owners Corporation No 2 PS613436T (Commercial Owners Corporation) ( <b>OC 2</b> ) C/- CLP Lawyers 4. Owners Corporation NO 4 PS613436T (Residential tower Corporation) ( <b>OC 4</b> ) C/- CLP Lawyers
<b>Respondent</b>	Municipal Building Surveyor, City of Melbourne ( <b>MBS</b> )
<b>Interested Party</b>	LU Simon Builders Pty Ltd ( <b>LU Simon</b> ) C/- Colin Biggers & Paisley Lawyers

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#### Nature of Appeals

Appeals pursuant to section 142(2)(b) of the *Building Act 1993* (**Act**) between the owner of the building or land and the municipal building surveyor against the imposition of any condition in a building order.

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#### DETERMINATION OF THE BOARD

Proceedings 448366, 448367, 448368 and 448369 are appeals against building orders (**Building Orders**) that were issued by the Municipal Building Surveyor, City of Melbourne (**MBS**), and were dated 23 October 2015. The Building Orders related to the building at 673-683 La Trobe Street (**subject address**).

Having considered all the submissions and information placed before it, the Building Appeals Board (**Board**):

- I. in relation to the appeal by Shireen Bangah (proceeding 448369), **determines** that:
  - (a) the appeal is dismissed; and
  - (b) under section 149(1)(a) of the Act, the decision to grant the building order, in the terms that it was made against Shireen Bangah, is affirmed;
- II. in relation to the appeals by Owners Corporation No 1 PS613436T (Unlimited Owners Corporation) (**OC 1**); Owners Corporation No 2 PS613436T (Commercial Owners Corporation) (**OC 2**); and Owners Corporation No 4 P5613436T (Residential Tower Corporation) (**OC 4**) (proceedings 448366, 448367 and 448368), **determines** that:
  - (a) the appeals are dismissed; and

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- (b) the Board will, under section 149(1)(c) of the Act, vary the decision to grant the Building Orders against OC1, OC2 and OC4, so that the time by which OC1, OC2 and OC4 need to remove and replace the external wall cladding will be a date in 2017 specified by the Board – that variation of the date will be determined by the Board after Monday 30 January 2017;
- III. in relation to the appeals by OC 1, OC 2 and OC 4 (proceedings 448366, 448367 and 448368), **directs** that:
- (a) the parties must file with the Board, and serve on the other parties, submissions (if any), by 4.00 PM on **Monday 30 January 2017**, regarding the matters noted in paragraph (b) below;
- (b) the submissions must relate to **when** the people who are subject to the Building Orders must remove and replace the external wall cladding, which is not non-combustible material, with external wall cladding that is compliant with the Building Code of Australia;
- IV. in relation to the appeals by OC 1, OC 2 and OC 4 (proceedings 448366, 448367 and 448368), **directs** OC 1, OC 2 and OC 4 to provide a copy of this determination and reasons to their respective members (to the extent that such members are owners of either an apartment or a commercial premise at the subject address);
- V. requests the Registrar of the Board to provide a copy of this determination and reasons to the Chief Officer of the Metropolitan Fire Brigade (**MF**B).

### REASONS

#### Background – fire and building orders

1. In November 2014, there was a fire at the subject address, which commenced on a balcony on the 8<sup>th</sup> level. The fire quickly spread from the 8<sup>th</sup> floor up to the 21<sup>st</sup> floor and down to the 6<sup>th</sup> level.
2. Following the fire, the MBS undertook an investigation regarding the subject address, and issued building notices in June 2015 and then building orders in October 2015.
3. The building orders were issued against approximately 470 owners, being:
  - (a) the owners of the 312 apartments and 16 commercial premises at the subject address; and
  - (b) OC1, OC2 and OC4.

#### Proceedings

4. There were four separate appeals against building orders that were issued by the MBS in relation to the subject address:
  - (a) proceeding 448366 - which was an appeal by OC 1;
  - (b) proceeding 448367 - which was an appeal by OC 4;
  - (c) proceeding 448368 - which was an appeal by OC 2; and
  - (d) proceeding 448369 - which was an appeal by Shireen Bangah.
5. LU Simon referred a dispute to the Board regarding the Building Orders. That referral was, by consent, dismissed upon LU Simon becoming a party to the above appeals.

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6. After the building orders were issued, the MBS worked with the people who were subject to the building orders:<sup>1</sup>
  - (a) regarding the implementation of the works that were listed in the relevant schedule to the building orders; and
  - (b) regarding a series of alternative solutions in relation to the external cladding, which were presented to the MBS in 2015 and 2016.
7. Although most of the building orders that were issued by the MBS were not the subject of a formal appeal to the Board, the MBS advised the Board that, if the Board amends or revokes the building orders, which are the subject of these appeals, he would, to the extent that the orders relate to the external cladding:
  - (a) amend the other building orders to reflect the Board's determination in these appeals; or
  - (b) otherwise act consistently with the determination of the Board in these appeals, in relation to the other building orders.
8. The building orders included a requirement regarding the removal and replacement of external cladding at the subject address (**Cladding Direction**). The Cladding Direction on the Building Orders, were worded slightly differently, For instance, two of the orders were worded (respectively) as follows:
  - (a) "the external wall cladding which is not non-combustible composite material is to be removed and be replaced with a cladding compliant with BCA for; non combustibility, structural and weatherproofing;" and
  - (b) "the external wall cladding which comprises of a composite aluminium cladding is not non-combustible and has no evidence of compliance with Part C, B and F of the Building Code of Australia - Volume 1, is to be removed and to be replaced with a non-combustible cladding compliant with the National Construction Code, including for structural stability (Part B) and weatherproofing (Part F)".
9. Although the wording of the Cladding Direction in the Building Orders varied, the Cladding Direction was clear: the external cladding, which is not non-combustible, needed to be replaced with external cladding, which complies with all of the requirements of the Building Code of Australia - Volume One (**BCA**), including the requirements regarding combustibility, structural stability and weatherproofing.
10. During the directions hearing in May 2016, there was significant uncertainty regarding the scope of the appeals, and the capacity or willingness of some of the appellants to continue their respective appeals. Subsequently:
  - (a) Shireen Bangah sought to withdraw her appeal;
  - (b) OC1, OC2 and OC4 advised (in September 2016) that they would not seek to make submissions or representations during the course of the appeal and they would abide by the decision of the Board;
  - (c) LU Simon, which was the builder of the building at the subject address, limited its appeal to the aspects of the building orders which related to the Cladding Direction; and

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<sup>1</sup> This included public meetings and information on the City of Melbourne website.

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- (d) LU Simon, OC1, OC2, OC4 and the MBS advised the Board that the required works (other than in relation to the Cladding Direction)<sup>2</sup> were either being undertaken or had already been undertaken.
11. The final hearing for this matter was delayed due to the unavailability of witnesses and Panel members.
12. Following hearings in September 2016:
- (a) the Chief Officer of the MFB provided, at the request of the Board, a response (**Chief Officer's Response**) to an alternative solution, which was proposed by LU Simon. The alternative solution involved the installation of wall wetting sprinklers and balcony sprinklers at each level of the subject address, as described in the report of Mr Ian Moore dated 6 July 2016 (**Alternative Solution**); and
- (b) further written submissions were provided by the parties, following receipt of the Chief Officer's Response.

### Submissions by LU Simon

13. LU Simon sought the following orders from the Board:
- (a) revocation of the Cladding Direction, on the basis that LU Simon intends to apply the Alternative Solution at the subject address; or
- (b) in the alternative, a variation of the Cladding Direction, with an order directing the people who are subject to the order to carry out the Alternative Solution within a reasonable time.
14. LU Simon did not argue that the Building Orders or the Building Notices were vitiated by legal error or otherwise made contrary to the requirements of the Act or the Building Regulations 2006.
15. The expert witnesses for both LU Simon and the MBS, agreed that the external cladding, the Alucobest aluminium composite panels (**ACPs**), was, within the meaning of the BCA, combustible<sup>3</sup> and therefore did not satisfy the Deemed to Satisfy (**DtS**) requirements of the BCA.<sup>4</sup>
16. LU Simon sought orders from the Board on the basis that the relevant performance requirements of the BCA (CP2 and CP4) will be met by the Alternative Solution.
17. CP2 and CP4 provide as follows:<sup>5</sup>
- “CP2**
- (a) A building must have elements which will, to the degree necessary, avoid the

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<sup>2</sup> Such as installation of exit signs, providing evidence that specified walls achieve a Fire Rating Level (FRL) of 90/90/90; raising balustrade height; replacing specified glassing; and providing a structural engineers report for external concrete panel.

<sup>3</sup> Clause A1.1 of the BCA has the following definition:

“Combustible means—

(a) applied to a material — combustible as determined by AS 1530.1; and

(b) applied to construction or part of a building — constructed wholly or in part of combustible materials.”

<sup>4</sup> The building is required to be a Type A construction: Clause C1.1 and Table C1.1 of the BCA. The DtS is that the external walls are non-combustible: Clause 3.1(b) of Specification C1.1.

<sup>5</sup> CP2(a)(ii) only applies to a Class 2 or 3 building or Class 4 part of a building. CP4 applies to linings, materials and assemblies in a Class 2 to 9 building – the residential units at the subject address are Class 2 buildings.

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spread of fire—

- (i) to exits; and
  - (ii) to sole-occupancy units and public corridors; and
  - (iii) between buildings; and
  - (iv) in a building.
- (b) Avoidance of the spread of fire referred to in (a) must be appropriate to—
- (i) the function or use of the building; and
  - (ii) the fire load; and
  - (iii) the potential fire intensity; and
  - (iv) the fire hazard; and
  - (v) the number of storeys in the building; and
  - (vi) its proximity to other property; and
  - (vii) any active fire safety systems installed in the building; and
  - (viii) the size of any fire compartment; and
  - (ix) fire brigade intervention; and
  - (x) other elements they support; and
  - (xi) the evacuation time.”

#### “CP4

To maintain tenable conditions during occupant evacuation, a material and an assembly must, to the degree necessary, resist the spread of fire and limit the generation of smoke and heat, and any toxic gases likely to be produced, appropriate to—

- (a) the evacuation time; and
- (b) the number, mobility and other characteristics of occupants; and
- (c) the function or use of the building; and
- (d) any active fire safety systems installed in the building.”

18. Clause AO.3 of the BCA provides that:<sup>6</sup>

#### “A0.3 Performance Solutions

- (a) A Performance Solution must—
  - (i) comply with the Performance Requirements; or
  - (ii) be at least equivalent to the [to the level of health, safety and amenity provided by the] Deemed-to-Satisfy Provisions,<sup>7</sup> and be assessed according to one or more of the Assessment Methods.<sup>8</sup>
- (b) A Performance Solution will only comply with the NCC when the Assessment Methods used satisfactorily demonstrate compliance with the Performance Requirements.”

19. LU Simon submitted that the Alternative Solution minimises the risks at the subject

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<sup>6</sup> The BCA now uses the expression “Performance Solution” instead of “Alternative Solution” (see clauses A1, AO2 and AO3 of the BCA). However, the oral and written submissions and relevant documents prepared by the parties all referred to the term “alternative solution”. Consistently with the language used in the submissions, this determination and reasons therefore uses the expression “alternative solution”.

<sup>7</sup> Clause A1.1 of the BCA provides: “**Equivalent** means equivalent to the level of health, safety and amenity provided by the *Deemed-to-Satisfy Provisions*.”

<sup>8</sup> The Assessment Methods are outlined in clause A0.5 of the BCA.

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address in a manner, and to an extent, that would not be achievable with the replacement of the cladding as directed by the MBS.

20. LU Simon submitted that the Alternative Solution:
- (a) complied with the relevant performance requirements of the BCA (ie CP2 and CP4); and
  - (b) was at least equivalent to the DtS Solution.

### MBS' Submissions

21. The MBS outlined a range of fire risks associated with the Alternative Solution, including the risk that, in the event of sprinkler failure, there was a risk of fire spread via external openings such as windows.
22. The MBS submitted that the Alternative Solution failed to meet the performance requirements of CP2, on the basis of any one or more of the following matters:
- (a) insufficient evidence has been provided to prove that the proposed external drenchers (strip wall) will be effective when wind forces are taken into consideration;
  - (b) the external sprinklers (balcony wall) are ineffective for fire commencing and spreading via the internal cavities and concealed spaces;
  - (c) the proposed use of the sprinkler system on the strip walls falls outside the manufacturers specification and is the first known use of the product in this way in Australia and, possibly, the world;
  - (d) the lack of efficacy of the demonstration / test of the proposed sprinkler system with reference to British Standard (**BS**) 8414;
  - (e) the lack of efficacy of the demonstration / test of the sprinkler system with reference to only one apartment layout type (an E02 Apartment); and
  - (f) the proposed sprinkler system is not an independent system.
23. The MBS also stated that there was no methodology proposed within the appellants' (or LU Simon's) appeal documentation as to how to restrict or ensure that cavities are not created by owners or occupiers in the future in the strip wall and in the wall adjoining the balcony.

### Chief Officer's Response

24. The Chief Officer's Response noted that the MFB does not support the Alternative Solution and believes that the Building Orders to remove the cladding should be enforced.
25. The Chief Officer expressed concern that:
- (a) the sprinklers would be connected to the existing combined system and the impact on hydraulic design is unknown;
  - (b) the tests configuration were not representative of the risks at the subject address and had a number of deficiencies;
  - (c) the effects of wind were not adequately modelled;
  - (d) the possibility of a DtS solution involving the use of wall wetting drenchers was proposed and extensively discussed by Standards Australia Committee FP18 during the development of AS 5113 and unanimously rejected due to difficulties

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in determining performance requirements, issues due to possible cavity fires and difficulties in installation and water supply provision; and

- (e) possibly the main issue for the ability of wall wetting sprinklers to appropriately manage a façade or balcony fire, relates to the rate of fire growth and spread for the Alucobest ACP. The concern is that external fire spread may occur prior to sprinkler activation. The fire at the subject address spread from Level 6 to Level 23 in approximately 11 minutes, whereas initial sprinkler activation for both the façade fire test and the balcony test for a test configuration favouring early sprinkler activation, was approximately at the four minute mark.

#### General observations regarding the appeal

- 26. The hearing of the appeal is a hearing *de novo*, where the Board determines itself whether it is appropriate to make the Building Order. The parties are able to provide fresh information or evidence to the Board.
- 27. It is clear that the Alucobest ACPs were non-compliant with the BCA DtS provisions and created a significant and unacceptable risk to occupants and, if there were a fire, a corresponding risk to fire and emergency services.
- 28. The proposal by LU Simon that the Cladding Direction in the Building Orders should be revoked, on the basis that LU Simon intends to apply the Alternative Solution at the subject address was untenable. The risk posed by the current cladding is so serious that it is necessary to have a building order which requires the owners to remedy the situation.
- 29. The alternative submission by LU Simon, that the Cladding Direction in the Building Orders should be varied directing the people who are subject to the order to carry out the Alternative Solution within a reasonable time was considered from three perspectives:
  - (a) firstly, has LU Simon demonstrated that the Alternative Solution complies with Performance Requirements CP2 and CP4;
  - (b) secondly, has LU Simon demonstrated that that the Alternative Solution would provide at least equivalent health and safety as would be provided if the cladding was non-combustible and satisfied the DtS provisions; and
  - (c) thirdly, having regard to all relevant factors, including the fire risk and the requirements of the Act, what are the appropriate terms of the building orders – in particular, should the building orders:
    - (i) include the Cladding Direction; or
    - (ii) include a requirement directing the people who are subject to the order to carry out the Alternative Solution within a reasonable time; or
    - (iii) include a different direction in relation to the fire risk posed by the cladding.

#### Consideration of existing alternative solutions at the subject address

- 30. In considering the Alternative Solution, it is necessary to consider the matter holistically, including:
  - (a) the alternative solutions that have already been granted in relation to fire safety at the subject address;

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- (b) the water supply for the sprinklers; and
  - (c) the high number of occupants that live at the building and their storage of material on the balconies.<sup>9</sup>
31. The Board agrees with the observations of Dr Enright that the alternative solutions listed in the occupancy permit<sup>10</sup> regarding fire safety are, collectively, highly unusual for a building of this size. For instance:
- (a) there is no fire separation within or between floors:
    - (i) Fire Resistance Level (FRL) requirements for walls between apartments and the corridor were removed;
    - (ii) FRL requirements for apartment fire doors were removed;
    - (iii) FRL requirements for walls bounding the escape stairs were removed;
    - (iv) FRL requirements to service shafts were removed (ie the floors are interconnected, and normal fire stopping requirements to penetrations are removed);
  - (b) there was an alternative solution which provided for a combustible rubbish chute;
  - (c) sprinkler coverage was removed from specified parts of the building; and
  - (d) the water supply for the sprinklers was downgraded from a Grade 1 to a Grade 2 system.

### Consideration of the Alternative Solution

32. The following considerations made it difficult to prepare the tests and imperative that the tests were developed after carefully identifying the risks and worst case scenarios and ensuring that the tests addressed those risks:
- (a) the proposed use of the sprinkler system on the strip walls would be outside the manufacturer's specification and was not supported by the manufacturer;
  - (b) the proposed use of the sprinkler system on the strip walls would be the first known use of the product in this way in Australia and, possibly, the world;
  - (c) there is no standard test for the use of sprinklers in this manner; and
  - (d) there are very significant risks associated with having combustible cladding on a 21 storey building and an alternative solution that retained such cladding needed to be very carefully assessed.
33. The first test that was conducted in relation to the Alternative Solution was based on AS 5113 (referencing BS 8414). However,
- (a) AS 5113 was not developed in order to test sprinklers, in fact, it does not even include sprinklers; and
  - (b) if an unmodified form of the test were undertaken on the Alucobest ACP (ie without sprinklers), the Alucobest ACP would have clearly failed the test, because it is combustible cladding.

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<sup>9</sup> Based on the evidence and submissions provided, it appeared that the high levels of occupancy and the use of the balconies for storage were likely to continue.

<sup>10</sup> Pages 1504 – 1510 of the Appeal Book.



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34. The second test was not a test to an Australian or overseas standard, did not have thermocouple measurements and was not the subject of a report by Exova.<sup>11</sup> Although the second test was sometimes referred to as a demonstration, because of these characteristics, for the sake of simplicity, these reasons refer to it as a "test".
35. The two tests were not developed in a collaborative manner and were not satisfactory:
- (a) the relevant risks and worst case scenarios associated with the Alternative Solution were:
    - (i) not identified with sufficient thoroughness and consideration;
    - (ii) not developed with the involvement of interested external parties, such as the MFB, the MBS or the MBS' expert, Dr Enright; and
  - (b) the tests were developed without obtaining input from these interested external parties, regarding how the test should be devised;
  - (c) the tests were conducted without the presence of Dr Enright, despite:
    - (i) Dr Enright requesting to be present at the tests; and
    - (ii) the fact that the Board had directed, with the agreement of the parties, that the experts would provide evidence in an enclave.
36. At the hearing, LU Simon's solicitor:
- (a) initially explained that Dr Enright was not permitted to attend due to "commercial considerations"; and
  - (b) ultimately stated that, at the time that the tests were undertaken, Dr Enright was excluded because the Alternative Solution was "in development" and that:

"had that test not achieved the outcome that [it] achieved, it is likely that we would not have put forward the alternative solution of this matter before the Board. That was, to put it another way, still at final stage of LU Simon's [examination] about whether or not this was a [viable] option .... It hadn't quite reached the stage of being [put] forward as a solution and discussion between experts. ....

If the testing didn't turn out the way it did, we would not - the position conveyed to the Owners Corporation on behalf of LU Simon was that we would not continue to press for an alternative solution."
37. This explanation indicated a lack of confidence in the outcomes of the tests and a desire for them to be developed and implemented without the involvement of Dr Enright.
38. There were a number of risks that were not adequately tested or examined by LU Simon:
- (a) the fire scenario of a cavity fire was not, to the satisfaction of the Board, addressed to show how the Alucobest ACPs would perform or how the sprinklers would act in this scenario. There is a real risk of occupants making alterations that increase the risk of cavity fires;
  - (b) the fire scenario of a smouldering fire against the Alucobest ACP, in a position that was shielded from the sprinkler, was not adequately tested;
  - (c) LU Simon did not provide sufficient information regarding maintenance of the

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<sup>11</sup> Transcript, 20 September 2016, page 87

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- external sprinkler system (NB: the PIA Report noted that smoke detectors were covered by occupants);
- (d) the Board was not satisfied that the sprinklers would operate effectively during high wind conditions. LU Simon did not utilise wind tunnel simulations and did not seek the opinion of a person with sufficient expertise in wind or fluid dynamics.<sup>12</sup> There are examples in Standards AS 1668.1 & NFPA 502 that recognise the detrimental effect of wind on sprinklers;
  - (e) the impact of older, buckled or broken Alucobest ACPs were not adequately considered;
  - (f) the effect of downgrading the water system from a Grade 1 to a Grade 2 system was not adequately considered by LU Simon. The external sprinkler system from the Alternative Solution will rely on this water supply, which:
    - (i) will place extra pressure on the water supply system; and
    - (ii) remove an important level of redundancy in the system; and
  - (g) the impact of the alternative solutions that significantly reduced the passive fire safety systems at the subject address were not adequately considered – if there were a failure in the water system, the reduction in FRLs and compartmentation, combined with having combustible external cladding, could be catastrophic.
39. In the circumstances of this matter, multiple testing was required and the tests needed to be developed in a manner that effectively identified and tested the most significant risks.
40. The Chief Officer, who has a statutory function for fire safety under the Act and the Building Regulations 2006, did not support the proposed alternative solution given the lack of testing and reliability of the external sprinklers proposed.
41. The Board considers that the proposed sprinklers on the balconies would:
- (a) decrease the risk of balcony fires developing to a point where they are capable of spreading vertically;
  - (b) decrease the risk of damage to, or ignition of, the cladding system; and
  - (c) signal the existence of a fire to the Metropolitan Fire Brigade through the alerts that would be connected to the sprinkler systems.
42. However, the Board considers that the risks associated with having the Alucobest ACPs are greater than the benefits outlined in paragraph 41 above.
43. LU Simon sought to draw support for the Alternative Solution from the PIA Report, noting that the test results were anticipated in the PIA Report.<sup>13</sup> The Board considers that the PIA Report:
- (a) provides support for the use of balcony sprinklers in addition to having non-combustible cladding; but

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<sup>12</sup> Mr Moore did not have a Bachelor, Masters or Doctorate in any field of Engineering – he has a Grad Dip Building Fire Safety and Risk Eng (Hons); and Bachelor Applied Science in Metallurgy (Hons). Whilst the Board is not bound by the rules of evidence, the Board notes that Mr Moore did not appear to have any formal qualifications regarding fluid dynamics.

<sup>13</sup> LU Simon Submission [8], footnote 9 of the submission referred to pages in the PIA Report which supported their submission: section 6.8 (AB 1388) and section 7 (AB 1391 and 1392), but did not refer to recommendation 8.7.

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- (b) does not support the use of balcony sprinklers as an alternative to removing and replacing the Alucobest ACPs. In particular, the note under recommendation 8.7 of the PIA Report states that the suggestion for sprinkler protection at the subject address was:

“not ... to mitigate the risk of the installation of combustible cladding material on external walls, but rather to address what the MFB perceives to be an increasing trend in the storage of combustible items on external residential balconies.”

### Conclusions

44. Based on the submissions and information provided to the Board, the Board determines that:
- (a) the Alternative Solution, which would have retained combustible Alucobest ACP cladding:
    - (i) does not comply with Performance Requirements CP2 and CP4;
    - (ii) does not provide at least equivalent health and safety as would be provided if the cladding was non-combustible and satisfied the DtS provisions;
  - (b) it would not be appropriate for the Building Orders to provide for the Alternative Solution (which includes retaining the combustible Alucobest ACP cladding); and
  - (c) the Building Orders, which were the subject of the appeals, are appropriate (subject to the discussion of the time for compliance noted below).

### *Time for compliance*

45. The time for completion of the Building Orders has expired and, if the Board merely affirmed the content of the existing Building Orders, the owners would, according to the wording of the orders, need to remove and replace the cladding in 2016.
46. No party has made submissions regarding what would be a reasonable time for the owners to remove the existing non-compliant Alucobest ACP and replace it with compliant cladding.
47. Given the serious consequences of contravening a building order, it is important that:
- (a) there is clarity regarding when the cladding needs to be removed and replaced; and
  - (b) the parties have an opportunity to provide submissions regarding the timing.

### *Appeal by Shireen Bangah*

48. Shireen Bangah sought to withdraw her appeal, despite there being no explicit power to withdraw an appeal. There were submissions regarding whether there is an implied power to withdraw an appeal.
49. Irrespective of whether there is an implied power to withdraw an appeal, the Board considers it appropriate to dismiss the appeal by Shireen Bangah and affirm the decision of the MBS to make the building order. The Board is satisfied that the building order is appropriate in the circumstances.
50. Affirming the decision of the MBS to make the building order ensures that the building order takes effect pursuant to section 146 of the Act. The advice of the MBS outlined in paragraph 7 above would apply to the affirmed building order, which was issued

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against Shireen Bangah.

*Continuing fire risks at the subject address*

51. LU Simon provided a detailed outline of the significant fire risks that are posed by the storage of material on the balconies and noted that those risks would subsist if the owners merely replaced the combustible cladding with non-combustible cladding.<sup>14</sup>
  52. The Board noted, in paragraph 30 above, that the alternative solutions listed in the occupancy permit regarding fire safety are, collectively, highly unusual for a building of this size.
  53. The determination of the Board is limited to determining the appeals against the Building Orders.
  54. The owners will need to ensure that the ongoing fire risks at the subject address are appropriately managed.
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#### **Panel Members**

**Date of Hearing:** 20/09/2016 &  
23/09/2016

Stephen Lodge, David Graham, Geoff Woolcock



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**Chairperson, Building Appeals Panel**

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**Registrar**

**Date signed:** 16/01/2017

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**OFFICE USE Ref:** TB : 448366, 448367, 448368 & 448369

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<sup>14</sup> LU Simon submissions 25 October 2016, [4] – [6].