
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : BUILDING SERVICES (COMPLAINT
RESOLUTION AND ADMINISTRATION) ACT
2011 (WA)

CITATION : OWNERS OF STRATA PLAN 65323 and PALAZZO
HOMES PTY LTD [2020] WASAT 57

MEMBER : MS C BARTON, MEMBER
MS S CHURN, SESSIONAL MEMBER

HEARD : 11 - 13 NOVEMBER 2019 AND 4 MARCH 2020

DELIVERED : 28 MAY 2020

FILE NO/S : CC 888 of 2019

BETWEEN : OWNERS OF STRATA PLAN 65323
Applicant

AND

PALAZZO HOMES PTY LTD
Respondent

FILE NO/S : CC 889 of 2019

BETWEEN : ALLSET INVESTMENTS PTY LTD
Applicant

AND

PALAZZO HOMES PTY LTD
Respondent

Catchwords:

Building service complaint - Meaning of 'carried out' a regulated building service - Nature of building contract - Contract specifications varied - Deficiencies in tiling system - Effect of acoustic mat on tiling system - Form of building remedy order

Legislation:

Building Act 2011 (WA), s 3

Building Regulations 1989 (WA), reg 13(1)(d)

Building Services (Complaint Resolution and Administration) Act 2011 (WA), s 3, s 5(1), s 11, s 11(d), s 36(1), s 36(1)(a), s 36(2), s 37(1), s 38(1), s 49

Building Services (Complaint Resolution and Administration) Regulations 2011 (WA), reg 5

Local Government (Miscellaneous Provisions) Act 1960 (WA), s 374

State Administrative Tribunal Act 2004 (WA), s 51(1)(b)

Building Services Registration Act 2011 (WA)

Result:

Applicants successful in relation to conceded items, reimbursement items and items the Tribunal identified as unsatisfactory

Applicants otherwise unsuccessful

Category: B

Representation:

CC 888 of 2019

Counsel:

Applicant : Mr PA Monaco & Ms D Lazarou

Respondent : Mr CS Gough & Mr JW Daly

Solicitors:

Applicant : GV Lawyers

Respondent : Mills Oakley

CC 889 of 2019

Counsel:

Applicant : Mr PA Monaco & Ms D Lazarou
Respondent : Mr CS Gough & Mr JW Daly

Solicitors:

Applicant : GV Lawyers
Respondent : Mills Oakley

Case(s) referred to in decision(s):

Diploma Construction (WA) Pty Ltd v South Central WA Pty Ltd
[2015] WASC 289
Gemmill v Sanders [2018] WASC 179
Hawke and Ennis [2018] WASAT 18
Jones v Dunkel (1959) 101 CLR 298
Lewis and Waco Pty Ltd [2016] WASAT 127
Primrose Meadows Pty Ltd v River View Pty Ltd [2019] VSC 263
Shami and Teo [2017] WASAT 73
Shaw v McLeod (unreported, WASC, Library No 4707, 8 November 1982)
The Owners of One Brighton Strata Plan 51948 and Pindan Pty Ltd [No 2]
[2020] WASAT 3

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 A dispute arose between the parties concerning a building service carried out at two apartment buildings in South Perth known as 'Prestige Towers' (**Prestige**) and 'Moritz Towers' (**Moritz**).

2 The applicant in CC 888 of 2019 is The Owners of Strata Plan 65323 (**Strata Company**). The applicant in CC 889 of 2019 is the developer of the Prestige and the Moritz, Allset Investments Pty Ltd (**Principal**). The respondent in both proceedings is Palazzo Homes Pty Ltd (**Palazzo Homes**).

3 In April 2019, the Strata Company and Principal (**applicants**) respectively lodged a building service complaint with the Building Commissioner alleging faulty or unsatisfactory building work comprising 143 Scott Schedule items in respect of CC 888 of 2019 and 50 Scott Schedule items in respect of CC 889 of 2019. The Building Commissioner referred the building service complaints to the Tribunal in June 2019 under s 11 of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA) (**Act**).

4 The Tribunal made an order on 30 July 2019 that proceedings CC 888 of 2019 and CC 889 of 2019 are to remain as separate proceedings but heard and determined together pursuant to s 51(1)(b) of the *State Administrative Tribunal Act 2004* (WA) (**SAT Act**).

5 Following the hearing by the Tribunal on 11-13 November 2019, and 4 March 2020, 78 complaint items remain in dispute in CC 888 of 2019 (in relation to common property) and 24 complaint items remain in dispute in CC 889 of 2019 (in relation to non-common property).

The issues for determination

6 The issues for determination by the Tribunal in relation to both proceedings are as follows:

- (1) did Palazzo Homes carry out a regulated building service?;
- (2) if the answer to (1) is in the affirmative, was the building work, the subject of each of the complaint items, faulty or unsatisfactory?; and

- (3) if the answer to (1) and (2) is in the affirmative, what is the appropriate form of the building remedy order (if any)?

The statutory framework

7 Section 5(1) of the Act relevantly provides that a person may make a complaint to the Building Commissioner about a regulated building service not being carried out in a proper and proficient manner or being faulty or unsatisfactory. A complaint made under s 5(1) of the Act is defined as a 'building service complaint': s 3 of the Act.

8 A 'regulated building service' is defined in s 3 of the Act to be a building service carried out by a registered building service provider. Relevantly, a 'building service' includes 'building work' as defined in s 3 of the *Building Act 2011* (WA) (**Building Act**) being the construction, erection, assembly or placement of a building or an incidental structure (being a structure attached to or incidental to a building).

9 Regulation 5 of the *Building Services (Complaint Resolution and Administration) Regulations 2011* (WA) (**Regulations**), imposes the limitation that only a person whose interests are being or have been adversely affected by the carrying out of a regulated building service may make a building service complaint.

10 Where a building service complaint is referred to the Tribunal by the Building Commissioner under s 11(d) of the Act, s 38(1)(a) of the Act enables the Tribunal to make a building remedy order where it is satisfied that the regulated building service has not been carried out in a proper and proficient manner or is faulty or unsatisfactory. The Tribunal may otherwise decline to make a building remedy order under s 38(1)(b) of the Act.

11 Under s 36(1) of the Act, a building remedy order made by the Tribunal may require a person who carried out a regulated building service to do one or more of the following:

- (a) remedy the building service as specified in the order;
- (b) pay to an aggrieved person such costs of remedying the building service as the Tribunal considers reasonable and specifies in the order; and

- (c) pay an aggrieved person a sum of money specified in the order to compensate the aggrieved person for the failure to carry out the building service in a proper and proficient manner or for faulty or unsatisfactory building work.

12 A building remedy order may require that the order be complied with within a time-frame specified in the order: s 36(2) of the Act.

Background to the dispute and remaining complaint items

13 The background to the dispute between the parties and summary of the remaining complaint items is provided below.

- (1) The Principal engaged an architect, DesignWise Concepts, to design the Moritz and the Prestige (**Buildings**).
- (2) On 27 August 2008, the Principal entered into a contract with Palazzo Homes for the construction of the Prestige. Palazzo Homes completed the forward works for the Prestige.
- (3) The Prestige is located at 63 South Perth Esplanade, South Perth. It is a four storey residential apartment complex with four apartments and a roof deck. The City of South Perth (**City**) issued building licence no. 20.2009.551.1 to Palazzo Homes in respect of the Prestige on 12 August 2011. Practical completion of the Prestige was achieved on or about 4 December 2014.
- (4) The Principal entered into a contract with Palazzo Builders Pty Ltd (**Palazzo Builders**) for the construction of the Moritz on 21 June 2010.
- (5) The Moritz is located at 5 Ferry Street, South Perth. It is a five storey residential apartment complex which comprises seven apartments and two two-storey penthouses. The City issued building licence no. 30.2009/550 to Palazzo Homes in respect of the Moritz on 24 May 2010. Practical completion of the Moritz was achieved on or about 29 August 2013.

- (6) The Strata Company is not a party to the building contracts (it was not a legal entity at the time the contracts were signed).
- (7) The building licences for the Moritz and the Prestige were issued under the s 374 of the *Local Government (Miscellaneous Provisions) Act 1960* (WA) and reg 13(1)(d) of the *Building Regulations 1989* (WA) (**1989 Regulations**). These provisions have been repealed and replaced by the Building Act.
- (8) The parties do not contest that the Buildings are a strata complex under Strata Plan 65323, the Buildings consist of multiple levels and the Strata Company is responsible for the common property of the Buildings.
- (9) Of the 102 items that remain in dispute, 32 relate to the tiling system and waterproofing on the external areas and balconies of the Buildings. There are also a number of complaint items relating to work that the applicants contend was not performed or which varied from the contract specifications. The remainder of the items relate largely to water ingress issues and cracking in the internal render and brickwork of the apartments, and in the basement car park of the Prestige.
- (10) Palazzo Homes contends that it did not construct the Buildings and, therefore, did not carry out a regulated building service for the purposes of s 5(1) of the Act. For this reason, Palazzo Homes contends that the Tribunal is unable to make any building remedy order against it under s 36(1) of the Act.

The conduct of the proceedings and expert evidence

14 The complaint items relating to the external tiling were addressed by Mr Neville Harrison, a registered builder who undertook the initial building inspection, and Dr Armand Zurhaar, a forensic and material scientist. Mr Harrison and Dr Zurhaar were engaged by the Principal and Strata Company as expert witnesses in these proceedings.

15 Mr Harrison is a builder with 62 years' experience in the building industry and 41 years' as a practising registered builder in Western Australia. The Tribunal found Mr Harrison to be a reliable witness.

He gave evidence based on his own investigation of each complaint item.

16 In relation to the tiling system, Palazzo Homes called civil engineer, Mr Guy Hopkins. Mr Hopkins gave his evidence in a considered manner and was of assistance to the Tribunal. Palazzo Homes also called Mr John Gary Holland. Mr Holland undertook the waterproofing work for the Moritz and the Prestige.

17 Dr Zurhaar initially gave evidence to the Tribunal that the rubber membrane used for sound proofing (**AcoustaMat**) did not affect the integrity of the tiles. Palazzo Homes contends that there were inconsistencies in Dr Zurhaar's evidence regarding the effect of the AcoustaMat on the tiling system because he subsequently acknowledged, after hearing the evidence of Mr Hopkins, that the AcoustaMat could have exacerbated the problem. The Tribunal considers that it is permissible for an expert witness to alter his or her opinion in light of evidence presented by another expert and, therefore, finds that any variation in Dr Zurhaar's evidence regarding the effect of the AcoustaMat on the tiling system did not diminish his credibility. The deficiencies Dr Zurhaar identified with the screed and waterproofing did not vary and that evidence is accepted by the Tribunal.

18 Mr Harrison provided further expert evidence for the applicants in relation to remainder of the structural complaint items, while structural engineer, Mr Gary Marocchi, was called by Palazzo Homes in relation to cracking caused by construction works on an adjoining property. The evidence of both Mr Harrison and Mr Marocchi was of assistance to the Tribunal in determining the cause of the cracking in the internal render and brickwork of the apartments, and the basement car park of the Prestige. Because Mr Marocchi was not called as an independent expert witness (Mr Marocchi's firm was the certifying design engineer for the project) the Tribunal prefers the evidence of Mr Harrison to that provided by Mr Marocchi.

19 The Tribunal relied on written reports prepared by the expert witnesses which were tendered in evidence as part of the Book of Documents comprising three volumes (**Exhibit 1**). The Tribunal also relied on a report prepared by Prompt Engineering dated 2 July 2018 prepared for the Strata Company in relation to wall cracking in storerooms 4, 7, 8 and 9 of the Moritz which formed part of Exhibit 1.

20 Mr Ante Jujnovich was called as a witness by Palazzo Homes. He provided a statutory declaration to the Tribunal dated 23 October 2019, which included building contracts for the Prestige and the Moritz as an annexure (Exhibit 1, p 638). Mr Jujnovich is a director of Palazzo Homes and Palazzo Builders.

21 The Tribunal had the benefit of a site view during which it observed the external tiling system on the roof and balconies of the Moritz and the Prestige, and the interior and exterior areas of the buildings that gave rise to the remainder of the complaint items. The Strata Company tendered in evidence photographs showing certain items in CC 888 of 2019 (**Exhibit 7**) and DesignWise concept plans dated August 2009 showing the location of the items in CC 888 of 2019 (**Exhibit 8**), many of which were conceded by Palazzo Homes or withdrawn by the Strata Company during the course of the hearing.

22 At the conclusion of the hearing, the Tribunal ordered the parties to file any further documents on which they wished to rely in the proceedings. The applicants subsequently filed and gave to the respondent a number of documents including tax invoices relating to the complaint items for which they sought an order to pay. The respondent filed with the Tribunal and gave to the applicants a letter from its solicitor dated 3 December 2019 with an indexed bundle of 48 documents.

23 Both parties filed with the Tribunal written submissions and any decided cases on which they wished to rely for the purposes of a further hearing on 4 March 2020. After hearing the parties' closing submissions, the Tribunal reserved its decision.

The applicants' case

24 The position of the Strata Company and Principal may be summarised as follows:

Who is the builder?

- (1) The builder is Palazzo Homes because it applied for and was issued the building licences for both the Moritz and the Prestige (Exhibit 1, p 1022). Mr Jujnovich gave evidence that Palazzo Homes collected the building licences from the City and paid for them (ts 361, 13 November 2019).

- (2) All building licences for the building works were in the name of Palazzo Homes and no application was made to the City for the building licences to be amended or re-issued in the name of Palazzo Builders.
- (3) The building contracts for the construction of the Moritz and the Prestige were between the Principal and Palazzo Builders. The Strata Company was not a party to the building contracts. The Principal received an email on 30 September 2015 in relation to practical completion (document 43, solicitor's letter dated 3 December 2019). The email was sent from Mr Jujnovich at a Palazzo Homes email address.
- (4) Mr Jujnovich swore a statutory declaration on 25 October 2019 in which he stated that Palazzo Homes was the registered builder that constructed the residential apartments at 5 Ferry Street, South Perth and 63 South Perth Esplanade, South Perth (Exhibit 1, p 638).
- (5) Palazzo Homes did not contest that it carried out a regulated building service in respect of the Moritz and the Prestige at the time the complaints were made to the Building Commissioner in April 2019 or prior to the Tribunal hearing.

The external tiling system

25 In relation to the tiling system, the position of the Strata Company and Principal may be summarised as follows:

- (1) Palazzo Homes did not install a tiling system on the balconies of the Moritz and the Prestige that complies with the Building Code of Australia (**BCA**) and relevant Australian Standards. The water proof membrane does not continue past the edge of the balcony, down the face of the balcony and return back to the drip groove as required by AS 4654.2.
- (2) The majority of the balconies have no perimeter expansion joints. This has caused the tiles to delaminate and become 'drummy'. Some tiles have lifted or 'tented'. In the Prestige, where there are

compliant intermediate joints but no perimeter joints, there is no tenting and the 'drumminess' is less than at the Moritz where there is a lack of expansion joints.

- (3) The sequence of the tiling system used by Palazzo Homes' contractors at the Buildings is not in accordance with the construction drawings. The drawings required the following sequence:
 - (a) concrete slab;
 - (b) water proof membrane;
 - (c) synthetic acoustic mat;
 - (d) cementitious screed;
 - (e) another layer of water proof membrane;
 - (f) tile adhesive; and
 - (g) the tiles.
- (4) The screed had not been prepared properly. The waterproofing on the roof and balconies had failed and there is water penetration into the building.
- (5) There is no continuation of the waterproof membrane around the penetrations of the drain and the penetrations for the fixings of the balcony stirrups.
- (6) The tiling system has failed because:
 - (a) there is not enough glue on the tiles;
 - (b) the waterproof membrane is too thin;
 - (c) the screed is very sandy; and
 - (d) the waterproofing has not been continued up the walls and has allowed water to enter.
- (7) The acoustic mat used by Palazzo Homes is not the one specified in the detailed construction plans (plan 59 of 60, Rev 3, 3 August 2009). Even if a different acoustic

mat was used, however, the tiling system would have failed because of the other workmanship deficiencies.

- (8) The remediation of the tiling and waterproofing system at the Moritz and the Prestige is complex and warrants the appointment of an expert engineer to supervise the remedial work.

Palazzo Homes' case

26 The position of Palazzo Homes may be summarised as follows:

Who is the builder?

- (1) Palazzo Homes contends that it is not the builder because the building contracts for the Moritz and the Prestige were between the Principal and Palazzo Builders, not Palazzo Homes. (The contract for the Prestige was initially between the Principal and Palazzo Homes but was subsequently replaced with a contract with Palazzo Builders).
- (2) Mr Jujnovich provided evidence at the hearing that:
 - (a) Palazzo Homes did not build the Moritz, Palazzo Builders did;
 - (b) Palazzo Homes carried out the forward works in respect of the Prestige but did not otherwise build the Prestige, Palazzo Builders did; and
 - (c) Palazzo Homes did not receive any money from the Principal or invoice the Principal (except in relation to the forward works).
- (3) Palazzo Homes accepts that it was the party that held the building licences but that does not contribute in any way to answering the question of who carried out the regulated building service within the meaning of s 36(1) of the Act. The holding of a building licence or permit does not equate to carrying out the registered building service.

- (4) The only party that carried out a registered building service, by virtue of carrying out building work within the meaning of the Building Act, is Palazzo Builders.
- (5) The Principal knew that Palazzo Builders was the builder as substantial correspondence was sent and certain permits were applied for and granted in the name of Palazzo Builders, including applications for occupancy permits and a building permit in respect of work for fire compartments (for example, documents 9 and 11, solicitor's letter of 3 December 2019). Palazzo Homes also provided to the Tribunal numerous examples of correspondence between the Principal and Palazzo Builders, including evidence of payments made by the Principal to Palazzo Builders.
- (6) The Strata Company has actual or constructive knowledge that Palazzo Builders was the builder by virtue of the director of the Principal being the owner of a number of the apartments in both the Moritz and the Prestige.

The external tiling system

27 The position of Palazzo Homes, in relation to the tiling system, may be summarised as follows:

- (1) While there may have been minor departures from the BCA, the tiling on the balconies in both the Moritz and the Prestige was done according to the overall nominated design and in a proper and workmanlike manner.
- (2) The key failing with respect to the tiling system arises out of the thermal expansion properties of the acoustic mat, the use of which was specified by the Principal and rendered the entire system (as proposed) doomed to fail.
- (3) It was the thermal expansion properties of the acoustic mat that resulted in expansion causing water to permeate the moisture barrier into the screed. The screed was satisfactory prior to waterproofing.

- (4) Any assertion that Palazzo Homes ought to have inserted control joints at every tile point would be entirely different from that which was required by the building contract and, in any event, would not be guaranteed to remain waterproof.
- (5) As the burden rests with the applicants to establish that the work performed by Palazzo Homes on the overall tiling system was defective (including the waterproofing, screed and control joints), based on the evidence before the Tribunal, it is impossible for the applicants to successfully discharge that burden.

The Tribunal's findings

Did Palazzo Homes carry out a regulated building service?

28 For a building remedy order to be made against a person under s 36(1) of the Act, that person must have 'carried out' a regulated building service for the purposes of the Act.

29 In the decision of *Shami and Teo* [2017] WASAT 73 (*Shami*), the Tribunal considered the proper construction of the phrase 'carried out' in s 36(1), s 37(1) and s 38(1) of the Act. The Tribunal decided that the phrase 'carried out' means the completion of the entirety of the building work of which the work the subject of a building service complaint forms part. The Tribunal described the entirety of that work as 'the building project'. In the case of the construction of an entire building, the building project will be the construction of the 'edifice' referred to in *Shaw v McLeod* (unreported, WASC, Library No 4707, 8 November 1982).

30 In *Shami*, the Tribunal concluded that a building remedy order can only be made against the person who had the role of ensuring that the entire building project, which includes the work which is the subject of a building service complaint, is brought to completion. The Tribunal stated at [14]:

For the purposes of s 36(1), s 37(1) and s 38(1) of the BSCRA Act, it is the entirety of the work of the building project which is carried out, not the components of it. What follows from that construction is that a building remedy order can only be made against the person who had the role of ensuring that the entire building project which includes the work which is the subject of a building service complaint was 'carried out', or in other words 'brought to completion'. It does not matter whether the

work was done personally by that person or by persons whom they arranged to perform the various components of the overall work.

31 In *Hawke and Ennis* [2018] WASAT 18 (*Hawke*), the Tribunal considered whether the regulated building service was carried out by a corporate entity or an individual, who was the sole director of the corporate entity. The work involved the removal and replacement of asbestos roof sheeting with a Colorbond roof. The restricted asbestos licence was held personally by the sole director and the corporate entity was contracted to remove the asbestos. The Tribunal stated at [20]:

What was made clear in the decision of *Shami* is that the entity who has carried out the regulated building service for the purposes of the BSCRA Act is not necessarily the person on site undertaking the mechanics of the work but is that entity which is responsible for the entirety of the building project. It is the entity who has the role of ensuring that the entire project is carried out and brought to a completed state.

32 The Tribunal concluded in *Hawke* at [53] that the written quotation and invoicing and the depositing of funds received in support of the asbestos removal work all support a position that the corporate entity carried out the regulated building service.

33 Palazzo Homes contends that it was Palazzo Builders that built the Moritz and the Prestige and not Palazzo Homes (although Palazzo Homes carried out the forward works in respect of the Prestige). Palazzo Homes contends that it did not receive any money from the Principal or invoice the Principal (except in relation to the forward works). Also, there were applications for occupancy permits made in the name of Palazzo Builders and correspondence between the Principal and Palazzo Builders that demonstrates that the Principal viewed Palazzo Builders as the builder. Therefore, Palazzo Homes contends that it did not carry out the work the subject of the building service complaint.

34 The Strata Company and Principal contend that the person who carried out a regulated building service for the purposes of the Act is Palazzo Homes because it applied for and was issued the building licences for both the Moritz and the Prestige. At no time did Palazzo Homes apply to the City to have the building licences placed in the name of Palazzo Builders. On 30 September 2015, an email was sent to the developer in relation to practical completion. The email was sent from Mr Jujnovich at a Palazzo Homes email address.

35 It is not in dispute between the parties that a building permit was required for the construction of the Moritz and the Prestige. The Tribunal finds that Palazzo Homes was named on the building licences and not Palazzo Builders and that Palazzo Builders has never held the building licences. Palazzo Homes applied for and was issued the building licences for both the Moritz and the Prestige. The building licences were issued in the name of Palazzo Homes and Mr Jujnovich, a director of Palazzo Homes, paid for the Building Permits (ts 361, 13 November 2019). The building licences required Palazzo Homes to carry out (or bring to completion) all building work in accordance with the plans, drawings, and specifications submitted with the licence application and the conditions of licence approval.

36 On 29 August 2015, Mr Jujnovich sent an email from Palazzo Homes to the Principal advising it of the date on which the occupancy permits were issued for both the Moritz and the Prestige (following a request by the Principal) as reference dates for the commencement of the 12 month defect period. On 30 September 2015, Mr Jujnovich again emailed the Principal from Palazzo Homes in relation to practical completion and the achievement of handover. These communications from Mr Jujnovic to the Principal further support a finding that Palazzo Homes had the role of ensuring that the building projects were 'brought to completion' for the purposes of the test in *Shami*.

37 It is also relevant to the test in *Shami* that at no time did Mr Jujnovich apply to the City to transfer the building licences from Palazzo Homes to Palazzo Builders. The building licences were issued under reg 13(1)(d) of the 1989 Regulations (now repealed) which provides that a builder must not commence work to construct, alter, add to or underpin any building until a licence has been issued in the prescribed form. The Tribunal finds that Palazzo Homes had the statutory authority to carry out the building work required to complete the Buildings. Palazzo Builders had no such authority.

38 Palazzo Homes contends that it did not receive any money from the Principal or invoice the Principal (except in relation to the forward works). The Tribunal finds that the existence of building contracts between the Principal and Palazzo Builders and the payment of money under those contracts are relevant but not determinative in the Tribunal's assessment of who brought the Buildings to completion. Palazzo Homes also produced correspondence from the Principal which refers to Palazzo Builders as the 'builder'. The Tribunal finds that the Principal's belief or state of mind regarding the identity of the builder is

only one factor in determining who 'carried out' the building service for the purposes of s 36(1), s 37(1) and s 38(1) of the Act.

39 The Tribunal finds that at no time prior to the hearing did Palazzo Homes contest its role as the builder of the Prestige and the Moritz. Mr Jujnovich acknowledged in his statutory declaration dated 23 October 2019 that Palazzo Homes was the builder of the Prestige and the Moritz in the following terms (Exhibit 1, p 641):

... While there are some complaints that I have offered to remedy (such as those relating to water ingress and other miscellaneous complaints that may be describe[d] as building issues), there are a range of complaints that are clearly not the respondent's responsibility. These relate, for example, to complaints which are based on design defects or are the result of fair wear and tear and are maintenance issues.

In relation to these complaints, the Owners and Allset appear to have misunderstood **my role as a builder, which is to construct a building according to the design and instructions provided**. It is not my role to rectify design defects which are selected by the client and given to me.

(Emphasis added)

40 On the basis of the evidence before it, the Tribunal finds that it was Palazzo Homes, and not Palazzo Builders, that carried out the building work that was the subject of the building licences. The Tribunal further finds that Palazzo Homes completed the construction of the Moritz and the Prestige for the purposes of the test in *Shami* notwithstanding that the Principal had entered into building contracts with Palazzo Builders and paid Palazzo Builders for the building work.

41 For a building remedy order to be made against a person who carried out the work the subject of the building service complaint, the building project must be a 'regulated building service'. A 'regulated building service' is defined in s 3 of the Act to be a building service carried out by a registered building service provider. The *Register of Building Contractors and Practitioners* under the *Building Services Registration Act 2011* (WA) provides that Palazzo Homes was first registered as a builder on 23 May 2002. The Tribunal finds that the construction of the Moritz and the Prestige is a building service (that is, building work as defined in s 3 of the Building Act) and that Palazzo Homes is a registered building service provider for the purposes of s 36(1) of the Act.

42 Accordingly, the Tribunal finds that Palazzo Homes did carry out a regulated building service which is the subject of the building service complaints by the applicants. Therefore, under s 38(1) of the Act, it is open to the Tribunal to make a building remedy order against Palazzo Homes under s 36(1) of the Act if the Tribunal is satisfied that the work which is the subject of the building service complaints was faulty or unsatisfactory.

Was the building work, the subject of each complaint item faulty or unsatisfactory?

43 For ease of reference, the Tribunal's findings in relation to each complaint item are to be found in Annexures A, B, C and D to these reasons other than the Tribunal's findings in relation to the tiling system which are addressed below.

44 The disputed complaint items in CC 888 of 2019 relating to the external tiling are 11, 13, 14, 18, 19, 27, 28, 56, 59, 60, 80, 81, 83, 106, 109, 110, 112, 114, 115, 116, 117, 120, 121, 122, 123, 124, 125, and 127 (of which the respondent has conceded items 66 and 77). In CC 889 of 2019, the complaint items relating to the external tiling are 2, 19, 35 and 47.

45 Annexures A and C list all items of complaint conceded by Palazzo Homes and Annexures B and D deal with the items of complaint disputed by Palazzo Homes.

46 Annexures A, B, C and D are to be read together with these reasons to form the reasons of the Tribunal in this proceeding. The Tribunal has made orders in respect of the complaint items in Annexures A, B, C and D at [69].

The tiling system, waterproofing and control joints

47 Dr Zurhaar is a forensic and material scientist and was called as a witness by the Strata Company and Principal. Dr Zurhaar gave evidence that the tiling system on the roof and balconies had failed because of the deficiency of the screed and the deficiency in the thickness of the waterproofing which allowed the penetration of water and produced 'drummy' tiles. In the Moritz building, there was a further issue in that there was a lack of expansion joints (ts 24-25, 11 November 2019). Also, Dr Zurhaar observed that the tiling sequence on the balcony of apartment 8 of the Moritz was different from the construction drawings in that the concrete slab has a layer of

water proof membrane on it, and then the cementious screed. The acoustic mat had been adhered to the top of the screed (ts 15, 11 November 2019).

48 Mr Harrison was called by the Strata Company and the Principal as a building expert. Mr Harrison and Dr Zurhaar gave evidence that the Moritz balcony tiling in respect of items 11, 13, 14, 19, and 27 of CC 888 of 2019 was not in accordance with AS 4654.2 (waterproofing membrane to extend over the exposed edge of a balcony), there were no perimeter and/or intermediate control joints, and no flexible sealant between the tile edge and the angle or between the face of the angle and edge of slab. Mr Holland, who undertook the waterproofing of the Moritz and the Prestige, was called as a witness by Palazzo Homes. Mr Holland acknowledged that the waterproofing should have been extended over the exposed edge of the balconies of the Moritz and Prestige but that this had not been done (ts, 330, 13 November 2019). The Tribunal accepts the evidence of Mr Holland, Mr Harrison and Dr Zurhaar and finds that the tiling system in these locations has failed, resulting in drummy and delaminating tiles.

49 Mr Hopkins is a civil engineer and prepared a report on the damage to roof and balcony tiles at the Moritz for Palazzo Homes dated 1 November 2019. He concluded in his report that the AcoustaMat had likely expanded both longitudinally and vertically due to temperature variations causing the tiles to delaminate due to water ingress. In cross-examination, Mr Hopkins accepted that both the Moritz and the Prestige tiling systems had failed. He gave evidence that the high thermal expansion of the AcoustaMat was possibly the most contributing factor but there were also other factors such as the failure of the waterproofing and tile joints (ts 303, 13 November 2019). He acknowledged that the AcoustaMat should not have been used externally (ts 294, 13 November 2019).

50 The Tribunal finds that the detailed construction plans (plan 59 of 60, Rev 3, 3 August 2009) specified the use of a minimum 5 millimetre impact-mat or similar (10 millimetre Regupol for best results) and that it was the decision of Palazzo Homes to use AcoustaMat 700 (a polymerically bound black recycled rubber with a thickness of 5 millimetres). The Tribunal further finds that the AcoustaMat was not suitable for use outside based on the evidence of Mr Hopkins and the email from A1 rubber dated 31 October 2019 (Exhibit 1, p 1046).

51 Palazzo Homes tendered a report from ND Engineering dated 8 November 2019 (**Exhibit 6**) which assessed the acoustic impact of 5 millimetre Regupol on the penthouse slab of the Moritz and found that a similar acoustic outcome could be achieved with an alternative solution, such as a flexible adhesive. The report concludes that the use of any rubber underlay is not recommended in outdoor areas, or any other areas subject to high thermal stress and/or water ingress, due to the detachment of the underlay from the concrete/tiles. No testing was undertaken for the investigation and, therefore, the Tribunal finds that it was a desk top assessment which did not have regard to the specific site characteristics or the tile sequence on the roof and balconies of the Moritz. For these reasons, the report was of limited assistance to the Tribunal in considering the complaint items relating to tiling and waterproofing.

52 The Tribunal finds that the use of the AcoustaMat may have contributed to the failure of the tiling system because the material was not suitable for use outside. However, the Tribunal accepts the evidence of Mr Hopkins and Dr Zurhaar and finds that there were factors other than the use of AcoustaMat that contributed to the system failing. This finding is supported by the fact that there are level 1 outdoor areas at the Moritz with no AcoustaMat which exhibit similar failures as the balconies and roof tiling (ts 25, 11 November 2019; ts 292, 13 November 2019).

53 In relation to the quality of the screed, Mr Holland was of the firm view that the screed was suitable at the time the waterproofing was undertaken. He said that he had waited for the screed to dry out because it had rained on a number of occasions. This was in contrast to Dr Zurhaar's evidence. Dr Zurhaar said that the failure of the tiling system on the roof and balconies of the buildings was caused by the deficient quality of the screed and the deficiency in the thickness of the waterproofing. Dr Zurhaar's evidence is consistent with the evidence of Mr Harrison who identified deficiencies with the waterproofing in that in some locations it had not been applied to the required thickness or was absent. Mr Harrison also gave evidence that tiles had moved in some locations due to the lack of expansion joints. The Tribunal prefers the evidence of Dr Zurhaar and Mr Harrison in relation to the quality of the screed and waterproofing, and the lack of expansion joints, and finds that the deficiencies they identified contributed to the ingress of water and caused the tiles on the roofs and balconies of the Buildings to delaminate and become drummy.

54 Accordingly, the Tribunal finds that the tiling and waterproofing system on the roofs and balconies of the Buildings has failed and that it is a result of faulty or unsatisfactory building work.

Building design and contract specifications

55 It is not contested that the Principal engaged an architect, DesignWise Concepts, to design the Buildings. Palazzo Homes advised the Tribunal that it was provided with the architectural plans in order to provide a quotation for the construction of the buildings and that the building works for each of the Buildings is the subject of a separate building contract. Palazzo Homes contends that the building contract is not a design and construct contract and, therefore, no complaint can lie against Palazzo Homes in respect of matters relating to design.

56 In the WA Supreme Court decision of *Diploma Construction (WA) Pty Ltd v South Central WA Pty Ltd* [2015] WASC 289 (*Diploma*) at [53], Mitchell J found that the Tribunal is not precluded from finding that building work is unsatisfactory where the builder received professional advice as to the design of the building and carries out construction which is inadequate but accords with the advice. The contract that was the subject of the decision in *Diploma* was a design and construct contract for stage 1 of a bulky goods shopping centre in Jandakot. The builder had engaged a firm of engineers to undertake the design of the carpark drainage system. Mitchell J concluded at [57]:

... it was open to the Tribunal to be satisfied that the construction of the drainage works which the appellant carried out was unsatisfactory because insufficient underground stormwater storage was constructed to comply with the requirements of the [Australian Rainfall and Runoff - A Guide to Flood Estimation] and accommodate a one in 10-year storm event. The Tribunal was not precluded from being so satisfied by the fact that the appellant had received professional engineering advice from a contractor as to the volume of underground water storage which should be constructed.

57 In these proceedings, Palazzo Homes contends that *Diploma* does not apply because the contract for the construction of the Moritz and the Prestige was not a design and construct contract and, therefore, Palazzo Homes is not responsible for remedying those complaint items that relate to the design of the Buildings. In relation to the tiling system, Palazzo Homes contends that it is not responsible for any failure of the design of the system because the evidence of Mr Hopkins demonstrates that the AcoustaMat was doomed to fail and even if Regupol had been used, it would have failed too. For the reasons

already given, the Tribunal does not accept that contention. Palazzo Homes did not utilise the acoustic material referred to in the detailed construction plans (plan 59 of 60, Rev 3, 3 August 2009) and, therefore, the Tribunal finds that Palazzo Homes did not follow the design specified.

58 There are a number of complaint items relating to work that was not performed or which varied from the contract specifications. Palazzo Homes contends that those items did not form part of the building contract or were varied by the architect or the superintendent. The applicants contend that if Palazzo Homes had obtained the necessary certification, variations and directions from the architect or superintendent to delete items or to deviate from the contract, Palazzo Homes would have produced those documents at the hearing. Therefore, the applicants contend that the Tribunal may infer that the uncalled evidence or missing material would not have assisted that party's case: *Jones v Dunkel* (1959) 101 CLR 298 (*Jones v Dunkel*) at 308, 312 and 320-21.

59 Palazzo Homes contends that the applicants seek to rely on the rule in *Jones v Dunkel* to fill in gaps in its evidence, which is impermissible. Palazzo Homes further contends that the applicants are incorrectly applying the rule and that it is not possible to draw any adverse inference against Palazzo Homes for failing to adduce particular evidence where the applicants have failed to discharge its burden of proof and establish a case against Palazzo Homes to answer: *Primrose Meadows Pty Ltd v River View Pty Ltd* [2019] VSC 263 at [19].

60 Mr Jujnovich swore a statutory declaration dated 23 October 2019 and gave evidence at the hearing in relation to the building contracts for the Prestige and the Moritz as the representative of Palazzo Homes/Palazzo Builders who negotiated and entered into the contracts in 2008 and 2010 respectively. The Tribunal found Mr Jujnovich to be a reliable witness in relation to his knowledge and understanding of the terms of those contracts and their inclusions. The Tribunal observes, however, that the standard specifications listed in the contract, such as the ducted vacuum system, did not reflect the actual build and this may be problematic for a builder when faced with a claim by a client after the contract is signed. The Tribunal further observes that where there are standard specifications which do not form part of the agreed scope of work, it would be prudent for a builder to delete or remove them from the contract before it is signed.

61 The Tribunal's findings in relation to the complaint items that relate to building design (other than the tiling system), and also work that was not performed or varied from the original contract specifications, are addressed in Annexures B and D to these reasons.

Cracking

62 Mr Marocchi was called by Palazzo Homes in relation to the cause of the cracking at the Prestige and the Moritz. Mr Marocchi's report of 2 November 2019 identifies that larger scale residential developments were completed to the south-west of the Moritz. According to searches Mr Marocchi undertook, the construction on the adjoining sites commenced in 2015 and was completed in late 2018. His report addresses the cracking in the basement of the Moritz, including the storerooms and also minor internal wall cracking at levels 2, 3, and 4 of the apartments. Mr Marocchi refers to the Prompt Engineering report of 2 July 2018 which concluded that the cracking in the brickwork in the storerooms 4, 7, 8, and 9 of the Moritz is a result of the construction works undertaken on the adjoining sites. The Tribunal observes that the complaint items relating to the cracking in the basement of the Moritz were withdrawn by the Strata Company.

63 The Tribunal's findings in relation to the remainder of the complaint items that relate to cracking, and remain in dispute, are addressed in Annexures B and D to these reasons.

What is the appropriate building remedy order (if any)?

64 The Tribunal may require a person who carried out a regulated building service that is faulty or unsatisfactory to be the subject of a building remedy order: s 38(1) of the Act. Section 36(1) of the Act confers discretion on the Tribunal as to the form of the building remedy order. The building remedy order may specify the work to be performed or require a sum of money to be paid to the aggrieved person to remedy the building service or as compensation for the work being faulty or unsatisfactory. It is not the case that any failure to carry out the building service in a faulty or unsatisfactory manner must result in the grant of a building remedy order: see *Lewis and Waco Pty Ltd* [2016] WASAT 127 [at 9].

65 The Tribunal finds that a building remedy order should be made under s 36(1)(a) of the Act to rectify the faulty tiling system and the complaint items listed in Annexures B and D. Section 36(1)(a) of the Act provides that the building remedy order consist of an 'order that a

person who carried out a regulated building service remedy the building service as specified in the order'.

66 The effect of s 36(1)(a) of the Act was considered by the Supreme Court in *Gemmill v Sanders* [2018] WASC 179 (*Gemmill*). The following passage from a decision by the Tribunal in *The Owners of One Brighton Strata Plan 51948 and Pindan Pty Ltd [No 2]* [2020] WASAT 3 (*Pindan*) provides useful observations about the specificity of building remedy orders under s 36(1)(a) of the Act having regard to the findings in *Gemmill* at [7]-[8]:

33 The respondent builder in *Gemmill v Sanders* argued that an order under s 36(1)(a) must 'state in detail how the remedy is to be carried out' (at [164]). Her Honour considered the meaning of the word 'specify' and then went on to say (at [169]):

I do agree that in light of the Tribunal's clear and unambiguous findings made about the method that is to be implemented to make good the cornices and ceilings, to simply state in the order that Gemmill Homes is required to remedy the effect of all cracking is not to specify how the regulated building service is to be remedied. Put another way, an order that simply required Gemmill Homes to remedy the effect of the cracking is not to implement the findings made by the Tribunal as to how the defects in the work were to be remedied.

34 This passage may suggest that it is necessary for a building remedy order to specify precisely how the remedial work is to be carried out.

35 Her Honour's remarks must be considered in the context of the particular circumstances before her. It appears that there was evidence before the Tribunal from the owner's expert that the work should be done in a particular way, which included installing 'scrim'. That evidence was not entirely accepted. The Tribunal accepted evidence that there was little benefit in installing scrim. The orders did not clarify or identify which approach to the remedial work should be adopted.

36 There are risks associated with specifying the particular way in which a defective building service should be remedied. *Owners of Strata Plan 52843 and Psaros Builders Pty Ltd* [2013] WASAT 46 and *Owners of Strata Plan 52843 and Psaros Builders Pty Ltd* [2018] WASAT 113 demonstrate the risk. A method for remedying the building service was specified but it did not work because the specified method did not comply

with the requirements of the Building Code of Australia and could not be carried out.

67 On the basis of these authorities, the Tribunal may specify the work to be done where there are clear and unambiguous findings about the method or approach that should be implemented to remedy the defects. The method specified by the Tribunal for doing the work necessarily requires the builder to formulate a design and procedure to achieve the result identified in the order. The Tribunal is not required to approve a set of plans: *Pindan* at [37]. Where there are no clear and unambiguous findings by the Tribunal about the preferred method for the remedial work, the builder is required to determine the method to remedy the work (as well as formulate the relevant design and procedure) and implement that method to satisfy the requirements of the order.

68 The exercise of the Tribunal's discretion cannot be fettered by simply adopting an applicant's election as to its preferred form of the building remedy order: *Gemmill* at [136]. There was evidence before the Tribunal of tiling sequences that differed between the Buildings, the incorrect use of AcoustaMat, inadequate waterproofing of the slab, sandy screed and insufficient glue on the tiles. The experts did not agree on a method for addressing these deficiencies. The Tribunal accepts the applicants' contention that the work required to rectify the tiling system of the roofs and balconies will be complex. However, the Tribunal does not find that the level of complexity warrants the appointment by Palazzo Homes of an independent engineer to supervise the remedial work. The Tribunal concludes that Palazzo Homes is to remedy the tiling and waterproofing in accordance with the following orders.

Orders

69 The Tribunal makes the following orders:

In matter CC 888 of 2019, the Tribunal orders:

1. By 5.00 pm on 30 June 2020, pursuant to s 36(1)(b) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the respondent is to pay the applicant the amount of \$16,838.80 (inclusive of GST) to remedy complaint items 95, 111 and 135.

2. By 5.00 pm on 31 July 2020, pursuant to s 36(1)(a) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the respondent is to carry out remedial work in relation to the following items:
 - (a) the items it has agreed to remedy in Annexure A being items 10(a), 16, 17, 23, 24, 32, 33, 34, 35, 39, 43, 49, 50, 51, 54, 55, 58, 61, 62, 64, 65, 66, 69, 70, 72, 74, 77, 78, 82(b)-(e), 84, 85, 86, 92, 93, 118, and 126 of the Scott Schedule; and
 - (b) the items in Annexure B that the Tribunal has identified as unsatisfactory being items 7, 20, 21, 25, 30, 37, 38(b), 38(c), 41, 47, 48, 53, 63, 71, 76, 82(a), 87, 88, 89, 90, 91, 94, 96, 99, 100, 103 of the Scott Schedule.
3. By 5.00 pm on 30 September 2020, pursuant to s 36(1)(a) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the respondent is to remedy the unsatisfactory tiling and waterproofing system in respect of items 11, 13, 14, 18, 19, 27, 28, 56, 59, 60, 80, 81, 83, 106, 109, 110, 112, 114, 115, 116, 117, 120, 121, 122, 123, 124, 125 and 127 of the Scott Schedule.
4. Pursuant to s 46(1) of the *State Administrative Tribunal Act 2004* (WA), the applicant has leave to withdraw complaint items 1, 3, 4, 5, 6, 8, 9, 10(b), 12, 15, 22, 26, 42, 44, 67, 68, 73, 104, 107, 108, 113, 119, 128, 131, 137, 138, 139, 140, and 141 of the Scott Schedule in CC 888 of 2019 and these items are dismissed pursuant to s 46(2) of the *State Administrative Tribunal Act 2004* (WA).
5. Pursuant to s 38(1)(b) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the Tribunal otherwise declines to make a building remedy order for the remaining items of the Scott Schedule and these items are dismissed pursuant

to s 46(2) of the *State Administrative Tribunal Act 2002* (WA).

6. The respondent is to make good any damage caused by the carrying out of the remedial work the subject of these orders.
7. Both parties have liberty to apply within 21 days from the date of this order to file with the Tribunal and serve an application for costs, including written submissions and any supporting documentation.
8. If a party elects to make an application for costs, the other party has 14 days from the date of the application to file with the Tribunal and serve written submissions and any supporting documentation in reply.
9. Subject to any further order, any application for costs will be determined entirely on the documents pursuant to s 60(2) of the *State Administrative Tribunal Act 2004* (WA).

In matter CC 889 of 2019, the Tribunal orders:

1. By 5.00 pm on 31 July 2020, pursuant to s 36(1)(a) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the respondent is to carry out remedial work in relation to the following items:
 - (a) the items it has agreed to remedy in Annexure C being items 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 23, 25, 26, 32, 36, 44, and 49 of the Scott Schedule; and
 - (b) the items in Annexure D that the Tribunal has identified as unsatisfactory being items 4, 5, 7, 13, 29, 30, 31, 38, 43, 45, and 48 of the Scott Schedule.
2. By 5.00 pm on 30 September 2020, pursuant to s 36(1)(a) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the

respondent is to remedy the unsatisfactory tiling and waterproofing system in respect of items 2, 19, 35 and 47 of the Scott Schedule.

3. Pursuant to s 46(1) of the *State Administrative Tribunal Act 2004* (WA), the applicant has leave to withdraw complaint items 1, 18, 20, 24, 27, 33, 34, 39, and 46 of the Scott Schedule and these items are dismissed pursuant to s 46(2) of the *State Administrative Tribunal Act 2004* (WA).
4. Pursuant to s 38(1)(b) of the *Building Services (Complaint Resolution and Administration) Act 2011* (WA), the Tribunal otherwise declines to make a building remedy order for the remaining items of the Scott Schedule and these items are dismissed pursuant to s 46(2) of the *State Administrative Tribunal Act 2002* (WA).
5. The respondent is to make good any damage caused by the carrying out of the remedial work the subject of these orders.
6. Both parties have liberty to apply within 21 days from the date of this order to file with the Tribunal and serve an application for costs, including written submissions and any supporting documentation.
7. If a party elects to make an application for costs, the other party has 14 days from the date of the application to file with the Tribunal and serve written submissions and any supporting documentation in reply.
8. Subject to any further order, any application for costs will be determined entirely on the documents pursuant to s 60(2) of the *State Administrative Tribunal Act 2004* (WA).

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MS C BARTON, MEMBER

28 MAY 2020

Annexure A - Items of complaint conceded by Palazzo Homes in CC 888 of 2019 (common property)

Complaint Item No Scott Schedule	Description	Strata Company's submissions	Palazzo Homes' submissions	Tribunal's findings
	MOURITZ TOWER Level 1			
10(a)	Apartment 2 - Uncontrolled condensate in corrosion of louvres and deterioration to tiling		Conceded. Palazzo Homes will connect overflows and direct to drains.	
16	Apartment 4, Bedroom 3, Water ingress north wall - Water coming down cavity. Water damage to sill, wall and skirting.		Conceded. Palazzo Homes will remedy.	
17	Apartment 4, Master Suite, Wall Cracks - Horizontal crack along both walls about floor, south west corner. Face of wall either side of crack. Not flush.		Conceded. Palazzo Homes will remedy.	
	MOURITZ TOWER Level 2			
23	Apartment 6 (next to lift well). Air conditioning installation -Uncontrolled condensate from air		Conceded. Palazzo Homes will connect and discharge into adjacent drain.	

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	conditioning unit. Discharges from P.G.I. Tray under and spills down face of louves, adding to spillage at Level 1.			
24	Apartment 7 (next to lift well). Air conditioning installation - Uncontrolled condensate from air conditioning unit. Discharges from P.G.I. Tray under and spills down face of louves, adding to spillage at Level 1		Conceded. Palazzo Homes will connect and discharge into adjacent drain.	
	MOURITZ TOWER Level 3 and 4 Apartment 8			
32	Dining Room - Cracks have developed in ceiling flush joins in both directions. Flush joins have not been offset as required by "Gyprock Residential Installation Guide".		Conceded. Palazzo Homes will remedy.	
33	Entry - Flush join near kitchen wall is delaminating.		Conceded. Palazzo Homes will remedy.	
34	Kitchen - Cracking in		Conceded. Palazzo	

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	bulkhead radiating from window pelmet.		Homes will remedy.	
35	Laundry cupboard - Hole 200 x 8mm in ceiling recess.		Conceded. Palazzo Homes will remedy.	
39	Bathroom - Water ingress through ceiling above vanity, resulting in nail ' popping' and staining.		Conceded. Palazzo Homes will remedy.	
	MOURITZ TOWER Level 3 and 4 Apartment 9			
43	Bedroom 3 - Water ingress resulting in damage left hand end of window pelmet.		Conceded. Palazzo Homes will remedy.	
49	Top Landing Stairs - No flexible joint between floor tiles and door frame.		Conceded. Palazzo Homes will remedy.	
50	Laundry cupboard - Hole in ceiling recess approximately 200 x 8mm		Conceded. Palazzo Homes will remedy.	
51	Living Room (Ceiling) - Water ingress resulting in damage to ceiling adjacent to powder room. The damage is directly below column in east		Conceded. Palazzo Homes will remedy.	

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	wall of Apartment 8 master suite over.			
54	Living Room (Ceiling) - Crack radiating from south east corner of skylight. Ceiling is 17.0m long and has no control joint.		Conceded. Palazzo Homes will remedy (ts 158, 12 November 2019).	
55	Entry Hall - Extensive water ingress resulting in damage along north wall.		Conceded. Palazzo Homes will remedy.	
58	Balcony #1 - Window head and underside of soffit not parallel. The surfaces vary 20mm over 1.2m, the gap has been roughly filled and is visible.	Mr Harrison gave evidence that the item could be remedied by the installation of new purpose-made pressing (ts 159, 12 November 2019).	Conceded in part. Palazzo Homes will perform the works recommended by Mr Harrison.	The Tribunal accepts the evidence of the Mr Harrison in relation to the manner in which the work is to be remedied.
	PRESTIGE TOWER Level 4			
61	Apartment 13 (not apartment 4) - Cracking to parapet walls. Cracking in parapet render up to 2mm wide on south elevation and west elevation return.		Conceded. Palazzo Homes will remedy.	
62	Powder Room Ceiling (Opposite kitchen) - Water ingress around		Conceded. Palazzo Homes will remedy.	

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	exhaust fan. Staining and damage to ceiling.			
64	Bedroom 1 Windows - water ingress has caused damage to west window sill, wall from sill to floor right hand end. South window right hand side to ceiling to floor. Plater reveal head west window.		Conceded. Palazzo Homes will remedy.	
65	Bedroom 2 Windows - Water ingress along north window head and sill has caused damage.		Conceded. Palazzo Homes will remedy.	
66	Outdoor Living (Tiling and drainage) - No perimeter or intermediate control joints to tiles area exit. Door from stairwell has no stepdown onto deck.		Conceded. Palazzo Homes will remedy.	
69	BBQ Recess - Tiles delaminating external corner west end		Conceded. Palazzo Homes will remedy.	
70	Foyer - Water ingress. Left hand side of doors to stairs damaged set coat and skirting.		Conceded. Palazzo Homes will remedy.	
72	Public Lobby - Water ingress external corner		Conceded. Palazzo Homes will remedy (ts	

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	left hand side of lift. Set court damages to F.L. up wall 600mm.		163, 12 November 2019).	
74	Carpark - Wall finish blistered top of wall left hand side of carpark #12. Possibly from water ingress.		Conceded. Palazzo Homes will remedy.	
77	Common Terrace (Opposite BBQ) - Upstand tiles delaminating. No intermediate movement control.		Conceded. Palazzo Homes will remedy.	
78	Stairwell (Ground to Level 1) south wall - Staining from water penetration from planter box behind, along "V" joint		Conceded. Palazzo Homes will remedy.	
82(b)-(e)	Parapet construction not in accordance with Fig 2.5 or 2.6. Detail AS 4654.2 waterproofing membranes for external above - Ground use in particular:- No evidence of cavity flashing. No coping or metal capping to top of parapet		Conceded. Palazzo Homes will remedy.	

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	and/or Architectural drawing floor plan - Level 3 and roof plan - notation states - "limestone cladding to wrap over and down to slab".			
84	Whole of complex ie "The Prestige" fire rating - Service duct and services continuous from ground floor to third floor and access hatches not fire rated. Services penetrating wall between ground floor foyer and void under stairs to common area Level 1 have non- compliant seal.		Conceded. Palazzo Homes will remedy.	
85	Termite Treatment - Unable to locate reticulated system specified on page 2 of 2 of Selection Schedule". Palazzo Homes to provide details of system for maintenance requirements.		Conceded.	
	MOURITZ TOWER Ground Floor			

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86	Termite Treatment - Unable to locate termite system for servicing.		Conceded.	
92	Undercover carpark - services penetrations not fire rated - Some service pipe penetrations do not have compliant seals through ceiling.		Conceded. Palazzo Homes will remedy.	
93	Undercover Carpark- Storeroom 6 - Door into store 6 has no fire rated seals or hardware.		Conceded. Palazzo Homes will remedy.	
	MOURITZ TOWER Apartment 3			
111	Ensuite - Shower recess ceiling - Water damage to ceiling along north and west walls after shower in Apartment 6 above is used.	The Strata Company is seeking an order to pay in the sum of \$6,487.80 as the remedial works have been completed (see Resources Contractors Group invoice 10.01 dated 27 November 2019).	Conceded.	The Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory. Palazzo Homes is to pay the Strata Company the amount of \$6,487.80 (inclusive of GST) for the costs of remedying the building service.
	MOURITZ TOWER Apartment 4			
118	Water Damage south East corner of Master Suite - Evidence of water ingress bottom of right hand window. Window		Conceded. Palazzo Homes will remedy.	

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	reveal - ie paint peeling.			
	MOURITZ TOWER Apartment 7			
126	W.I.R. (master suite) - Staining to ceiling from water ingress north east corner directly under metal roof over.		Conceded. Palazzo Homes will remedy.	

Annexure B - Items of complaint disputed by Palazzo Homes in CC 888 of 2019 (common property)

Complaint Item No	Description	Strata Company's submissions	Palazzo Homes' submissions	Tribunal's findings
	MOURITZ TOWER Ground Floor			
2	Storeroom 6 - Water ingress north west corner of store and around pier in Apartment 6 carpark abutting	Mr Harrison gave evidence that there is water ingress in the corner of the storeroom due to a failing of the waterproofing in that area. In his opinion, it was not connected to the work on the adjoining site (ts 127, 12 November 2019).	Palazzo Homes contends that this is a maintenance issue due to a failure to clean the gutters. A drainpipe immediately adjacent to the corner was blocked with a plastic bag and a pile of leaves (ts 127, 12 November 2019).	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that the Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
6	Apartment 1 - Unable to locate condensate discharge point			Withdrawn (ts 8, 11 November 2019).
7	Apartment 1 Ensuite/W.C. - Water ingress in ceiling above W.C. ensuite.	Mr Harrison gave evidence that there was water ingress and evidence of staining on ceiling along face of plumbing duct above W.C. ensuite (ts 129, 12 November 2019). The probable source of the damage is water tracking from plumbing	The statement by Mr Harrison that water ingress from any source is faulty work is unfounded and insufficient to establish liability.	The Tribunal accepts the evidence of Mr Harrison and finds that there is water ingress in the ceiling above the W.C. ensuite which is due to poor workmanship being a failure in the plumbing associated with the ensuite in the unit above and the failure of the waterproofing. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes

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		associated with ensuite in unit above (in ceiling space); failure of waterproofing to ensuite floor of unit above; water tracking down duct from unidentified source from levels 1&2 (Exhibit 1, p 319).		has carried out a regulated building service in a manner that is faulty or unsatisfactory.
	Level 1			
10(b)	Apartment 2 (next to lift well) Air conditioner installation - Uncontrolled condensate discharge resulting in corrosion of louvres and deterioration to tiling. No access to air conditioning unit for servicing. Collection tray under unit continuously holding condensate (health problem)			Withdrawn (ts 8, 11 November 2019).
11	Apartment 2 Balcony (Off Living/Master Suite) - Many tiles appear to			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>be "drummy". No perimeter movement joints. No waterproof membrane at edge of balcony and edge detail not in accordance with AS 4654.2 Waterproofing Membranes Section. Non-compliance with AS 3958.1 installation of ceramic tiles clauses 5.4.5 and 5.6.</p>			
12	<p>Apartment 3 (next to lift well) Air conditioner installation - Same as for Apartment 2, Item 7</p>			Withdrawn (ts 8, 11 November 2019).
13	<p>Apartment 3 Balcony (off Dining) Tiling - Many tiles have "drummy" sound when tapped. There are no perimeter or intermediate control joints. Grout missing in many places. No waterproof</p>			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>membrane to edge of slab and edge detail not in accordance with AS 4654.2 waterproofing membrane Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.</p>			
14	<p>Apartment 3 (off Bedrooms 2 and 3) Tiling - Many tiles have "drummy" sound when tapped. There are no perimeter or intermediate control joints. Grout missing in many places. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 waterproofing membrane Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>

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15	Apartment 4 (next to lift well) Air conditioner installation - Same as for Apartment 2, Item 10			Withdrawn (ts 8, 11 November 2019).
18	Apartment 4 Balcony (off Living/Dining) Tiling - Many tiles have "drummy" sound when tapped. There are no perimeter or intermediate control joints. Grout missing in many places. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 waterproofing membranes Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
19	Apartment 4 Balcony (off Master Suite)			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>Tiling Note: This balcony adjoins tiled roof area over garages below providing a continuous tiled area and is defined by a glass balustrade i.e. adjoins "common property" - Many tiles have "drummy" sound when tapped. There are no perimeter or intermediate control joints. Grout missing in many places. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 waterproofing membranes Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.</p>			
	Level 2			
20	Lift Lobby	Mr Harrison gave	Mr Harrison was unable to	The Tribunal accepts the evidence of

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	Water ingress - Water ingress as window sill damaging wall and skirting	evidence that there is water damage to the window sill and skirting from water ingress (ts 131, 11 November 2019).	determine the source of the water ingress (or provide an opinion on the issue) and, therefore, could not attribute any faulty workmanship to Palazzo Homes.	Mr Harrison of water ingress at this location and finds that it is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
21	Lift Lobby Wall crack - Vertical wall crack under window	Mr Harrison's evidence is that there is a vertical crack under the window in the lift lobby.	Mr Harrison was unable to determine the cause of the crack (or provide an opinion on the issue) and, therefore, could not attribute any faulty workmanship to the Palazzo Homes.	The Tribunal accepts the evidence of Mr Harrison that the crack was not caused by movement as the building sits on piles (ts 133, 12 November 2019). The Tribunal finds that there is a vertical wall crack in the lift lobby and that it is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
22	Apartment 5 (next to lift well) Air conditioner installation - Uncontrolled condensate from air conditioning unit Discharges from			Withdrawn (ts 8, 11 November 2019).

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	P.G.I. Tray under and spills down face of louvres, adding to spillage at Level 1.			
	Level 3			
25	Lift Lobby Water ingress above window - Evidence (staining) of water ingress left hand top corner of window	Mr Harrison gave evidence that there is water damage from water ingress above the window (ts 134, 11 November 2019).	Mr Harrison was unable to determine the source of the water ingress (or provide an opinion on the issue) and, therefore, to attribute any faulty workmanship to Palazzo Homes.	The Tribunal accepts the evidence of water ingress at this location and finds that it is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
	Levels 3 and 4			
26	Apartment 8 Air conditioning units (Level 4 behind stairwell on the roof) - Installation not in accordance with DWG No 5 i.e. 2 units not 1. Units not mounted on top AA T section. Condensate discharges uncontrolled onto the roof area. Access to units for servicing is via climbing parapet wall			Withdrawn (ts 8, 11 November 2019).

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	or glass safety balustrade.			
27	<p>Balcony (off kitchen/living Level 3) Tiling - Majority of tiles have "drummy" sound when tapped. Two tiles easily lifted north east corner adjacent to column Not waterproof membrane to upstand and membrane stops short of wall. No perimeter or intermediate movement of joints. Grout missing from tile joints. Cracked tiles under glass balustrade shoes and around drain. No waterproof membrane to edge of balcony and edge detail not in accordance with AS 4654.2 Waterproofing Membranes Section. Water ponding around</p>			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	floor drain outside dining room door.			
28	<p>Outdoor Living (Level 4) Tiling Note: Outdoor Living common. Adjoins tiled roof areas that form the roof for Level 3. Under the Outdoor Living is defined by glass balustrade - Many tiles have "drummy" sound when tapped. No intermediate or perimeter movement joints. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>
29	<p>Outdoor Living (West side) - Palazzo Homess repair to "plywood" soffit visible.</p>	<p>Mr Harrison gave evidence that an area of 10 x 50mm has been poorly repaired and is clearly visible from normal viewing position (ts 134, 11 November 2019).</p>	<p>There is no evidence as to when the alleged damage occurred or who carried out the relevant repair work. There is no evidence that Palazzo Homes performed the alleged faulty work.</p>	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

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30	Staircase (Walls) - Gyprock lining to staircase walls is "fractured" and there are many horizontal and diagonal cracks.	Mr Harrison gave evidence that the gyprock lining hasn't been fixed in accordance with the gyprock code. The cracking of the gyprock has occurred because there is no clearance and is due to poor installation (ts 135, 136, 11 November 2019).	Mr Harrison acknowledged in cross-examination that the significant crazing and cracking in the gyprock could have been a result of movement in the building.	The Tribunal accepts the evidence of Mr Harrison and finds that the cracking of the gyprock is due to poor installation. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
31	Master Suite - Previous repairs to ceiling clearly visible.	Mr Harrison's evidence is that the poor flushing of repairs in finished work is faulty work (Exhibit 1, p 341).	There is no evidence that Palazzo Homes carried out the repair work. The item was not listed in the defects inspections performed as provided by Palazzo Homes at documents 12-16 and 40-42, solicitor's letter of 3 December 2019.	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
36	Bedroom 3 - Previously repaired horizontal crack near air conditioning vent has reappeared.	Mr Harrison gave evidence that a hairline horizontal crack has developed on the left hand side of the AC vent (Exhibit 1, p 344). The crack happened during the construction stage, prior to the	The statement by Mr Harrison that the majority of the cracks reported on happened during the construction of the building appears to be pure conjecture. The cracking was not identified in construction reports and	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or

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		building next door being built (ts 137, 11 November 2019).	defects punch lists produced by Palazzo Homes.	unsatisfactory.
37	Bedroom 3 - Water ingress at window. Damage to top left hand window reveal and staining on walls down to floor.	Mr Harrison gave evidence that there is water staining on the walls down to the floor from water ingress (ts 139, 11 November 2019).	Mr Harrison was unable to determine the source of the water ingress (or provide an opinion on the issue) and, therefore, to attribute any faulty workmanship to Palazzo Homes.	<p>The Tribunal accepts the evidence of Mr Harrison of water ingress at this location and that it is a result of poor workmanship.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
38	Bedroom 3 - Horizontal crack left hand side of window sill. "Map" cracking visible top of wall between window and corner. Plaster reveal to sill delaminating from sub-strate.	Mr Harrison gave evidence that the 'map' cracking is caused by workmanship (the application of the plaster) and that moisture is causing delamination of the set coat from the float coat in relation to the reveal. In Mr Harrison's opinion, it is a moisture problem (ts 140, 11 November 2019).	Mr Harrison acknowledged in cross-examination that the horizontal crack to the left hand side of the window sill could have occurred as a result of movement.	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate the complaint item in relation to the horizontal crack. However, the Tribunal accepts the evidence of the Strata Company's witness in relation to the 'map' cracking (item 38(b)) and the reveal (item 38(c)) and finds that the observed faults are due to poor workmanship.</p> <p>Accordingly, the Tribunal finds that, in relation to item 38(b) and item 38(c), Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
40	Bedroom 4 -	Mr Harrison gave	The cracking is of a minor	The Tribunal finds that the Strata

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	Horizontal crack left hand side of air conditioning vent.	evidence that the horizontal joint might have been fractured when the hole was formed (ts 142, 11 November 2019). The crack has recently appeared (Exhibit 1, p 344).	nature and as a result of the normal expansion and contraction of building materials (Mr Marocchi's report, Exhibit 1, p 1065). There is no direct attribution by the Strata Company of faulty workmanship.	Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
41	Entry - Hole in ceiling next to downlight, over size hole for light fitting.	Mr Harrison gave evidence that a hole had been drilled in the ceiling that was too large for the fitting or in the wrong location. The patching has not been successful and is unacceptable workmanship (Exhibit 1, p 347; ts 150, 11 November 2019).	There is no evidence as to when the alleged damage occurred or who carried out the relevant repair work. There is no evidence that Palazzo Homes performed the alleged faulty work.	The Tribunal accepts the evidence of Mr Harrison and finds that the defect in the ceiling is the result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
42	Apartment 9 Air conditioner installation (Level 4 behind stairs on roof) - Air conditioning unit not mounted on top AAT section. Condensate spills uncontrolled across			Withdrawn (ts 8, 11 November 2019).

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	<p>roof top tiles damaging tiles. Access for servicing unit is via scaling glass safety balustrade and walking around roof or climbing BBQ and walking across lift shaft roof.</p>			
45	<p>Bedroom 3 - Horizontal crack left hand side of air conditioning vent.</p>	<p>Mr Harrison's evidence is that the cracks have recently developed and recommends monitoring the crack (Exhibit 1, p 350).</p>	<p>The cracking is of a minor nature and as a result of the normal expansion and contraction of building materials (Mr Marocchi's report, Exhibit 1, p 1065). There is no direct attribution by the Strata Company of faulty workmanship.</p>	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory</p>
46	<p>Bedroom 2 - Horizontal crack left hand end of window sill and vertical crack central below window.</p>	<p>Mr Harrison's evidence is that the cracks have recently developed and recommends monitoring both cracks (Exhibit 1, p 350). The vertical crack is not a step crack so it's not following the brick course and, something is happening behind the crack (ts 153, 11</p>	<p>The cracking is of a minor nature and as a result of the normal expansion and contraction of building materials (Mr Marocchi's report, Exhibit 1, p 1065). There is no direct attribution by the Strata Company of faulty workmanship.</p>	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

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		November 2019).		
47	Staircase (between Levels 3 and 4) - Many cracks and fracturing of Gyprock lining both sides of stairs.	Mr Harrison gave evidence that the gyprock lining has not been fixed in accordance with the gyprock code. The cracking of the gyprock has occurred because there is no clearance and is due to poor installation (Exhibit 1, p 350).	The cracks and fracturing in the gyprock are the result of the ordinary wear and tear of the building. Mr Harrison acknowledged in cross-examination that the significant crazing and cracking in the gyprock could have been a result of movement in the building.	The Tribunal accepts the evidence of Mr Harrison and finds that the cracking of the gyprock is due to poor installation. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
48	Staircase (Top landing) - Crack in bulkhead where plaster and gyprock join.	Mr Harrison gave evidence that the crack in the bulkhead was caused by the absence of a v-joint between two different materials. It was not a design error but poor workmanship (ts 154, 12 November 2019).	The item involves minor cracking.	The Tribunal accepts the evidence of Mr Harrison that the gyprock and plaster set wall move at different ratios and the crack occurred due to the absence of a v-joint (ts, 154, 12 November 2019). The Tribunal finds that the crack in the bulkhead was caused by poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory
52	Living Room (North wall) - Vertical crack, top left hand side of north window.	Mr Harrison gave evidence that a vertical crack has developed in this location and should	Mr Harrison acknowledged in cross-examination that it is only a hairline crack which	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.

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		be monitored (Exhibit 1, p 353).	should be monitored. There is no allegation of defective work.	Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
53	Living Room (West wall) - Vertical crack in "gyprock" warping 1 mm from left hand end of wall.	Mr Harrison's evidence is that the cracking to the gyprock flush joint is faulty work. The crack is in the gyprock cladding of the wall and should be raked out, reflashed and painted (Exhibit 1, p 354).	Mr Harrison was unable to identify a fault and conceded that it may be the result of movement.	The Tribunal accepts the evidence of Mr Harrison that the flush joint has moved and has not been done correctly (ts 157, 12 November 2019) and, therefore, the Tribunal finds that the crack in the gyprock is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory
56	Balcony #1 (Outside kitchen tiling) - Many tiles have "drummy" sound when tapped. No perimeter joint along walls. No waterproof membrane to edge of balcony and edge detail not in accordance with AS			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	4654.2 Waterproofing Membrane Section 2. Cracked tiles under (3) glass balustrade shoes.			
57	Balcony #1 Wall cracks - Cracks in south north and east walls. "Drummy" render along east wall crack.	Mr Harrison gave evidence that there was drummy render along the east wall track which suggests there is something going on behind the plaster. Cracks greater than 1mm are considered to be faulty work (Exhibit 1, p 359; ts 158, 12 November 2019).	The cracking is minor and as a result of normal movement in the building. Mr Harrison was unclear as to the cause of the cracking.	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
59	Balcony #2 (Off master suite) Tiling - Many tiles have "drummy" sound when tapped. No perimeter or intermediate control joints. No waterproof membrane to edge of balcony and edge detail not in accordance with AS 4654.2 Waterproofing			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>Membrane Section 2. A channel drain has been installed north/south across balcony with no joint between drain and tiles. There is a distinct variation in tile colour i.e. 2 visible areas.</p>			
60	<p>Apartments 8 and 9 Outdoor living and roof top tiling (Level 4, Roof Terrace) - The tiling to outdoor living areas for Apartments 8 and 9 and roof top tiling form the majority of roof cover for Level 3 below with parapet walls, lift shafts and glass balustrade separating the level plane of the roof. <i>The defects to the tiling across Level 4 are consistent with those described in Item 2 of Apartment 8 "Building Complaint</i></p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>

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	<p><i>Form" dated 21 March 2019.</i></p> <p>The roof top and outdoor living tiling is inseparable.</p>			
	<p>PRESTIGE TOWER</p> <p>Level 4</p>			
63	<p>Apartment 13 Kitchen Ceiling - East/west flush join clearly visible.</p>	<p>Mr Harrison stated in evidence that the flush join had not been done very well. The east/west flush join is clearly visible when viewed in accordance with AS/NZS2589. The join was not filled and sanded properly (Exhibit 1, p 387; ts 161, 12 November 2019).</p>	<p>The nature and extent of the alleged defect does not amount to faulty work. The alleged defect was not visible.</p>	<p>The Tribunal accepts the evidence of Mr Harrison that the flush join was not filled and sanded properly. The Tribunal finds that the defect is a result of poor workmanship.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
67	<p>Air conditioner located in plant room - Condensate discharges onto tiled floor into floor waste. It is not containing as recommended by manufacturer. Condensate should not discharge into</p>			<p>Withdrawn (ts 8, 11 November 2019)</p>

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	sewerage system. Access for removal of unit if required is only via crane through louvres. Electrical connections not compliant with manufacturer's instructions.			
71	Public Lobby - Panel above lift door dislodged	Mr Harrison gave evidence that the item involves a formed finished panel and you can see where it has dislodged. It's not in line (ts 163, 12 November 2019).	There is insufficient evidence to establish faulty work and liability under the Act.	The Tribunal accepts the evidence of Mr Harrison and finds that the dislodged panel is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
75	Carpark - Wall crack right hand top back corner	Mr Harrison gave evidence that there is a wall crack at the back corner in the car park. There is something causing the crack other than just movement (ts 163, 12 November 2019).	The cracking is minor. Mr Harrison's description of the cause of the crack is insufficient to attribute a finding of faulty work.	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
76	Carpark (Unroofed area) -	Mr Harrison gave evidence that there was	The cracking is minor and not the result of faulty	The Tribunal accepts the evidence of Mr Harrison and finds that the cracking

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	Cracking along "V" joint between slabs and beam east end of open area. Staining from water ingress	some cracking 25mm away from the v-joint. Cracking parallel to v joints in not what it's meant to do and there's some water -staining along the crack (ts 164, 11 November 2019).	workmanship. See Mr Marocchi's report, Exhibit 1, p 1065.	parallel to the v-joint is the result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory
79	All window and door openings and masonry walls (every level) - No flexible sealant to openings in masonry walls	Mr Harrison gave evidence that he did not detect sealant between any of the openings and the finish aquatex coat (ts 165, 12 November 2019).	The evidence of a third party professional, Mr Shane Winchester of Revaglass, is that the sub framing and angle trims appeared to have fixings and Polyurethane sealant/adhesive to the masonry walls. There have been no complaints or observations of water damage in relation to any of the windows or masonry walls surrounding the windows in the properties (see document 37, solicitor's letter of 3 December 2019).	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, in light of the evidence of Mr Winchester, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
80	Moat (south end) - Repairs to upstand tiles to moat incomplete. Finish to wall discoloured.			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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81	Moat (south end) - Upstand tiles to rear of service area north east corner delaminating			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
82(a)	Roof parapet North and west elevation - Horizontal cracking up to 2mm wide along parapet approximately 100mm from top.	Mr Harrison gave evidence that this is similar to the cracking on the parapet walls.	The cracking is minor and not the result of faulty workmanship. See Mr Marocchi's report, Exhibit 1, p 1065.	The Tribunal accepts the evidence of Mr Harrison and finds that the cracking is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
83	Roof area (Level 4) - Architectural drawings A3-53 and 54 notation states: "Provide waterproofing layer to slab and again to screed prior to laying tiles or as per approved system". No evidence that a double W.P.M system was installed. Service duct and services continuous from ground floor to			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

	third floor and access hatches not fire rated.			
	MOURITZ TOWER Ground Floor			
87	Undercover Carpark (Finishes) - (a) Ceiling from grid lines 4 to 9, texture coating omitted. (b) All pipework not painted. (c) Beams and columns not texture coated grid lines 5 to 9.	Mr Harrison gave evidence that the carpark ceiling grid lines 4 to 9 in the central section has not been texture coated as required by the drawings (ts 167, 12 November 2019). There has been no evidence produced by Palazzo Homes to show that this item was excluded from the specifications of the contract.	This item is excluded from the specifications, despite being on the drawings. Painting and texture coating is only required to the balcony and not the garage. It is not standard practice to texture coat beams and columns in carparks. No issues were raised with this work at completion.	The Tribunal accepts the evidence of Mr Harrison and finds that only part of the car park has been texture coated. (ts, 168, 12 November 2019). The Tribunal finds that the reference to the 'finishes' for the 'garage internal walls' at Exhibit 1, p 655 of the contract specifications for the Moritz does not refer to the precise location of those 'finishes' in the undercover carpark. The Tribunal finds that the failure to complete the texture coating of the carpark in accordance with the drawings is poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
88	Undercover Carpark Exit Door - Clearance under exit door (north elevation) has excessive gap at F.L. and door is delaminating.	Mr Harrison gave evidence that the door has a 30mm gap underneath, that it had not been sealed with a waterproofing strip across the bottom, and	Palazzo Homes made the decision to raise the door to protect it from water because of the presence of reticulation. This decision does not amount to faulty work. The delamination is	The Tribunal accepts the evidence of Mr Harrison and finds that the door is delaminating because the base of the door has not been sealed. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes

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		that it is delaminating. The doors are to be totally sealed after they have been fitted (ts 170, 12 November 2019).	not the fault of Palazzo Homes.	has carried out a regulated building service in a manner that is faulty or unsatisfactory.
89	Undercover Carpark (various locations) - Box gutter leaking adjacent to storeroom 6. Leak on gridline 9-1. Leak on gridline 7-1. Leak on gridline H-7.	Mr Harrison gave evidence that along the box gutter adjacent to storeroom 6 there is water ingress. The box gutter is leaking at the join (ts 172, 12 November 2019).	The position of Palazzo Homes is that the gutters have not been appropriately cleaned. (The blocked drain is shown in a photograph being document 33, solicitor's letter of 3 December 2019). The box gutters were installed according to design and any issues experienced are the result of a failure of maintenance.	The Tribunal accepts the evidence of Mr Harrison and finds that there is water ingress at the join. The Tribunal further finds that this is due to poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
90	Undercover Carpark Box Gutter Gridline 7 - No overflow provision to box gutter - gridline 7.	Mr Harrison's evidence is that there is no overflow provision to the box gutters.	The position of Palazzo Homes is that the gutters have not been appropriately cleaned. (The blocked drain is shown in a photograph being document 33, solicitor's letter of 3 December 2019). The box gutters were installed according to design and any issues experienced are	The Tribunal accepts the evidence of Mr Harrison and finds that there is no overflow provision to the box gutters. The Tribunal further finds that this is due to poor workmanship. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.

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			the result of a failure of maintenance.	
91	Public Lobby - water ingress - Water ingress in bulkhead on gridline 6 -A to B,	Mr Harrison gave evidence that there is water ingress in the bulkhead as you enter the public lobby (ts 173, 12 November 2019).	Palazzo Homes was unable to verify this complaint following inspection. There was no damage or defect sighted.	<p>The Tribunal accepts the evidence of Mr Harrison and finds that there is water ingress in the bulkhead. The Tribunal finds that this is a result of poor workmanship.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
94	Undercover Carpark - Additional wall installed between Storeroom 5 and 9 - Additional Wall constructed between storerooms 5 and 9 with non-compliant fire door. Wall is not brick or nominated on floor plan.	Mr Harrison gave evidence that there is an additional wall built in the undercover carpark and that it was not brick. He was not aware whether it had been fire proofed and certified. It was not on the drawings provided to him.	Palazzo Homes has produced the fire door certificate, certificate of design compliance for the car park wall and the occupancy permit (document 9, 10 and 20 respectively, solicitor's letter of 3 December 2019).	<p>The Tribunal accepts the evidence of Palazzo Homes, including that of Mr Jujnovich in relation to reducing the area of the carpark to achieve a certain fire rating (ts 345, 13 November 2019), and finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
95	Common Gym - Exit door to pool area - Exit door to pool area	Mr Harrison gave evidence that this item has been remedied by	Palazzo Homes obtained a certificate of occupancy which would not have	The Tribunal accepts the evidence of Mr Harrison and finds that the common gym door was required to be

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	<p>non-compliant and safety hazard (door lock).</p>	<p>the Strata Company (ts 176, 12 November 2019). The cost of the work was \$1,888.70 (see invoice 10200 from PRM Property Repair and Maintenance dated 14 November 2018).</p>	<p>been granted if there was a non-compliant pool door.</p>	<p>permanently locked to the outside to prevent access to the pool area in accordance with the City's requirements.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p> <p>Palazzo Homes did not provide to the Tribunal evidence of its estimated costs of rectifying this item. On the basis of invoice 10200 from PRM Property Repair, Palazzo Homes is to pay the Strata Company the amount of \$1888.70 (inclusive of GST) for the costs of remedying the building service.</p>
<p>96</p>	<p>Pool Surround - Construction joint sealant - Sealant to paving joints in pool area has failed allowing pool water to penetrate paving.</p>	<p>Mr Harrison gave evidence that the construction joints in the paving around the pool area have been filled with a mastic or sealant. The sealant has collapsed (as there is no backing rod underneath) and allows water to penetrate under</p>	<p>There was no requirement on Palazzo Homes to install the sealant. Accordingly, the allegation of faulty work is misplaced.</p>	<p>The Tribunal accepts the evidence of the Strata Company's witness, Mr Harrison, and finds that the sealant has collapsed in the construction joints in the paving due to poor workmanship.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or</p>

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		the paving (ts 179, 12 November 2019).		unsatisfactory.
97	Pool Area - No hot water to BBQ - Hot water not connected to BBQ.	Mr Harrison gave evidence that the hot water connection has not been completed to the barbeque as shown on the architectural drawings (ts 180, 12 November 2019).	The hydraulic drawings show that no hot water was to run to the BBQ, just a hose cock (cold water). Palazzo Homes relies on document 6, solicitor's letter of 3 December 2019.	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
98	Pool - Drainage provision - Unable to locate compliant provision for draining of pool and disposal.	Mr Harrison gave evidence that there is a requirement in the BCA to be able to drain the swimming pool. He could not find any return pipes that could drain the pool to external drainage.	The relevant pool installation quote provided for a soak well. There is no requirement for a pool to be drained completely.	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
99	Electrical Sub-Station - Non-compliant construction - WPM not continuous down face of slab. Horizontal cracking all side between slab and top brick course. Water run-off from	Mr Harrison gave evidence that the water proof membrane for the roof does not continue down the face of the slab and there is a horizontal crack through which water could enter. The	The 20mm roof overhang was reduced so that the roof slab finished flush with the wall. This is a design flaw which is not the responsibility of Palazzo Homes. Palazzo Homes relies on document 2, solicitor's letter of	The Tribunal accepts the evidence of Mr Harrison and finds that the 20mm overhang required by drawing 51.6 was omitted by Palazzo Homes. The Tribunal does not accept the argument of Palazzo Homes that the complaint item arose from a design flaw. The Tribunal further finds that the water proof membrane does not continue

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	<p>roof damaging texture coating and render. Roof not constructed in accordance with drawing 51.6 electric sub-station i.e. - 20mm roof overhang to wall face omitted. As constructed there is high risk of water ingress.</p>	<p>engineer drawings show a 20mm overhang of the slab to deflect water from getting into the substation (ts 182, 12 November 2019).</p>	<p>3 December 2019.</p>	<p>down the face of the slab. The Tribunal finds that these omissions constitute poor workmanship and, as a result, the integrity of the sub-station is at risk of water ingress.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
100	<p>Feature Entry Statement (Levels 1 to 4) - Entry statement cantilevers out over walkway. Horizontal cracking to both faces 1 c above slab (Level 1). Texture coating damaged. Water runs out of joint after rain and cascades onto path beneath (continues long after rain ceases).</p>	<p>No written submissions were provided to the Tribunal in relation to this complaint item. The Tribunal has considered the oral evidence given at the hearing.</p>	<p>No written submissions were provided to the Tribunal in relation to this complaint item. The Tribunal has considered the oral evidence given at the hearing.</p>	<p>The Tribunal accepts the evidence of Mr Harrison and finds that water has penetrated the inside of the entry statement, runs out of the building and has discoloured the façade of the building due to poor workmanship (ts 185, 12 November 2019).</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory</p>
101	<p>Undercover Carpark and Driveway - Spoon drains omitted - Palazzo Homes' specification</p>	<p>Mr Harrison gave evidence that there was a problem with water accumulating and causing damage to the</p>	<p>The work performed goes beyond the design drawing. Additional drains have been placed over and above what was</p>	<p>The Tribunal accepts the evidence of Palazzo Homes and finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p>

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	<p>nominates "spoon drain" to driveway and entrance to garage. Palazzo Homes has installed a single grated drain inlet centrally near front boundary. Had Palazzo Homes installed channel drain at entrance the surface water problem between garage and sub-station would not exist.</p>	<p>sliding door track. Specifications show that there was a spoon drain to the driveway and to the entrance of the garage that has not been installed (ts 187, 12 November 2019).</p>	<p>in the hydraulic design to address drainage issues (Mr Jujnovich, ts 348, 13 November 2019).</p>	<p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
102	<p>Garage Sliding Gate Track - Track rusting and water flows into garage - Floor track for gate badly rusted. Surface water from roof flows over edge and into garage. Surface water from roof over discharges over roof edge resulting in damage to building elements. Track should be heavy duty galvanised in this</p>	<p>Mr Harrison gave evidence that this complaint item arises because there are no spoon drains and the track is not a heavy duty galvanised track (ts 188, 12 November 2019).</p>	<p>The galvanisation of the track has worn off due to continual use. Palazzo Homes is not responsible for general wear and tear. The design at the top of the roof allows water to flow over and down the side of the building. This is a design issue and not the responsibility of Palazzo Homes.</p>	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

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	location.			
103	Ground Level Paving - No insulation joints with adjoining surfaces - No "insulation joints" provided to external walls of sub-station and paving.	Mr Harrison gave evidence that the paving around the substation had no insulation joints, and that there are some hairline cracks developing from the corners (ts 201, 13 November 2019).	There is no allegation of cracking to pavement or walls. No physical damage can be observed. It would have manifested by now being approximately six years after completion.	The Tribunal accepts the evidence of Mr Harrison and finds there is a lack of insulation joints. The Tribunal finds that the absence of insulation joints and the development of cracks is due to poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
	Level 1			
105	Holes drilled in face of aluminium window frames (Apartments 2 and 4) - Since inspection on 20/07/2018 holes have been drilled in Apt 2 bed 2 and Apt 4 bed 3 windows presumably to disperse water from inside of window. This attempt to rectify leaking windows is totalling unacceptable and will impact on the lifespan of window frames.	Mr Harrison gave evidence that he does not know how the holes were drilled and could only assume it was Palazzo Homes in order to deal with the water issues in apartments 2 and 4 (ts 206, 13 November 2019).	There is no evidence that Palazzo Homes carried out this work. Without any evidence that it was carried out by Palazzo Homes it cannot be faulty or unsatisfactory building work attributed to Palazzo Homes.	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.

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	<p>It appears holes were drilled to rectify previously reported water ingress. Drilling holes in frames is not an acceptable solution to water ingress.</p>			
106	<p>Undercover Carpark (Tiled Roof Over) - Carpark roof is part slab/ceramic tile and colorbond sheeting. Tiles and metal strip along edge of slab (gridline 9) have delaminated and can be peeled off. Construction of upstand between garage metal roof and tiled roof deck (Level 1) is non compliant with AS 4654.2 Clause 2.8.2.1 Roofs and Balconies. Palazzo Homes has been aware of tile delamination for at least 2 years. Rusting of upstand</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>

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	flashing has commenced. Tile delamination has increased since last inspection 20/07/2018.			
107	Air Conditioning Units - Discharge from Apartments 2, 3, 4, 5, 6, and 7 onto Level 1 roof - Condensate. Discharge from air conditioner. Units is uncontrolled and spills onto metal louvres and roof deck. Rusting to louvres and roof flashing has commenced and clearly visible. Condensate catchment trays holding water which will lead to rusting of units.			Withdrawn (ts 8, 11 November 2019).
	Apartment 2			
109	Roof Extension - (outside living and kitchen balcony) - No perimeter or intermediate			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>movement control joints Grout missing in many joints. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 Waterproofing Membranes Section 2. Non-compliance with AS 3957.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.</p>			
110	<p>Roof Extension - (outside master suite balcony) - As for Item 109</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>
	Apartment 3			
112	<p>Roof Extension - (outside master suite balcony) - As for Item 109 Apartment 2</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>
	Apartment 4			
114	<p>Roof Extension (outside living between grids H-1) - As for Item 109 Apartment 2</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>
	Level 2			

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	Apartment 5			
115	<p>Roof Extension (outside living and kitchen) - Tiles are lifting along edge and fall away from drain outlets. No perimeter or intermediate movement control joints. Grout missing in many joints. No waterproof membrane of slab and edge detail not in accordance with AS 4654.2 Waterproofing Membrane Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6 Efflorescence forming on surface of tiles.</p>			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
116	<p>Balcony (outside living) - Many tiles have "drummy" sound when tapped. No perimeter or intermediate</p>			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>movement control joints. Grout missing in many joints. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 Waterproofing Membranes Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6. Efflorescence forming where surface water is ponding.</p>			
117	Balcony (outside master suite) - As for Item 115			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
120	Roof Extension (outside master suite balcony) - As for Item 109.			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
	Apartment 6			
121	Roof Extension (outside master suite) - No perimeter or intermediate movement control			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	<p>joints. Grout missing in many joints. No waterproofing membrane to edge of slab and edge detail not in accordance with AS 4654.2 Waterproofing Membranes Section 2. Non-compliance with AS 3958. 1 installation of ceramic tiles Clauses 5.4.5 and 5.6.</p>			
122	<p>Balcony (outside living) - As for Item 109</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>
123	<p>Balcony (outside beds 2 and 3) - Some tiles have "drummy" sounds when tapped. No perimeter. Movement control joints. Grout missing in many joints. No waterproof membrane to edge of slab and edge detail not in accordance with</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>

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	<p>AS 4654.2 Waterproofing Membrane Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6 Efflorescence forming on surface of tiles.</p>			
	Apartment 7			
124	<p>Balcony (outside dining/living) - A east/west crack has developed along tile joint mid span of balcony. Some tiles have "drummy" sounds when tapped. No perimeter or intermediate movement control joints. Grout missing in many joints. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 Waterproofing</p>			<p>Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.</p>

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	Membrane Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6.			
125	Balcony and Roof Extension (outside master suite) - As for Item 122 Apartment 6			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
	Level 3 Apartment 8			
127	Roof Extension (outside living/home theatre) - No perimeter or intermediate movement control joints. No waterproof membrane to edge of slab and edge detail not in accordance with AS 4654.2 Waterproofing Membrane Section 2. Non-compliance with AS 3958.1 installation of ceramic tiles Clauses 5.4.5 and 5.6. Extensive efflorescence forming			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	around drain outlets.			
129	Skylight (in study) - Diffuser omitted from skylight.	Mr Harrison gave evidence that on the drawings the two skylights for apartment 8 and 9 show that there is a diffuser to be installed at ceiling level and it is not there (ts 209, 13 November 2019).	Palazzo Homes relies on a statement by the architect that he gave an instruction not to install the diffuser (document 2, solicitor's letter of 3 December 2019).	<p>The Tribunal accepts the evidence of Palazzo Homes, including that of Mr Jujnovich regarding instructions Palazzo Homes received from the architect to delete the diffusers (ts 349, 13 November 2019) and finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory</p>
	Apartment 9			
130	Skylight (in study) - Diffuser omitted from skylight	Mr Harrison gave evidence that on the drawings the two skylights for apartment 8 and 9 show that there is a diffuser to be installed at ceiling level and it is not there (ts 209, 13 November 2019).	Palazzo Homes relies on a statement by the architect that he gave an instruction not to install the diffuser (document 2, solicitor's letter of 3 December 2019).	<p>The Tribunal accepts the evidence of Palazzo Homes, including that of Mr Jujnovich regarding instructions Palazzo Homes received from the architect to delete the diffusers (ts 349, 13 November 2019) and finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or</p>

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				unsatisfactory.
	General Items			
132	Window and Door Frame Manufacturer/Installer (all frames all levels) - There are no manufacturer identification labels on aluminium window and door frames or performance labels.	Mr Harrison gave evidence that there is a requirement under the BCA for the manufacturer to attach a label to the windows for identification and certifying they have been tested. He could not find the labels. The windows are a possible source of water ingress. (ts 209, 13 November 2019).	The absence of labels is not faulty work. Palazzo Homes has produced a compliance certificate for the windows used at the Prestige, from Shelley glass, which includes certification that the windows and doors are provided in accordance with Australian Standards (document 19, solicitor's letter of 3 December 2019).	The Tribunal accepts the evidence of Palazzo Homes, including the evidence of Mr Jujnovich that he has never seen labels on windows that arrive at his building sites (ts 344, 13 November 2019), and finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
133	C-Bus System not working throughout complex - System not working. Incomplete terminations in some apartments.	Mr Harrison gave evidence that the C-Bus system is not working throughout the units (ts 214, 13 November 2019).	No issues with the C-Bus system have been identified in any punch lists produced by Palazzo Homes. The C-Bus systems were working during walk throughs conducted at defects liability period and handover.	The Tribunal accepts Palazzo Homes' evidence, including the evidence of Mr Jujnovich that all electrical systems were working at the time of handover and in working order at the end of the defects period (ts 349, 13 November 2019), and finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service

				in a manner that is faulty or unsatisfactory.
134	<p>Acoustic Installation throughout complex - Unable to confirm acoustic installation is compliant throughout complex.</p> <p>i.e.</p> <p>(a) waste pipes wrapped in acoustic wrapping.</p> <p>(b) access panels to service ducts.</p> <p>(c) diffusers to skylights Apartments 8 and 9.</p> <p>(d) seals to apartment entry doors.</p> <p>Note: Acoustic report called for milestone inspections and/or testing.</p>	<p>Mr Harrison gave evidence that there is no acoustic material wrapped around the soil pipes or the water pipes. The acoustic requirements for the building would require them to be wrapped as part of the acoustic compliance certificate. The pipes that he viewed were normal PVC pipes and were not covered by an appropriate acoustic material as required by the BCA (ts 224, 13 November 2019).</p>	<p>There is no evidence from the Strata Company as to defective acoustic properties. There is evidence before the Tribunal of photographs taken during construction which shows the use of acoustic wrapping (document 44, solicitor's letter of 3 December 2019).</p>	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
	PRESTIGE TOWER Ground Level			
135	<p>Lift Shaft (water present in lift well) - Water discovered in lift well causing</p>	<p>The evidence of Mr Harrison is that the source of water ingress at the top of the lift</p>	<p>The entry of water into the lift shaft was the direct result of the construction work on the neighbouring</p>	<p>The Tribunal accepts the evidence of Mr Harrison and finds that the water in the lift well entered through a crack at the top of the lift shaft as a result of</p>

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	serious damage to lift equipment.	shaft from a crack line between the concrete slab and brick upstand (ts 224, 13 November 2019). The source of the water has been rectified. If the water table did rise, the lift well is supposed to be waterproofed (ts 226, 13 November 2019).	property and the raising of the water table. See Mr Marocchi's report, Exhibit 1, p 1066.	<p>poor workmanship. The Tribunal further finds that the item has been remedied by the Strata Company because the repair work was required as a matter of some urgency to avoid damage to the mechanics of the lift (ts 224, 13 November 2019).</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p> <p>Palazzo Homes did not provide evidence to the Tribunal of its estimated costs of rectifying this item. Palazzo Homes is to pay the Strata Company the amount of \$8,462.30 (inclusive of GST) for the costs of remedying the building service comprising \$5,035.80 for Industrial Building Services invoice 05950 dated 10 September 2019 and \$3,426.50 for Schindlers Lifts Australia invoice 468661355 dated 30 October 2019.</p>
	All Apartments			
142	Window and Door Manufacturer/Installer - There are no	Mr Harrison gave evidence that there is a requirement under the BCA for the	The absence of labels is not faulty work. Palazzo Homes has produced a certificate of compliance	The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.

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	<p>manufacturer identification on aluminium window and door frames or performance labels.</p>	<p>manufacturer to attach a label to the windows for identification and certifying they have been tested. He could not find the labels. The windows are a possible source of water ingress. (ts 209, 13 November 2019).</p>	<p>for the windows used at the Prestige, from Shelley glass, which includes certification that the windows and doors are provided in accordance with Australian Standards (document 19, solicitor's letter of 3 December 2019).</p>	<p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
143	<p>Acoustic Installation Compliance (in ducts) - Unable to confirm acoustic installation is compliant. i.e. (a) waste pipes wrapped in acoustic wrapping. (b) access panels to service. (c) all apartment entry doors. Acoustic report called for milestone inspections and/or testing during construction.</p>	<p>Mr Harrison gave evidence that there is no acoustic material wrapped around the soil pipes or the water pipes. The acoustic requirements for the building would require them to be wrapped as part of the acoustic compliance certificate. The pipes that he viewed were normal PVC pipes and were not covered by an appropriate acoustic material as required by the BCA (ts 224, 240, 13 November 2019).</p>	<p>There is no evidence from the Strata Company as to defective acoustic properties. There is evidence before the Tribunal of photographs taken during construction which shows the use of acoustic wrapping (document 44, solicitor's letter of 3 December 2019).</p>	<p>The Tribunal finds that the Strata Company has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

Annexure C - Items of complaint conceded by Palazzo Homes in CC 889 of 2019 (non-common property)

Complaint Item No	Description	Principal's submissions	Palazzo Homes' submissions	Tribunal's findings
	MOURITZ TOWER Apartment 1			
6	Staircase window - Black protection tape still on window frame.		Conceded. Palazzo Homes will remediate.	
8	Kitchen - Colour variations in laminate facing to drawer bank and end panels.		Conceded. Palazzo Homes will remediate.	
9	Kitchen - Glazing bead to aluminium door not fitting and too short		Conceded. Palazzo Homes will remediate.	
10	Laundry - No sealant to gap along bench tops.		Conceded. Palazzo Homes will remediate.	
	MOURITZ TOWER Apartment 9			
11	Staircase - Black tape on window frame		Conceded. Palazzo Homes will remediate.	
12	Kitchen - colour variations in laminate facing to drawer bank and end panels.		Conceded. Palazzo Homes will remediate.	
	PRESTIGE TOWER			

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	Apartment 10			
14	Bedroom 1 - Water ingress west wall right hand side of window, skirting and wall damage.		Conceded. Palazzo Homes will remediate.	
15	Living - Water ingress west wall right hand side of window skirting and wall damage.		Conceded. Palazzo Homes will remediate.	
16	Services Duct - Services duct is continuous from Ground Floor to Level 4 and access hatch is not fire rated or sound proofed. Services penetrations not sealed and non-compliant.		Conceded. Palazzo Homes will remediate.	
17	Bathroom 2/W.C - Water ingress around exhaust grill above W.C. suite.		Conceded. Palazzo Homes will remediate.	
	PRESTIGE TOWER Apartment 11			
23	Services Duct (Internal - between Hall and Bedroom 1		Conceded. Palazzo Homes will remediate.	

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	entry)- Services duct is continuous from Ground Floor to Level 4 and access hatch is not fire rated or sound proofed. Services penetrations not sealed and non-compliant.			
25	Private Terrace - North/east corner of southern planter box tiles delaminating. Intermediate and perimeter movement control joints non-compliant.		Conceded. Palazzo Homes will remediate.	
26	Balcony (off bedroom 2) - Upstand tiles in north/south west corners non-compliant.		Conceded. Palazzo Homes will remediate.	
	PRESTIGE TOWER Apartment 12			
32	Services Duct (Internal - between Hall and Bedroom 1 entry) - Services duct is continuous from Ground Floor to Level		Conceded. Palazzo Homes will remediate	

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	4 and access hatch is not fire rated or sound proofed. Services penetrations not sealed and non-compliant.			
36	Terrace - Glass louvre blade installed by Palazzo Homes exploded and disintegrated - possible safety issue.		Conceded. Palazzo Homes will remediate	
	PRESTIGE TOWER Apartment 13			
44	Services Duct (Internal - between Hall and Bedroom 1 entry) - Services duct is continuous from Ground Floor to Level 4 and access hatch is not fire rated or sound proofed. Services penetrations not sealed and non-compliant.		Conceded. Palazzo Homes will remediate	
49	Lift Shaft - Upstairs tile to north east corner of shaft delaminated (tile		Conceded. Palazzo Homes will remediate	

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	fallen off wall).			
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Annexure D - Items of complaint disputed by Palazzo Homes in CC 889 of 2019 (non-common property)

Complaint Item No	Description	Principal's submissions	Palazzo Homes' submissions	Tribunal's findings
	MOURITZ TOWER Apartment 8			
2	Outdoor Living. Glass balustrade shoes and drain outlets not water proofed - Glass balustrade shoes and drain outlets not waterproofed in accordance with AS 4652.2 Waterproofing Membrane Section 2.			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
3	Outdoor Living - G.P.O. loose	Mr Harrison gave evidence that the whole box in the outdoor living area of Apartment 8 is loose and the power point screw has not been attached in the wall. The box itself has not been secured in the wall (ts 249, 13 November 2019).	This is an example of fair wear and tear that is expected of a property of this age. The cause of the alleged defect is pure speculation on the part of Mr Harrison which cannot support a finding of faulty or unsatisfactory building work.	The Tribunal finds that the Principal has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory
4	Outdoor Living - Recessed lights in	Mr Harrison gave evidence that the	No complaint was raised in relation to this issue at	The Tribunal accepts the evidence of Mr Harrison and finds that the exterior

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	deck not working, rusting and full of water after rain.	recessed lights are not working and have rusted. These are outdoor lights and should not have any water in them. If the lights are waterproof then they are not fit for purpose (ts 205, 13 November 2019).	completion. The cause of the alleged defect is pure speculation on the part of Mr Harrison.	lights have rusted and are not working, which is a result of poor workmanship either from the manner in which they were installed or because the lights are not fit for purpose. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
5	Outdoor Living - Full height vertical crack centrally in BBQ west wall.	Mr Harrison gave evidence that the crack in the outdoor living area of Apartment 8 goes from the floor to the ceiling which is about 2 metres high. It is not stepped and has been caused by more than just movement (Exhibit 1, p 339; ts 251, 13 November 2019).	The cracking is minor and part of the natural wear and tear and movement of the buildings. It is not the result of faulty workmanship. See Mr Marocchi's report, Exhibit 1, p 1062).	The Tribunal accepts the evidence of Mr Harrison that this is a vertical crack (and not stepped) and finds that the crack is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
7	Staircase Landing - Large gap internal corner of skirting.	Mr Harrison gave evidence that, in his opinion, the skirting has been poorly fitted. There are no other cracks to suggest that the wall has parted.	No complaint was raised in relation to this item at completion. It is a matter of fair wear and tear.	The Tribunal accepts the evidence of Mr Harrison and finds that the gap in the corner of the skirting is a result of poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes

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		This just relates to the skirting and is a workmanship issue (ts 253, 13 November 2019).		has carried out a regulated building service in a manner that is faulty or unsatisfactory.
13	Balcony #2 Glass Balustrade - Severe staining/damage has occurred on handrail, glass and tiles. Water cascades down onto this area from roof over. Edge details of tiled roof over does not conform to AS 4654.2 Waterproofing Membrane Section 2 resulting in the staining.	Mr Harrison gave evidence that the glass on the balcony has been severely stained and cannot be cleaned. The staining is caused by water that comes over the balcony above that is contaminated with a cement based product due to a lack of waterproofing.	This item is the result of the cantilever design of the balcony.	The Tribunal accepts the evidence of Mr Harrison and finds that lack of waterproofing on the balcony above Balcony #2 has contributed to the staining of the glass balustrade. This finding is supported by the evidence of Mr Holland who stated that waterproofing had not continued over the exposed edge of the balconies in both the Moritz and the Prestige (ts 330, 13 November 2019). Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory
	PRESTIGE TOWER Apartment 10			
19	Balcony (Off bedroom 2) - Upstand tiles in north and south west corners delaminating.			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
	Apartment 11			

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21	Bedroom 1 , Lounge, Study, Bedroom 2, Master Bedroom - Bullnose custom wood sills not installed.	Mr Harrison gave evidence that in the contract specifications it calls for the windows in these locations to have custom wood sills (ts 251, 13 November 2019). There is no documentation in the form of variations and/or instructions from the architect or superintendent to establish that this item was excluded from the contract.	This item was deleted from the scope of work and was not required to be installed (see statutory declaration of Mr Jujnovich, Exhibit 1, p 650). Mr Harrison had no knowledge of the contract negotiation process.	<p>The Tribunal accepts the evidence of Mr Jujnovich in his statutory declaration at Exhibit 1, p 650 and at the hearing (ts 351, 13 November 2019) and finds that the bullnose custom sills system did not form part of the scope of work.</p> <p>The Principal has not provided sufficient evidence to substantiate this complaint item. No evidence was called by the Principal in relation to the negotiations that took place with Palazzo Homes at the time the contract was entered into.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
22	Main Bathroom - Noisy exhaust fan.	Mr Harrison gave evidence that when he turned on the exhaust fan the exhaust fan rattled. The fan should not deteriorate and become noisy if it has not been used (ts 253, 13 November 2019).	This item is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time.	<p>The Tribunal finds that the Principal has not provided sufficient evidence to substantiate this complaint item.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

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28	All rooms - Ducted vacuum system not installed.	Mr Harrison gave evidence that the construction documents stated that the vacuum system was to be installed and no variation had been provided by Palazzo Homes to prove that it had been deleted from the contract (ts 253, 13 November 2019).	This item was deleted from the scope of work and was not required to be installed. Mr Harrison had no knowledge of the contract negotiation process. Electrical plans provided as document 32 of the letter of 3 December 2019 do not detail ducted vacuum. There is no provisional sum allocated for a ducted vacuum system in the contract for the Prestige.	<p>The Tribunal accepts the evidence of Mr Jujnovich in his statutory declaration at Exhibit 1, p 640 and finds that the vacuum system did not form part of the scope of work.</p> <p>The Principal has not provided sufficient evidence to substantiate this complaint item. No evidence was called by the Principal in relation to the negotiations that took place with Palazzo Homes at the time the contract was entered into.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
Apartment 12				
29	Main Bathroom - Exhaust fan not working. All circuit breakers were on.	Mr Harrison gave evidence that the exhaust fans were not working. There was power to the exhaust fan as all circuit breakers were on (ts 254, 13 November 2019).	There is no explanation as to why the fans do not work. This is an example of fair wear and tear and is to be expected of a building of this age. It is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used	<p>The Tribunal accepts the evidence of Mr Harrison and finds that the exhaust fans are not working and that this is due to poor workmanship.</p> <p>Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

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			for an extended period of time	
30	Bathroom 1 - Exhaust fan not working. All circuit breakers were on.	Mr Harrison gave evidence that the exhaust fans were not working. There was power to the exhaust fan as all circuit breakers were on (ts 254, 13 November 2019).	There is no explanation as to why the fans do not work. This is an example of fair wear and tear and is to be expected of a building of this age. It is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time.	The Tribunal accepts the evidence of Mr Harrison and finds that the exhaust fans are not working and that this is due to poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
31	Bathroom 2 - Exhaust fan not working. All circuit breakers were on.	Mr Harrison gave evidence that the exhaust fans were not working. There was power to the exhaust fan as all circuit breakers were on (ts 254, 13 November 2019).	There is no explanation as to why the fans do not work. This is an example of fair wear and tear and is to be expected of a building of this age. It is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time.	The Tribunal accepts the evidence of Mr Harrison and finds that the exhaust fans are not working and that this is due to poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
35	Terrace Tiling - No intermediate movement control			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.

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	joints in tiling.			
37	All Rooms - Ducted vacuum system not installed.	Mr Harrison gave evidence that the construction documents stated that the vacuum system was to be installed and no variation had been provided by Palazzo Homes to prove that it had been deleted from the contract (ts 253, 13 November 2019).	This item was deleted from the scope of work and was not required to be installed. Mr Harrison had no knowledge of the contract negotiation process. Electrical plans provided as document 32 of the letter of 3 December 2019 do not detail ducted vacuum. There is no provision sum allocation for a ducted vacuum system in the contract for the Prestige.	<p>The Tribunal accepts the evidence of Mr Jujnovich in his statutory declaration at Exhibit 1, p 640 and at hearing (ts 353, 13 November 2019) and finds that the building contract was varied to exclude the installation of the ducted vacuum system.</p> <p>The Principal has provided insufficient evidence to substantiate this complaint item. No evidence was called by the Principal in relation to the negotiations that took place with Palazzo Homes at the time the contract was entered into.</p> <p>Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>
	Apartment 13			
38	Outdoor Living Glass Balustrade - Design and installation of glass balustrade traps debris against wall. Cleaning of glass and removal of debris is not possible without	Mr Harrison gave evidence that there is a gap about 40mm and the gap continues around but as the tiling slopes up, the glass line does not change. The consequence is that there is no gap behind	The design for this item followed the specification. It is incorrect to say that the cleaning of the glass and the removal of the debris is not possible.	<p>The Tribunal accepts the evidence of Mr Harrison and finds that the manner in which the balustrade was installed constitutes poor workmanship.</p> <p>The Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.</p>

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	removing glass.	the glass so the glass cannot be cleaned (ts 260, 13 November 2019).		
40	Bathroom 2 - Noisy exhaust fan.	Mr Harrison gave evidence that when he turned on the exhaust fan the exhaust fan rattled. The fan should not deteriorate and become noisy if it has not been used (ts 262, 13 November 2019).	This item is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time	The Tribunal finds that the Principal has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
41	Bathroom 1 - Noisy exhaust fan.	Mr Harrison gave evidence that when he turned on the exhaust fan the exhaust fan rattled. The fan should not deteriorate and become noisy if it has not been used (ts 262, 13 November 2019).	This item is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time	The Tribunal finds that the Principal has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
42	Laundry - Noisy exhaust fan.	Mr Harrison gave evidence that when he turned on the exhaust fan the exhaust fan rattled. The fan should not deteriorate and become noisy if it has not been used (ts 262, 13 November 2019).	This item is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time	The Tribunal finds that the Principal has not provided sufficient evidence to substantiate this complaint item. Accordingly, the Tribunal is not satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.

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43	Main Bathroom - Exhaust fan not working. All circuit breakers on.	Mr Harrison gave evidence that the exhaust fans were not working. There was power to the exhaust fan as all circuit breakers were on (ts 262, 13 November 2019).	There is no explanation as to why the fans do not work. This is an example of fair wear and tear and is to be expected of a building of this age. It is not a proper allegation of faulty work. Mr Harrison acknowledged that the fans have not been used for an extended period of time.	The Tribunal accepts the evidence of Mr Harrison and finds that the exhaust fans are not working and that this is due to poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
45	Kitchen - Ceiling access panel poorly fitted.	Mr Harrison gave evidence that the ceiling panel access was poorly fitted. It is not equal in its margins around the opening and looks badly finished. In Mr Harrison's opinion, this is a workmanship item (ts 262, 13 November 2019).	The ceiling access could have been used since the defects liability period. The panel could have been moved.	The Tribunal accepts the evidence of Mr Harrison and finds that the poorly fitted ceiling panel is due to poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory
47	Terrace (Tiling) - No intermediate movement control joints in tiling.			Palazzo Homes to remedy for the reasons provided in the main body of the Tribunal's decision.
48	Internal Stair Landing - Water ingress right	Mr Harrison gave evidence that at the top of the stair landing as	In conjunction with the architect, the builder built up areas on a slope to	The Tribunal accepts the evidence of Mr Harrison and finds that the water ingress in this location is a result of

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	hand side of exit door. Set coat at F/L damaged.	you step out onto the balcony there is water ingress. There should have been a spoon drain across the face of the door to prevent the water coming into the building. The water is accumulating and causing damage to the right hand side of the door. It is a workmanship issue (ts 270, 13 November 2019).	avoid an identified trip issue or risk. It is not a workmanship issue.	poor workmanship. Accordingly, the Tribunal finds that, in relation to this item, Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
50	All Rooms - Ducted vacuum system not installed.	Mr Harrison gave evidence that the construction documents stated that the vacuum system was to be installed and no variation had been provided by Palazzo Homes to prove that it had been deleted from the contract (ts 253, 13 November 2019).	This item was deleted from the scope of work and was not required to be installed. Mr Harrison had no knowledge of the contract negotiation process. Electrical plans provided as document 32 of the letter of 3 December 2019 do not detail ducted vacuum. There is no provision sum allocation for a ducted vacuum system in the contract for the Prestige.	The Tribunal accepts the evidence of Mr Jujnovich in his statutory declaration at Exhibit 1, p 640 and at hearing (ts 353, 13 November 2019) and finds that the building contract was varied to exclude the installation of the ducted vacuum system. The Principal has provided insufficient evidence to substantiate this complaint item. No evidence was called by the Principal in relation to the negotiations that took place with Palazzo Homes at the time the contract was entered into. Accordingly, the Tribunal is not

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				satisfied that Palazzo Homes has carried out a regulated building service in a manner that is faulty or unsatisfactory.
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