Civil and Administrative Tribunal

New South Wales

Case Name:	The Owners – Strata Plan No. 90347 v President Properties Pty Ltd
Medium Neutral Citation:	[2022] NSWCATCD 99
Hearing Date(s):	27 June 2022
Date of Orders:	30 June 2022
Decision Date:	30 June 2022
Jurisdiction:	Consumer and Commercial Division
Before:	Graham Ellis SC, Senior Member
Decision:	1. The request to join Stadurn Pty Ltd as a respondent is refused. 2. The application is dismissed as the Tribunal does not have jurisdiction under the Home Building Act 1989. 3. The request for leave to amend the application to add claims under the Design and Building Practitioners Act 2020 is refused. 4. Written submissions not exceeding five pages and any supporting evidence in support of any application for costs are to be filed and served by Monday 11 July 2022. 5. Written submissions not exceeding five pages and any supporting evidence in response to any such application for costs are to be filed and served by Wednesday 20 July 2022. 6. Any written submissions in reply, not exceeding two pages, are to be filed and served by Wednesday 27 July 2022.
Catchwords:	BUILDING AND CONSTRUCTION – Joinder of party after expiration of limitation period – Date when claim lodged – Whether Tribunal has jurisdiction

Legislation Cited:	Civil and Administrative Tribunal Act 2013 (NSW) Design and Building Practitioners Act 2020 (NSW) Home Building Act 1989 (NSW) Uniform Civil Procedure Rules 2005 (NSW)
Cases Cited:	Amaca Pty Ltd v Cremer [2006] NSWCA 164 Cittia Hobart v Cawthorn [2022] HCA 16 Commissioner of Police, NSW Police Force v Fine [2014] NSWCA 327 David Cameron Jones t/as Oz Style Homes v Panchal [2018] NSWCATAP 238 DHJ v Secretary, Department of Family and Community Services [2018] NSWCATAD 46 Dyldam Developments v The Owners SP 85305 [2020] NSWCA 327 Fernance v Nominal Defendant (1989) 17 NSWLR 710 Gardez Nominees Pty Ltd v NSW Self Insurance Corporation [2016] NSWSC 532 Hopcroft v Edmunds (No 2) [2012] SASC 94 Howlett v Hurburgh [2004] TASSC 79 Ketteman v Hansel Properties Ltd [1987] AC 189 Lendlease Engineering Pty Ltd v Owners Corporation No. 1 & ors [2021] VSC 338 Owners Corporation Strata Plan 64757 v MJA Group Pty Ltd [2011] NSWCA 236 Owners SP 92648 v Binah Constructions PL & Anor [2021] NSWCATAP 68 Smith v Council of the Shire of Wakoo [2002] NSWSC 964 The Owners – Strata Plan No 66375 v King [2018] NSWCA 170 Vella v Mir [2019] NSWCATAP 28 Weldon v Neal [1987] QBD 394 Wilson v Chan & Naylor Parramatta Pty Ltd [2020] NSWCA 213 Woolloomooloo Foundation Pty Ltd v Maritime Services Board of New South Wales [1999] NSWSC 287
Texts Cited:	Nil
Category:	Principal judgment
Parties:	The Owners – Strata Plan No. 90347 (Applicant) President Properties Pty Ltd (Respondent)

	Stadurn Pty Ltd (Proposed Respondent)
Representation:	Counsel: L Corbett (Respondent) A Ahmad (Proposed Respondent) Solicitors: Bannermans Lawyers (Applicant)
File Number(s):	HB 21/27940
Publication Restriction:	Nil

REASONS

Outline

1 The respondent challenged the validity of its joinder to these proceedings and a proposed respondent opposed its joinder to these proceedings. That arose in circumstances where an owners corporation lodged an application prior to the expiration of the applicable limitation period against a builder. After that limitation period expired, the builder having been wound up and removed as a respondent, one of the developers was joined as a respondent and a request was made to join a second developer.

2 It was necessary to consider what was the date when the claim was lodged and whether the Tribunal had jurisdiction to hear and determine the application. On the day of the hearing of that preliminary issue, a desire to add a further claim under the *Design and Building Practitioners Act* 2020 (DBPA) was indicated. Having considered the written and oral submissions of the parties, the Tribunal determined that it did not have jurisdiction to consider a claim under the *Home Building Act* 1989 (HBA) and that, by reason of not having jurisdiction, it was not able to grant an application to amend to include a claim based on the DBPA.

History of the proceedings

3 On 29 June 2021 Gregory Castle lodged an application which named Trinity Constructions Pty Ltd as the only respondent.

4 At the first directions hearing, held on 17 August 2021, Mr Castle was in attendance but there was no attendance on behalf of the respondent. The

orders made on that occasion included the name of the applicant being amended to The Owners – Strata Plan No 90347 (the applicant), the name of the respondent being amended to Trinity Constructions (Aust) Pty Ltd (Trinity), and for the applicant to provide an ASIC search for Trinity by 24 August 2021.

5 On 1 November 2021, at the second directions hearing, Mr Rahaeb informed the Tribunal that Trinity had been wound up. The application was adjourned to provide an opportunity for that to be considered by the applicant.

6 A third directions hearing was conducted on 15 February 2022. On that occasion, President Road Properties Pty Ltd (President) was added as a respondent, at the request of the applicant, and the application was withdrawn as against Trinity. The applicant was given a week to lodge an amended application.

7 On 30 March 2022 the applicant was directed to file submissions in response to those of President and leave was granted for the parties to be legally represented.

8 There was a fifth directions hearing on 27 April 2022 at which the applicant indicated a desire to add Stadurn Pty Ltd (Stadurn) as a further respondent. Directions were made for the provision of written submissions so that the Tribunal could consider:

> (1) "Whether the joinder of further parties to proceedings commenced within 6 years of completion of residential building work, such joinder occurring more than 6 years after completion of the residential building work, is sufficient to confer jurisdiction upon the Tribunal to determine claims against those further parties in respect of breaches of statutory warranties under s 18B of the Home building Act."
>
> (2) Whether to grant the application to join Stadurn.

9 On 9 May 2022 a notice was issued to advise that those issues would be considered on 27 June 2022.

Hearing

10 At the hearing, the submissions were marked for identification as follows, noting that the submissions for President included a statutory declaration which annexed a copy of the relevant building contract:

MFI 1 Submissions for President, received by the Tribunal on 25 May 2022

MFI 2 Submissions for Stadurn, received on 25 May 2022

MFI 3 Applicant's initial submissions, received on 14 April 2022

MFI 4 Applicant's further submissions, received on 26 May 2022

11 The legal representatives were each provided with an opportunity to provide the Tribunal with supplementary oral submissions: Mr Campbell for the applicant, Mr Corbett for President, and Mr Ahmad for Stadurn. As Mr Campbell sought leave to amend the application to include a claim under the DBPA, that was the dominant aspect of the oral submissions since the written submissions had dealt with the claim under the HBA.

Submissions for President

12 The written submissions for President began by suggesting that, since the subject building contract was dated 2 September 2013, the statutory warranty period is six years and not seven years.

13 Next, reference was made to s 48K(7) of the HBA and it was contended that the crucial question was the effect of the words "*the date on which the claim is lodged*" in that subsection. It was suggested that the Tribunal has jurisdiction to determine whether it has jurisdiction, based on *Dyldam Developments v The Owners SP 85305* [2020] NSWCA 327 at [45].

14 It was noted that the Tribunal's Act and Rules do not contain a provision equivalent to r 6.28 of the *Uniform Civil Procedure Rules* 2005 (*UCPR*).

15 After noting that most Tribunal decisions in relation to joinder refer to *Commissioner of Police, NSW Police Force v Fine* [2014] NSWCA 327 (*Fine*), and that the principles were set out in *DHJ v Secretary, Department of Family and Community Services* [2018] NSWCATAD 46 (*DHJ*), it was said that those principles related to the determination of proper and necessary parties and not to the joinder after a limitation period had expired.

16 Reliance was placed on *Amaca Pty Ltd v Cremer* [2006] NSWCA 164 (*Cremer*) which decided, in the context of a Dust Diseases Tribunal claim, that proceedings commenced before the plaintiff's death were only commenced against the appellant when it was jointed as a defendant. Reference was made

to the judgements of McColl JA at [83] and Brereton J (as he then was) at [152] – [154].

17 After referring to what was said by Lord Keith of Kinkel in *Ketteman v Hansel Properties Ltd* [1987] AC 189 (*Ketteman*) at [200], quoted by Clarke JA in *Fernance v Nominal Defendant* (1989) 17 NSWLR 710 (*Fernance*) at 732–733, which was in turn quoted by Brereton J in *Cremer* at [154], it was submitted that:

> (1) the proceedings against President were commenced on 15 February 2022 at the earliest,
>
> (2) the limitation period expired on 2 July 2021, and
>
> (3) under s 48K of the HBA, the Tribunal does not have jurisdiction.

18 *Lendlease Engineering Pty Ltd v Owners Corporation No. 1 & ors* [2021] VSC 338 (*Lendlease*) was said to be an example of the recent application of the same principle and reference was made to what was said in that case at [71], [75] and [77].

19 Additional matters raised in oral submissions by Mr Corbett were that, when President was joined, the claim was under the HBA and now the applicant was seeking to raise a different cause of action which had not yet been articulated. He suggested that if there was to be a claim under the DBPA then that should only be considered when it had been set out.

20 Mr Corbett also expressed doubt as to whether such a claim could be maintained on the basis that, while the HBA made a developer liable as if it were the builder, the DBPA required President to have carried out construction work. His contention was that President should not have been joined in February 2022, at a time when there was no claim under the DBPA, and that any such claim should only be considered to have commenced when that claim had been set out.

Submissions for Stadurn

21 The written submissions for Stadurn referred to s 39, s 40 and s 44 of the *Civil and Administrative Tribunal Act* 2013 (the CATA), and to *Fine* at [38], before quoting various provision in the HBA, namely s 48K, 48L, 48A, s 18B, s 18C and s 18E.

22 It was contended that a "*building claim*" under s 48K is necessarily a claim against a particular defendant and that the date on which the "*claim is lodged"*, for the purposes of s 48K(7), is the date on which the party is joined.

23 Omitting the references to paragraphs in *Cremer* and *Lendlease* to which the submissions for President referred, the submissions for Stadurn referred to *David Cameron Jones t/as Oz Style Homes v Panchal* [2018] NWCATAP 238 (*Panchal*) at [42] – [53] in support of the proposition that a building claim can comprise distinct claims in respect of separate breaches. It was noted that the decision in cases such as *Lendlease* was consistent with r 6.28 of the UCPR.

24 Like Mr Corbett, Mr Ahmad relied on his written submissions and spoke in reply. He noted that Stadurn had not been formally joined, that there had only been an application to join Stadurn, and that the applicant had not identified the relief sought against Stadurn or provided details of the basis upon which such relief was claimed. Mr Ahmad also noted that no claim against Stadurn falling within the DBPA had been identified and suggested that the applicant's reference to the decision in *Owners SP 92648 v Binah Constructions PL & Anor* [2021] NSWCATAP 68 (*Binah*) was moot because the current claim cannot stand and there was no basis for the joinder of Stadurn.

Applicant's submissions

25 The applicant's initial written submissions were in the form of Points of Claim which suggested that the applicant was entitled to sue the developers, the builder having gone into external administration. After referring to *Vella v Mir* [2019] NSWCATAP 28 (*Vella*) at [44], it was contended that:

(1) As the subject building work was completed on 3 July 2015, when an Occupation Certificate was issued, the six-year statutory warranty period expired on 2 July 2021.

(2) If the contract was entered into prior to 1 February 2021, a seven-year statutory warranty period would apply would expire on 2 July 2022.

(3) There had been no prior proceedings in which an attempt had been made to enforce the applicable statutory warranty.

(4) Each of the alleged defects was a major defect.

(5) The proceedings were commenced on 29 June 2021, prior to the expiration of the statutory warranty, with the contended result that the

Tribunal has jurisdiction to hear and determine the applicant's claim against the developers, President and Stadurn.

26 In the subsequent written submissions, it was accepted that:

(1) The date of the relevant building contract was 2 September 2013.

(2) The final occupation certificate was granted on 3 July 2015.

(3) On 29 June 2021 the applicant commenced these proceedings against Trinity.

(4) On 15 February 2022 Trinity was removed and President was joined.

(5) Stadurn was subsequently proposed as an additional respondent.

27 The applicant's case is that the claim was made within time since the claim against the developers (President and Stadurn) is the same as the claim against the builder (Trinity). It was contended that (1) the alleged defects are identical, (2) the contract is the same, relying on s 18C of the HBA and what was said by Young JA in *Owners Corporation Strata Plan 64757 v MJA Group Pty Ltd* [2011] NSWCA 236 at [33] and [36], (3) the proceedings are the same in that the applicant has not commenced separate proceedings against the developer(s).

28 It was further submitted that there was nothing in the CATA, in s 53 (which deals with amendment) or elsewhere, which precludes the addition of parties to the same building claim. That submission was followed by a quotation of portions of what was said by Ward JA (as she then was) in *The Owners – Strata Plan No 66375 v King* [2018] NSWCA 170 (*King*) at [295].

29 Given the absence of initial oral submissions from Mr Corbett or Mr Ahmad, Mr Campbell spoke in chief and in reply. In chief, he indicated that a copy of the decision in *Binah* had been provided, to the Tribunal and the other lawyers, on the morning of the hearing, which commenced at 2.45pm, and suggested the Tribunal does have jurisdiction under the DBPA with the contended result that the application, currently against President, should not be dismissed and the joinder of Stadurn should be permitted.

30 In his submissions in reply, Mr Campbell asserted that the DBPA provided for a ten-year limitation period from the date of the breach and that the applicant should not be required to commence fresh proceedings, that the Tribunal is not a forum in which strict pleading applies, that applications are commonly sought

to be amended, and that the Tribunal always permits that to occur. He submitted that the proceedings had only just been brought and that they should be dealt with in accordance with the normal course for such proceedings in the Tribunal.

Consideration

31 It is clear the Tribunal has jurisdiction to determine whether it was jurisdiction: *Wilson v Chan & Naylor Parramatta Pty Ltd* [2020] NSWCA 213 (in the context of whether an application would involve the exercise of Federal jurisdiction) and *Dyldham Developments Pty Ltd v The Owners SP 85305* [2020] NSWCA 327 (in the context of s 48K(7) of the HBA). That position was confirmed by the High Court on 3 June 2022 in *Cittia Hobart v Cawthorn* [2022] HCA 16 at [23] where it was said:

> The State tribunal must be taken to have incidental jurisdiction to determine whether the hearing and determination of a particular claim or complaint would be within the legislated limits of its State jurisdiction.

32 The following dates comprise the uncontested chronology relevant to this decision:

2 September 2013	Date of contract between builder and developers
3 July 2015	Work completed: Occupation Certificate issued
28 June 2021	Application commenced against builder
2 July 2021	Six-year limitation period expired
15 February 2022	President was added as a respondent
27 April 2022	Applicant sought to add Stadurn as a respondent

33 The pivotal question in this instance is whether a claim initiated before a limitation period expires can be pursued against a party joined, or proposed to be joined, after the expiry of that limitation period.

34 Understandably, the applicant says it should be permitted to continue against the developers a claim it made within time against the builder while the developers maintain that they should not be subjected to a claim that was not made against them until after the applicable limitation period had expired.

35 This question arises in a context where the UCPR do not apply and where the provisions of the CATA do not provide the answer. The statutory provision requiring consideration is s 48K(7) of the HBA which is in the following terms:

> The Tribunal does not have jurisdiction in respect of a building claim arising from a breach of a statutory warranty implied under Part 2C if the date on which the claim is lodged is after the end of the period within which the proceedings for a breach of the statutory warranty must be commenced (as provided by section 18E).

36 Accordingly, the question upon which this application turns is whether the words "*the date on which the claim is lodged*" in s 48K(7) should be interpreted to mean the date when the proceedings were commenced (as suggested by the applicant) or the date when a claim was made against the developers (for which the respondents contend).

37 The Tribunal does not consider that a building claim can be taken to mean a claim devoid of any consideration of who that claim is against. Just as an insurance claim is made against an insurer, so must a building claim be made against a builder or, by reason of statutory provisions, a developer who is treated as if it were the builder.

38 That approach is supported by the common law. In *Ketteman,* at 200, Lord Keith of Kinkel said:

> A cause of action is necessarily a cause of action against a particular defendant, and the bringing of the action which is referred to must be the bringing of the action against that defendant in respect of that cause of action. The causes of action here against Mid-Sussex and the architects were separate and distinct from the cause of action against Hansel. In my opinion there are no good grounds in principle or in reason for the view that an action is brought against an additional defendant at any earlier time than the date upon which that defendant is joined as a party in accordance with the rules of court.

39 In *Fernance,* at 722-723, Clarke JA, after quoting that passage from *Ketteman*, suggested that, where a limitation period had expired, there was a clear distinction between adding a cause of action against an existing defendant, which only requires a change in the defence of an existing party who was put on notice of the proceedings before the limitation period expired, and adding a defendant, which would bring a party into proceedings without notice prior to the expiration of the limitation period.

40 The effect of the UK decision in *Weldon v Neal* [1987] QBD 394 is that an amendment should not be allowed which adds a new defendant or a new cause of action against an existing defendant if the amendment is made after the expiry of the relevant statutory time limit.

41 That decision has been discussed and followed in Australia, such as in *Woolloomooloo Foundation Pty Ltd v Maritime Services Board of New South Wales* [1999] NSWSC 287, *Smith v Council of the Shire of Wakoo* [2002] NSWSC 964, *Howlett v Hurburgh* [2004] TASSC 79, and *Hopcroft v Edmunds (No 2)* [2012] SASC 94. So much so that the words "*the rule in Weldon v Neal*" are sometimes used.

42 Those cases clearly establish that the principle that was often referred to as the doctrine of relation back (the effect of which was that an amendment was deemed to apply from the date when the proceedings were commenced) should not apply to an amendment which seeks to add a party after expiry of the limitation period because to do so would serve no useful purpose since the added party would be able to defeat the claim with a defence based on the limitation period.

43 The decision in *Cremer,* a case which was commenced in the Dust Diseases Tribunal (DDT), is to the same effect. While the Supreme Court Rules applied to the DDT, in that case both McColl JA (at 83]) and Brereton J (at [152]) expressed the view that, in the absence of a specific rule, proceedings against a party added by an amendment are commenced at the date of that amendment.

44 *Lendlease* is Victorian decision, involving proceedings commenced in the Victorian Civil and Administrative Tribunal (VCAT), to the same effect. The Tribunal's decision in this case would thus result in consistency in that the position is no different for a builder or developer in Albury and a builder in Wodonga, on the other side of the Murray River border between New South Wales and Victoria.

45 Accordingly, the Tribunal would, metaphorically speaking, be swimming against the tide if the joinder of President or Stadurn were determined to be a claim commenced when the application was lodged. The practical effect of such an

interpretation would be that a party is subjected to a claim which is first brought to that party's notice after the relevant limitation period has expired, perhaps by a significant period, contrary to the clear intention of the HBA.

46 While the UCPR do not apply to the Tribunal, it is noted that the Tribunal's decision on this point is consistent with r 6.28 which provides:

> If the court orders a person to be joined as a party, the date of commencement of the proceedings, in relation to that person, is taken to be the date on which the order is made or such later date as the court may specify in the order.

47 The option of specifying a later date could cater for a situation where leave is granted for a party to be joined but the nature of the claim against that party is only subsequently communicated to that party.

48 The wording of UPCR r 6.28, although not applicable to the Tribunal, is a relevant consideration given that the Tribunal's jurisdiction in claims under the HBA carries a ceiling of $500,000 by reason of s 48K(1) and it would ne incongruent for the position in relation to adding a respondent after the expiration of the limitation period was different depending on whether the amount claimed was above or below $500,000, ie in a court rather than the Tribunal. Thus, while r 6.28 does not apply to the Tribunal, the decision in this case carries the benefit of consistency with claims under the HBA which exceed the upper monetary limit of the Tribunal's jurisdiction.

49 As the Tribunal is of the view that the claim against President and the proposed claim against Stadurn were lodged after the expiration of the limitation period, it follows that the effect of s48K(7) of the HBA is that the Tribunal does not have jurisdiction in relation to this application.

50 That view assumes, in favour of the applicant, that its claim against the developers can be regarded as having been lodged when the Tribunal was notified of the intention to make such a claim, 15 February 2022 in the case of President and 27 April 2022 in the case of Stadurn, and not the date on which Points of Claim are filed and served. If a strict view of the word "*lodged*" in s 48K(7) is adopted then no claimed could be said to have been lodged against President or Stadurn until either an amended application or Points of Claim have been filed and, arguably filed and served.

51 The applicant’s written submissions referred to a portion of the judgement of Ward JA in *King* at [295] in support of the proposition that the HBA seeks to close loopholes, such as where “*homeowners have been left without recourse against a bankrupt builder”*.

52 To put those words in context, after quoting of a summary of aspects of the HBA by Hammerschlag J in *Gardez Nominees Pty Ltd v NSW Self Insurance Corporation* [2016] NSWSC 532 at [3] – [5], Ward JA said, at [295] – [296]:

> [295] What emerges from the above is that the legislature was seeking to strike a fair balance between the interests of consumers and home building contractors and recalibrate a contracting process which was described in the relevant second reading speech as having been, for too long, “heavily skewed in favour of the builder”. The Home Building Act seeks to provide a comprehensive scheme of statutory warranties which will enure for the benefit of subsequent owners and close loopholes in situations where, for example, homeowners have been left with no recourse against a bankrupt builder.”
>
> [296] That said, the limitations in such an analysis must be acknowledged. As Gleeson CJ explained in Carr v Western Australia (2007) 232 CLR 138; [2007] HCA 47 (at [5]), a purposive approach:
>
> … may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose.

53 While the statutory provisions in the HBA enabling a homeowner to treat a developer as if it was the builder can be said to have the purpose of providing a homeowner with a remedy against the developer if the builder is bankrupt, s 48(7) of the HBA also reveals a purpose of requiring claims to be lodged within the limitation period and the justification for limitation periods does not require elaboration. Those two purposes need not be in conflict as they can be simultaneously met by a homeowner commencing proceedings, prior to the expiration of the limitation period, naming both the builder and the developer as respondents, as commonly occurs.

54 Thus, by way of summary, the decision of the Tribunal as to the operation of s 48K(7) of the HBA: (1) is consistent with the common law position in both the UK and Australia, (2) is consistent with the position that would apply if this claim had been lodged in a court, (3) is consistent with the position that would apply if this claim had been lodged in Victoria, (4) is consistent with the clear statutory purpose of limiting the period for a claim to be made to six years, and (5) does not prevent the achievement of the discernible statutory purpose of providing a homeowner with a remedy against a developer when the builder is insolvent.

55 Moving to the request for leave to amend the application to include a claim based on the provisions of the DBPA. Even assuming in favour of the Applicant that there is a basis in fact and in law for such a claim, that application must be refused since the Tribunal does not have jurisdiction and thus cannot allow such an amendment. While it is true that the Tribunal commonly adopts a liberal approach to the amendment of claims, that is in circumstances where the Tribunal has jurisdiction and the Tribunal's guiding principle of seeking the just, quick, and cheap resolution of the real issues in the proceedings, established by s 36 of the CATA, provides support for such an approach.

56 However, the Tribunal considers that where it has no jurisdiction under the HBA, it cannot add a claim under the DBPA as there is no valid claim that can be amended. As indicated above, it is clear the Tribunal has jurisdiction to consider whether it has jurisdiction but, having formed the view that it has no jurisdiction, the Tribunal cannot add a claim to fill a jurisdictional vacuum.

57 In this case, there is a bare suggestion that *Binah* provides support for the Tribunal having jurisdiction to entertain a claim under the DBPA, and no of Points of Claim to indicate how it is suggested a claim under that Act can be made against developers. Even if those matters were adequately addressed, the position would remain that the Tribunal not having jurisdiction under the HBA has the effect that there is no valid claim that can be amended to add a claim under the DBPA.

58 It is noted that, if the applicant is correct in its contention that the applicable limitation period under the DBPA is ten years, and that it has an arguable claim

against the developers under that Act, and that the Tribunal has jurisdiction to hear and determine such a claim, then it will be open to the applicant to commence a fresh application, ideally accompanied by Points of Claim which address those issues.

59 Finally, as the effect of the Tribunal's decision is to finalise this application, provision should be made to cater for any application for costs.

Orders

60 For the reasons indicated above, the following orders are made:

(1) The request to join Stadurn Pty Ltd is refused.

(2) The application is dismissed as the Tribunal does not have jurisdiction under the *Home Building Act* 1989.

(3) The request for leave to amend the application to add claims under the *Design and Building Practitioners Act* 2020 is refused.

(4) Written submissions not exceeding five pages and any supporting evidence in support of any application for costs are to be filed and served by Monday 11 July 2022.

(5) Written submissions not exceeding five pages and any supporting evidence in response to any such application for costs are to be filed and served by Wednesday 20 July 2022.

(6) Any written submissions in reply, not exceeding two pages, are to be filed and served by Wednesday 27 July 2022.

(7) Any written submissions provided in support of or in response to any application for costs are to indicate whether it is agreed that costs should be determined on the papers, without the need for a further hearing.

****

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.