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Wednesday, August 10, 2016

Important Notice

Domestic Water System Pipe Replacement

Dear unit owners:

The Board of Directors has a duty to manage the property, assets, and common elements of the Corporation on behalf of owners.

As discussed at the Annual General Meeting last year, the domestic water supply system for TSCC 1524 (Phase II, Blocks 500-800) includes Kitec piping and fittings.

Your sister corporation, TSCC 1440 (Phase I, Blocks 100-400) also has Kitec piping and fittings. Both Corporations have experienced numerous piping failures which ultimately result in monthly maintenance fee increases. There has also been a successful class-action lawsuit against the manufacturer of Kitec piping due to defects in the product design that result in high-volume flooding. Kitec is no longer sold nor permitted in new builds.

With this information at hand, your Board of Directors, in co-operation with the Board of TSCC 1440, retained the services of M&E Engineering to physically inspect units in both Phase I (TSCC 1440) and Phase II (TSCC 1524) here at 415 Jarvis to determine what next steps, if any, were advisable.

The water supply piping systems in a sample of 6 units (two 100-level units, one 200-level unit, and three 300-level units) from a total of 214 units were visually inspected. It was recommended that the Board consider replacement of Kitec piping with Type "L" copper pipes or Uponor tubing (a polyethylene compound).

The TSCC 1524 Board of Directors has weighed the:

- cost of plumbing system and unit repairs incurred by TSCC 1440 due to piping failures
- probability of future failures in TSCC 1524 units (and related repair and insurance costs)
- results of the class action lawsuit against the Kitec manufacturer
- details of the report from the engineer
- actions taken by condominium corporations in similar circumstances around Toronto

- impact on property values (the Real Estate Council of Ontario – RECO – suggests that the presence of Kitec piping constitutes a material fact that should be disclosed to buyers, similar to the presence of knob-and-tube electrical wiring in older homes)

Given these factors (see Appendix I for further detail), the Board has determined that replacement of Kitec piping present in the water supply system (both common elements and in-suite) is the prudent course of action.

With the assistance of an engineering firm, the Board is presently engaging in a tender process with contractors to determine the exact pricing of the two replacement options (copper and Uponor) that were recommended by the consulting engineer.

The Board is asking for bids from contractors based on a construction start date of November 2017.

There will be a mailing in late September of 2016 with per-unit cost information based on bids that we receive from contractors.

There will be a “town hall” meeting in early October of 2016 to provide more details about how this project will be financed and organized.

Should you have any questions or concerns, please contact the property management office at 416-489-3388.

Sincerely,

Ms. Monica Balaj
Property Manager
Canlight Hall Management Inc.
On behalf of the Board of Directors for TSCC 1524

Appendix I

Q. What is Kitec piping?

A. From the report produced by M&E Engineering for our Corporation:

“Kitec piping [manufactured] by IPEX is typically used for plumbing and radiant heating applications installed in commercial, industrial, and residential buildings. The pipe is an engineered composite made from flexible aluminium tubing that is permanently bonded between layers of polyethylene. The piping was originally advertised as a corrosion resistant alternative to other pipes available on the market. Due to its flexible nature and light weight, installation of this type of piping was easier when compared to other pipes such as copper.”

Q. Under what conditions does Kitec piping fail?

A. From the report produced by M&E Engineering for our Corporation:

“Kitec fittings are primarily made from brass, which is composed of copper and zinc. However, high zinc percentage makes these fittings vulnerable to corrosion through a process known as dezincification. When water flows through the fitting, it corrodes the metal and leaches zinc from the brass thereby weakening the structural integrity of the fitting, and ultimately causing failure.”

From an article authored by the Nova Scotia Real Estate commission (obtained through a copy hosted at the Real Estate Council of Ontario website):

“[F]ittings aren’t the only issue. In Nova Scotia there have been problems with the actual pipe disintegrating. One theory is that the pipes degrade from running the hot water system at too high a temperature. Kitec was certified to run at a maximum temperature of 180° F. A typical hot water boiler is set at a high of 170° F. In cases where the coil that heats the water off the main boiler degrades and reduces water temperature, some homeowners increase the temperature of the hot water system past what it was designed to handle, causing the piping to disintegrate.”

Q. What are the characteristics of a Kitec piping failure?

A. From the report produced by M&E Engineering for our Corporation:

“Failure of Kitec piping is different than that of copper piping. Copper piping failure typically leads to pinhole leaks which can be manageable and do not typically result in a big flood. In our past experience, failure of Kitec piping usually results in separation of the fitting from piping or outright failure of the actual pipe which is much more forceful than a small pin hole leak, resulting in big floods.”

Q. Can't potential failure of Kitec piping be mitigated?

- A. While it would seem that appropriately managing water pressure and temperature could reduce or eliminate the potential for Kitec piping failure, these are not the only factors at play. The report from M&E Engineering notes:

“The lifespan of Kitec fittings... depends on the quality of water, and water temperature. Higher concentrated corrosive contaminants and elevated water temperatures facilitate a greater rate of corrosion. Based on the information received from IPEX Canada, improper treatment of city water can result in contaminants remaining in the water chemistry, which reacts with the zinc compounds, hence causing it to corrode. The contaminants are an outcome of air pollution, acidity from rainwater, and by-products from waste treatment and power plants. The extent of knowing these chemicals is an on-going study as they are yet to be determined. IPEX Canada further states that there is no set lifespan of these fittings, or knowing when failure can occur.”

IPEX Canada, the manufacturer of Kitec piping in Canada, has settled a class action lawsuit to compensate homeowners and other consumers of Kitec pipes for the cost of repairs due to failures and for pipe replacement.

Kitec piping is no longer manufactured, sold, or permitted for use in new builds.

Finally, our Corporation (TSCC 1524 / Phase II, blocks 500-800), need look no further than the experience of our sister Corporation (TSCC 1440 / Phase I, blocks 100-400), to understand the potential for future failures.

The Phase I units were built earlier than the units in Phase II.

Phase II has already experienced piping failures.

Phase I has experienced more than twenty failures, including several high-volume floods in 300-level units, resulting in extensive damage to the units below.

Q. Is a complete replacement of our pipes really necessary?

- A. When Kitec piping fails, it cannot be repaired with a smaller segment of pipe or a single new fitting, as it is no longer manufactured. The entire plumbing system in the unit (or the common-element riser) must be replaced. Therefore the cost of repairing a failure is higher. While it is true that insurance eventually covers the cost of repairs to the plumbing system and damaged units, our Corporation faces rising deductibles and premiums as future failures occur. Ultimately this means higher maintenance fees for everyone.

We cannot monitor the condition of Kitec fittings and pipes in our Corporation due to their inaccessibility. The Corporation status certificate must also show the presence of Kitec plumbing which may cause problems for owners wanting to sell their unit.

Given the above the Board believes that replacement now is the prudent action. We hope to achieve economies of scale by approaching contractors for a complete replacement.

Q. Why are we only learning about this now?

- A. Documents from the Kitec class action lawsuit settlement indicate that Kitec settlement and discontinuation was not well publicized:

“The court-approved notice provider shall mail a long form notice to reasonably identifiable distributors, wholesalers, plumbers, homebuilders, contractors...”

However:

“... the IPEX Defendants have informed Class Counsel that they do not maintain data specifying Class Members’ names and addresses.”

Individual homeowners and condominium corporations were rarely notified directly.

Kitec pipes and fittings were first installed in buildings in 1995.

Kitec products were recalled in 2005.

Kitec was discontinued for use in new builds in 2007.

The class action lawsuit was settled in the Ontario Superior Court of Justice in 2011.

Media articles about Kitec failures have started to appear in recent years, and it is only in 2015 that the Real Estate Council of Ontario advised that the presence of Kitec plumbing in a property constitutes a material fact that should be disclosed to buyers.

Q. What is the scope of the project?

- A. Common element pipes “rise” from primary water supply lines in the parking garage to feed the units in each vertical “alcove” of our condominium. The “riser” pipes terminate at the main shut-off valve located in the HVAC closet of each unit. These common-element riser pipes are the responsibility of the Corporation.

In-suite pipes (all pipes past the main shut-off valve) are the responsibility of unit owners.

The consulting engineer recommends that all Kitec pipes be replaced. A complete replacement is necessary to ensure that we receive the lowest possible cost for insurance coverage as a Corporation and as individual unit owners going forward.

Additionally, unit owners will have the option to have hot water heaters replaced at the same time as their in-suite pipes. If the hot water heater in your unit is still original to the build, this is highly recommended, and may be required by contractors to complete the pipe replacement. In our tender to contractors, the Corporation is asking for options on traditional “tank-based” hot water heaters as well as tankless water heaters. Finally, an additional shut-off valve will be added to all systems such that water can be shut off to the unit, but retain supply of water to heating systems in the HVAC closet.

Q. Can I arrange for replacement of Kitec pipes in my unit?

- A. While unit owners are responsible for the cost of replacement of pipes in their unit, we expect to achieve economies of scale by approaching contractors for replacement of all riser pipes and in-suite pipes as part of a single project.

The Corporation has a responsibility to ensure that all work that has the potential to affect the safety and security of other unit owners, or cause damage to the common elements, is undertaken against specifications drawn up by the Corporation's engineer.

Some unit owners have already replaced their in-suite water supply system with copper or Uponor pipes. Any work completed on an individual basis will need to be inspected by the Corporation's consulting engineer to ensure the work meets specifications. Due to the inaccessibility of pipes, this inspection will involve the removal of drywall.

Ultimately, unit owners are free to replace their in-suite pipes sooner, but we encourage owners to have their unit's pipes replaced as part of the collective effort.

Q. Can we recover funds from the Kitec class action lawsuit?

- A. As in-suite pipes are the responsibility of the unit owner, you can submit a claim to the Kitec settlement. The class action lawsuit was settled for the amount of \$125 million US dollars in 2011. Given the expected large number of claims to be paid on a pro-rated basis, there is a low probability of significant recovery of funds. Nonetheless, we encourage individual unit owners to file a claim. The Corporation will be filing a separate claim to recover funds for the replacement of the common-element riser pipes.

Q. Why was Kitec installed in the first place?

- A. The Central development was built between 1999 and 2003. TSCC 1440 / Phase I was registered as a condominium corporation in 2000. TSCC 1524 / Phase II was registered in 2002. At that time, there was no evidence available that Kitec piping was a faulty product.

Q. Can we recover funds from the developer in court?

- A. The Corporation's solicitor, Delzotto, Zorzi LLP, has indicated that it would be difficult to initiate a successful lawsuit against the developer, Noblestar Properties Inc., unless there is strong evidence to establish that they knowingly installed a faulty product.

At the time of construction, to the best of our knowledge and research, Kitec was a product approved by the Canadian Safety Authority for use.

Q. Should I contact my own insurance provider?

- A. Yes. Some unit owners have already been advised by their insurance provider that the unreported presence of Kitec piping will result in the invalidation of claims.