



CAS Ref: 10869756

Attn: Proper Officer  
Ross Kenna Developments Pty Ltd  
Suite 1, 140 Keira St,  
Wollongong NSW 2500

Service: By registered post, and by email

3 August 2023

## Building Work Rectification Order

### **Section 33 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020***

Ross Kenna Developments Pty Ltd (ACN 164 985 531) (Kenna Developments) is being given this Building Work Rectification Order (Order) in relation to 177 Burraneer Bay Road, Caringbah South, NSW, 2229 (SP 93352).

Kenna Developments is required to cause building work to be carried out to remediate the potential serious defects as set out in below in this Order.

Failure to comply with the requirements in this Order is a criminal offence.

#### **Background**

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement*

*Powers) Act 2020 (the Act).*

2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential defect.
3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines the term “building element” by reference to the *Design and Building Practitioners Act 2020 (DBP Act)*. Section 4 of the Act defines the term “developer”. Section 6 of the Act provides the building work to which the Act applies. Relevant excerpts from sections 3, 4 and 6 of the Act and section 6 of the DBP Act are **Attachment A** to this order.
4. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. Kenna Developments is the developer of the residential apartment building known as 177 Burraneer Bay Road, Caringbah South, NSW, 2229 (SP 93352) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development comprises five residential townhouses (across three separate buildings) with a common basement carpark. The separate buildings contain Townhouses 1 & 2 separated by a common fire-resisting wall, Townhouse 3 & 4, separated by a common fire-resisting wall, and Townhouse 5, which is a standalone building located at the rear of the property. Townhouses 1 to 4 are constructed above and are connected by a common underground basement carpark. Townhouse 5 has a car space located in the common underground basement carpark. The Act applies to building work at the Development.
7. On 24 August 2022, authorised officers conducted a lawful inspection of the Development.
8. On 23 February 2023, a Building Work Rectification Order was issued to Ross Kenna Developments Pty Ltd (ACN 164 985 531) in relation to the Development.
9. On 20 July 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier. The parties were invited to provide written representations relating to the Order to the Department by 27 July 2023.
  - a. On 20 July 2023 the Developer sought an extension of time to make submissions. An extension of time was rejected.
  - b. On 27 July 2023 written submissions were received from the Owners Corporation.
  - c. No submissions were received as at the date of this Order from Local Council or the Certifier.

#### **Requirements in relation to Serious Defects**

10. I, Matthew Whitton, under section 33 of the Act, require you Ross Kenna Developments Pty Ltd (ACN 164 985 531), to do the things specified

in column 4 in Table 1 to eliminate, minimise or remediate each respective serious defect described in columns 1, 2 and 3 of Table 1. Each requirement must be complied with by the time set out in column 5 of Table 1:

**Table 1: Requirements in respect of Serious Defects**

| <b>Serious Defect Reference</b> | <b>Location of Serious Defect</b>   | <b>Description of Serious Defect</b>  | <b>Requirement, being a requirement under section 33(2)(a) to ensure specified building work is carried out, as follows</b>  | <b>Time for compliance with Requirement</b>     |
|---------------------------------|---|---|--|---|
| 1                               | <p>The external balcony sliding door for:</p> <ul style="list-style-type: none"> <li>Townhouse 3: Level 1, bedroom 2</li> </ul> | <p>The waterproofing membrane is insufficiently vertically terminated to prevent water entry.</p> | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance declaration to the NSW planning portal. The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be an integrated design prepared by: <ul style="list-style-type: none"> <li>a. a design practitioner — façade (registered under the <i>Design and Building Practitioners Act 2020</i>) and;</li> <li>b. a design practitioner — architectural and/or an design practitioner — structural engineer (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> </ul> </li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b></p> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> <li>ii. Complete any consequential repairs as a result of work conducted to rectify the defect.</li> </ul> | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |

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| 2 | <p>The external above ground areas immediately above the following:</p> <ul style="list-style-type: none"> <li>• The basement plant room containing the main switchboard, located partly under Townhouse 4 and the external common pathway.</li> <li>• From around two (2) drainage risers, in front and at the rear of the townhouse 5 garage. The area immediately above is considered to outdoor areas at the rear of Townhouse 3 &amp; Townhouse 4</li> <li>• Within the void space adjacent to the carpark entry ramp.</li> </ul> | <p>The waterproofing membrane is insufficient to prevent ingress of water to the common carpark, individual garages for townhouse 1 to 5 and plant areas.</p> | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance declaration to the NSW planning portal. The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be an integrated design prepared by: <ul style="list-style-type: none"> <li>a. a design practitioner — civil engineering (registered under the <i>Design and Building Practitioners Act 2020</i>) and;</li> <li>b. a design practitioner — architectural and/or an design practitioner — structural engineer (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> </ul> </li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b></p> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> </ul> | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |

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|   |   |   | ii. Complete any consequential repairs as a result of work conducted to rectify the defect.  |   |
| 3 | <ul style="list-style-type: none"> <li>Townhouse 1: Level 1 balcony</li> <li>Townhouse 2: Level 1 balcony</li> <li>Townhouse 3: Level 1 balconies</li> <li>Townhouse 4: Level 1 balcony</li> </ul>  | There is no drainage measure implemented to the balconies to provide protection against overflows | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance declaration to the NSW planning portal. The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be a design prepared by a design practitioner — civil engineering (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b></p> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> <li>ii. Complete any consequential repairs as a result of work conducted to rectify the defect.</li> </ul> | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |
| 4 | <ul style="list-style-type: none"> <li>Basement Common Carpark where sanitary drainage floor waste pipework penetrates the slab.</li> <li>Basement Common Carpark where plumbing, electrical and mechanical services penetrate the slab.</li> </ul> | Service penetrations are not protected against the spread of fire.                                | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance declaration to the NSW planning portal. The regulated design required to be submitted must:</p>  | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |

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|   | <ul style="list-style-type: none"> <li>Basement Common Carpark where plumbing, electrical and mechanical services penetrations pass through the blockwork wall.</li> <li>Basement Common Carpark within the main switchboard room at the soffit of the slab</li> </ul> |  | <ul style="list-style-type: none"> <li>i. be an integrated design prepared by a design practitioner – fire safety engineering (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b></p> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> <li>ii. Complete any consequential repairs as a result of work conducted to rectify the defect.</li> </ul> |   |
| 5 | The <i>On-Site Stormwater Detention Tank</i> located adjacent to Townhouse 5   | The On-Site Stormwater Detention Tanks inability to convey water to the outlet | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance declaration to the NSW planning portal. The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be an integrated design prepared by a design practitioner – civil engineering (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul>                    | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |

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|  |  |  | <b>Stage 2</b> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> <li>ii. Complete any consequential repairs as a result of work conducted to rectify the defect.</li> </ul> |  |
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| 6 | Stormwater pump well adjacent to the Townhouse 2 garage | The basement stormwater drainage pumped system lacks a control panel, float switches, visible and audible alarms, a connected duplicate pump and necessary pump controls. | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance declaration to the NSW planning portal.</p> <p>The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be an integrated design prepared by: <ul style="list-style-type: none"> <li>a. a design practitioner – civil engineering (registered under the <i>Design and Building Practitioners Act 2020</i>) and;</li> <li>b. a design practitioner – structural engineer (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> <li>c. a design practitioner – electrical engine (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> </ul> </li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2:</b><br/>Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and<br/>Complete any consequential repairs as a result of work conducted to rectify the defect.</p> | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |
| 7 | Basement, Bin Storage Area                              | The bin wash bay floor drain does not drain to the sanitary drainage system as required.  | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p><b>Stage 1:</b><br/>Submit a regulated design and design compliance</p>   | <p>Stage 1: 30 days</p> <p>Stage 2: 60</p>      |



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|   |                  |  | <p>declaration to the NSW planning portal. The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be an integrated design prepared by: <ul style="list-style-type: none"> <li>a. a design practitioner — drainage (registered under the <i>Design and Building Practitioners Act 2020</i>) and;</li> <li>b. a design practitioner — structural engineer (registered under the <i>Design and Building Practitioners Act 2020</i>); and</li> <li>c. a design practitioner — electrical engineer (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> </ul> </li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii. be prepared with consideration with the report written by Mr Andrew Vukovich, of In The Square Building Consulting Pty Limited, titled <i>BCA Advice reference ITS 10012.6</i> dated 22 June 2023, specifically in accordance with the scope on page 27(i) &amp; (ii), in relation to the Development in order to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b></p> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> <li>ii. Complete any consequential repairs as a result of work conducted to rectify the defect.</li> </ul> | days  |
| 8 | Basement carpark | The basement carpark compartment exceeds 500m2 and is without suitable firefighting equipment. | <p>Within the time period specified in column 5, carry out the works prescribed below:</p> <p>Stage 1:<br/>Submit a regulated design and design compliance declaration to the NSW planning portal. The regulated design required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be an integrated design prepared by:</li> </ul>   | <p>Stage 1: 30 days</p> <p>Stage 2: 60 days</p> |

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|  |  |  | <ul style="list-style-type: none"> <li>a. a design practitioner – fire safety engineering (registered under the <i>Design and Building Practitioners Act 2020</i>) and;</li> <li>b. a design practitioner – fire systems (fire hydrant and fire hose reel) (registered under the <i>Design and Building Practitioners Act 2020</i>);</li> </ul> <ul style="list-style-type: none"> <li>ii. be prepared with consideration to this Order and the Reasons for this Order.</li> </ul> <p><b>Stage 2</b></p> <ul style="list-style-type: none"> <li>i. Carry out the work the rectify the defect in accordance with the Stage 1 regulated design; and</li> <li>ii. Complete any consequential repairs as a result of work conducted to rectify the defect.</li> </ul> |  |
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#### Duration of this Order

11. This Order remains in force until it is revoked by the Secretary.
12. This order is given on the date that it is listed above in accordance with section 67 of the Act.



Matthew Whitton  
**Assistant Building Commissioner Building and  
Construction Compliance**

## Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 3 August 2023 issued to **Ross Kenna Developments Pty Ltd (ACN 164 985 531)** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons For Order.
2. I, Matthew Whitton, have formed a reasonable belief that the Development has serious defects based.
3. I have formed this belief after reviewing:
  - a. A Building Work Rectification Order issued to Ross Kenna Developments Pty Ltd (ACN 164 985 531) in relation to the Development on 23 August 2022
  - b. an Inspection Report (dated 26 September 2022) prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act in the Building on 24 August 2022;
  - c. *Building and Waterproofing Reports Australia Report no. BWR 22-32DP* dated 1 September 2022.
  - d. Submissions received from the Developer and Owner (Owners Corporation of Strata Plan 93352) as outlined in this Order Building Work Rectification Order notice issued to Ross Kenna Developments Pty Ltd (ACN 164 985 531) in relation to the Development on 23 August 2022.
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in Column 2 of Table 1 of the Order.

**Table 2 – basis of reasonable belief as to serious defects**

| <b>Serious Defect Reference</b> | <b>Building element in which serious defect has been identified</b> | <b>Defect</b>   | <b>Reason why defect is a serious defect</b>   | <ul style="list-style-type: none"> <li><b>Applicable approved plan, Code or Australian Standard</b></li> </ul>  |
|---------------------------------|---|---|--|---|
| 1                               | Waterproofing   | The waterproofing membrane does not prevent water entry   | The waterproofing membrane is insufficiently vertically terminated to prevent water entry, which is attributable to a failure to comply of the Building Code and Australian Standards referenced in column 5, which requires adequate vertical upward termination of the waterproof membrane to prevent water penetration.   | <ul style="list-style-type: none"> <li>Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp, and weatherproofing - FP1.4 Weatherproofing</li> <li>Australian Standard AS 4654.2 Waterproofing membranes for above ground use -: Design and installation</li> </ul>  |
| 2                               | Waterproofing   | Water is penetrating the ground floor slab into the basement carpark and basement electrical switch room. | The water penetrating the ground floor slab is attributable to a failure to comply with the Building Code and Australian Standards referenced in column 5 which requires the membrane installed on the carpark slab to prevent penetration of water. The water entry through into the basement carpark demonstrates a failure of any waterproofing measures installed. | <ul style="list-style-type: none"> <li>Australian Standard AS 4654.2 Waterproofing membranes for above ground use -: Design and installation</li> <li>Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and weatherproofing - FP1.4 Weatherproofing</li> <li>Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and weatherproofing - FP1.3 Rainwater Drainage System</li> </ul> |
| 3                               | A component of a building that is part of the building enclosure    | There is no overflow drainage measure implemented for the balconies.                                      | The lack of an overflow drainage measure being implemented is attributable to a failure to comply with the Building Code and Australian Standards referenced in column 5.4 which requires that overflow measures be installed on all balconies. No such measures have been installed.  | <ul style="list-style-type: none"> <li>Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and weatherproofing - FP1.4 Weatherproofing</li> <li>Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and weatherproofing - FP1.3 Rainwater Drainage System</li> <li>Australian/ New Zealand Standard 3500.3:2003 Plumbing and stormwater drainage, Section 5 Surface</li> </ul>      |

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|   |   |   |   | drainage systems, 5.4 General method, Clause 5.4.1 Basis   |
| 4 | Fire safety systems   | Service penetrations are not protected against the spread of fire.  | The absence of protection of service penetrations against the spread of fire is attributable to a failure to comply with the Building Code and Australian Standards referenced in column 5. 4 which requires service penetrations to be protected using a tested system a fitting tested and proven to action to close the penetration in the event of a fire and no such measures have not been installed. | <ul style="list-style-type: none"> <li>• Building Code of Australia (Vol 1): Section 3 Fire resistance, Part C3 Protection of openings - C3.15 Openings for service installations</li> </ul>   |
| 5 | Those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the <i>Building Code of Australia</i> | The On-Site Stormwater Detention Tanks inability to properly convey water to the outlet.  | The inability for the On-Site stormwater detention tank to properly convey water to the outlet is attributable to a failure to comply with the Building Code and Australian Standards referenced in column 5 which requires that a stormwater drainage connection be installed in the onsite stormwater detention tank so that it drains all water to an outlet and no such measures have been installed.   | <ul style="list-style-type: none"> <li>• Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.1 Stormwater Drainage</li> <li>• 3500.3:2003 Plumbing and Drainage – Stormwater Drainage, Section 8 – Surface and Subsoil Drainage Systems</li> <li>• - Ancillaries, 8.11 On-Site Stormwater Detention (OSD) Systems, 8.11.3 Below Ground Systems</li> </ul> |
| 6 | Those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the <i>Building Code of Australia</i> | The basement stormwater drainage pumped system lacks a control panel, float switches, visible and audible alarms, a connected duplicate pump and necessary pump controls which makes the stormwater drainage pumped system ineffective to convey surface water to an appropriate outfall during an average recurrence interval (ARI) event. | The lack of a properly operating basement stormwater drainage pumped system is attributable to a failure to comply with the Building Code and Australian Standards referenced in column 5 which requires that a stormwater drainage system has an operating control panel, operating float switches, operating visible and audible alarms, a connected duplicate pump and                                   | <ul style="list-style-type: none"> <li>• Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.1 Stormwater Drainage</li> <li>• Australian Standard 3500.3:2003 Plumbing and Drainage – Stormwater Drainage, Section 9 - Pumped Systems, 9.3 Wet Wells and</li> <li>• 9.4 Pumps</li> </ul>  |

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|   |   |  | necessary pump controls. No such measures have been installed.  |  |
| 7 | Those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the <i>Building Code of Australia</i> | Contaminated water draining from the bin wash bay floor cannot be adequately treated.          | That contaminated water draining from the bin wash bay floor cannot be adequately treated is attributable to a failure to comply with the Building Code and Australian Standards referenced in column 5, which requires the contaminated water to drain to the sanitary drainage system.  | <ul style="list-style-type: none"> <li>• Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.1 Stormwater Drainage</li> <li>• Australian Standard 3500.3:2003 - Plumbing and drainage, Part 3: Stormwater drainage, Section 5 Surface Drainage System Design, 5.3 Layout, Clause 5.3.3.5 Containment of Harmful Substances &amp; Clause 5.3.3.7 Sanitary Drainage System</li> </ul> |
| 8 | Fire safety systems   | The basement carpark compartment exceeds 500m2 and is without suitable firefighting equipment. | The absence of suitable firefighting equipment in the building is attributable to a failure to comply with the Building Code referenced in column 5 . 4 which requires installation of fire hydrant and fire hose reels to enable the occupants to undertake initial attack on a fire and to also facilitate the needs of the fire brigade. No such measures have not been installed. | <ul style="list-style-type: none"> <li>• Building Code of Australia (Vol 1): Section E Services and Equipment, Part E1 Fire Fighting Equipment, Performance Requirement EP1.1 and Performance Requirement EP1.3.</li> </ul>  |

### Consideration of written representations

5. Representatives of the Owners Corporation of Strata Plan 93352 provided me with the Owners Corporation submissions dated 27 July 2023 which included the following information (**Owners Corporation Representations**). The Owners Corporation provided written representations that:

a. there appears to be conflicts of interests with the following involved persons:

(i) Mr Andrew Vukovich (author of the Report by In The Square Building Consulting Pty Limited, titled BCA Advice reference ITS

10012.6 dated 22 June 2023). Mr Vukovich was an employee of the Local Group (Certification Company) when the construction and Occupation Certificates were issued by Paul Gearin (BDC 0132) of Local Group.

(ii) Mr Christopher Morris providing hydraulic engineering advice who was the engineer who previously certified the works as compliant and completed in accordance with the relevant Australian Standards and Development Consent conditions.

- b. any design, approval, supervision, or certification of the rectification works be required to be carried out by designers and certifiers that have not previously been linked to the identified defects.
- c. the scope for all items include commissioning and handover requirements to ensure the plant and equipment are functional, clean, meet the required standards when complete and the Owners Corporation has the required warranties and as-built documents.
- d. there are risks with the proposed use of BCA Performance Solutions to meet compliance requirements. The Owners Corporation submit that these alternative engineered solutions be rejected unless an amended Development consent can be obtained. The Owners Corporation opine state that both Sutherland Shire Council and Sydney Water would be required to provide consent.
- e. two (2) items be removed from the previous BWRO, being:
  - i. Wet area entry doorway: (Serious Defect No. 1 in the BWRO dated 23 February 2023). The Owners Corporation accept the items removal but request this should still be recognised as defective, albeit that it is not currently displaying with evidence of loss and damage.
  - ii. Perimeter drainage – Fire Stair One (Serious Defect No. 8 in the BWRO dated 23 February 2023). The Owners Corporation believe this defect should be reinstated in the new BWRO stating that the 40mm pipe blocks quickly through leaf and sediment build up and floods the base of the fire stair. The Owners Corporation consider a more acceptable solution would be to install grates over the channel allowing visual inspection and easy removal of blockages.

#### **Defects 1, 2, 4 and 6.**

- f. The Owners Corporation provided written correspondence that these defects should be retained in the final BWRO.

#### **Defect 3.**

- g. The Owners Corporation provided written correspondence that this defect should be retained in the final BWRO and that Final Certification of the changes should identify compliance to ensure no future building insurance issues arise in the future.

#### **Defect 5.**

- h. The Owners Corporation provided written correspondence that this defect should be retained in the final BWRO, however the Owners Corporation also contends the following:
  - A. The stormwater detention system is required to comply with the Development Consent which it does not, including in terms of the failure for the detention system to be constructed with adequate falls to drain stormwater to the outlet.
  - B. That the Rainwater Re-use system be included in the BWRO.
  - C. That the reference to 10mm of retained water is incorrect.

#### **Defect 7.**

- i. The Owners Corporation provided written correspondence that this defect should be retained in the final BWRO, however the Owners Corporation rejects the proposed rectification methodology for the following reasons:
  - A. The Development Consent requires the bin area to drain to sewer.
  - B. Sydney Water standards require enclosed bin rooms to drain to the sewer system.
  - C. The requirement is not just for bin wash out but to ensure any spills or leaks from the bins is disposed of to the sanitary drain system and not to the stormwater system.

#### **Defect 8.**

- j. The Owners Corporation provided written correspondence that this defect should be retained in the final BWRO and that this should be combined with the issuing of a new Fire Schedule.
6. I have reviewed the Owners Corporation representations. In relation to the issues raised in the Owners Corporation representations, I have considered the written representations provided by the Owners Corporation and make the following observations:
- a. **Defects 1, 2, 4 and 6** - these defects are retained and are progressed to final BWRO without amendment.
  - b. **Defect 3** – these defects are retained and are progressed to final BWRO without amendment. I note that the requirements of the *Design and Building Practitioners Act 2020* requires the work to be carried out declaring the regulated designs and execution of the works as integrated with regulated designs and in compliance with the Building Code of Australia.
  - c. **Defect 5** - these defects are retained and are progressed to final BWRO without amendment. I note that the requirements of the *Design and Building Practitioners Act 2020* requires the work to be carried out declaring the regulated designs and execution of the works as integrated with regulated designs and in compliance with the Building Code of Australia. It is also noted that the engagement with the local authority (Sutherland Shire Council) and Sydney Water, is required to comply with the original Development Consent.



- d. **Defect 7** - these defects are retained and are progressed to final BWRO without amendment. I note that the requirements of the *Design and Building Practitioners Act 2020* requires the work to be carried out declaring the regulated designs and execution of the works as integrated with regulated designs and in compliance with the Building Code of Australia
- e. **Defect 8** – these defects are retained and are progressed to final BWRO without amendment. I note that the requirements of the *Design and Building Practitioners Act 2020* requires the work to be carried out declaring the regulated designs and execution of the works as integrated with regulated designs and in compliance with the Building Code of Australia. The engagement with the local authority (Sutherland Shire Council), is required to facilitate compliance including the adoption of an amended Fire Safety Schedule to accurately represent the essential fire safety measures in the building.

#### **Why is it appropriate to give the Building Work Rectification Order?**

- 7. I am of the view that a period of 60 days for Defect 1 through 8 (inclusive) is a reasonable period for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.
- 8. I have considered all of the circumstances. I accept that the order requires considerable further construction work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers of the unit in having the building constructed so that it does not cause or likely to cause the inability to inhabit or use the building (or part of the building) for its intended purpose, the destruction of the building or any part of the building and a threat of collapse of the building or any part of the building.
- 9. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the Building Code of Australia, Australian Standards and the approved plans, and the benefits arising from remediating the Serious Defects and I find that it is appropriate, in the exercise of my discretion, to make the Order to carry out the specified actions in the Order within the time specified in the Order.
- 10. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.

## Attachment A

### ***Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.***

#### **3 Definitions**

(1) In this Act —

**approved plans**, in relation to building work, means the following —

- (a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,
- (b) regulated designs under the *Design and Building Practitioners Act 2020*,
- (c) any other plans prescribed by the regulations for the purposes of this definition.

**Building Code of Australia** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**Building Commissioner** means the Building Commissioner referred to in section 61.

**building element** has the same meaning as in the *Design and Building Practitioners Act 2020* and includes any element of a building that is prescribed by the regulations for the purposes of this definition.

**building product** means any product, material or other thing that is, or could be, used in a building.

**building work** — see section 5.

**building work rectification order** — see section 33.

**class** of building means a building of that class as recognised by the *Building Code of Australia*.

**completion**, in relation to building work, means the date that the occupation certificate for the building or part of a building to which the building work relates was issued.

**Department** means the Department of Customer Service.

**developer** — see section 4.

**expected completion amendment notice** — see section 8.

**expected completion notice** — see section 7.

**expected date** — see section 7(2).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**occupation certificate** means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*.

**owner's corporation** for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

**prohibition order** — see section 9.

**rectification bond** — see section 28.

**residential apartment building** means a class 2 building within the meaning of the *Building Code of Australia* and includes any building containing a part that is classified as a class 2 component but does not include any building or part of a building excluded from this definition by the regulations.

**Secretary** means the Secretary of the Department.

**serious defect**, in relation to a building, means —

- (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
- (b) a defect in a building product or building element that —
  - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
  - (ii) causes or is likely to cause —
    - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
    - (B) the destruction of the building or any part of the building, or
    - (C) a threat of collapse of the building or any part of the building, or
- (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (d) the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

**stop work order** — see section 29.

**strata building** means a building containing a lot or part of a lot that is the subject of a strata scheme.

**strata plan** has the same meaning as in the *Strata Schemes Development Act 2015*.

**strata scheme** has the same meaning as in the *Strata Schemes Development Act 2015*.

**Note.** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

#### **4 Meaning of “developer”**

For the purposes of this Act, a **developer**, in relation to building work, means any of the following persons, but does not include any person excluded from this definition by the regulations —

- (a) the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out,
- (b) if the building work is the erection or construction of a building or part of a building — the owner of the land on which the building work is carried out at the time the building work is carried out,
- (c) the principal contractor for the building work within the meaning of the *Environmental Planning and Assessment Act 1979*,
- (d) in relation to building work for a strata scheme — the developer of the strata scheme within the meaning of the *Strata Schemes Management Act 2015*,
- (e) any other person prescribed by the regulations for the purposes of this definition.

#### **6 Act applies only to residential apartment building work.**

- (1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that —
  - (a) is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, or is required to be authorised by a construction certificate or complying development certificate, and
  - (b) has not been completed or has been completed within the period of 10 years before the exercise of that function.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the *Building Code of Australia*).

***Design and Building Practitioners Act 2020.***

**6 Building elements**

(1) For the purposes of this Act, building element means any of the following —

- (a) the fire safety systems for a building within the meaning of the Building Code of Australia,
- (b) waterproofing,
- (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
- (d) a component of a building that is part of the building enclosure,
- (e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the Building Code of Australia,
- (f) other things prescribed by the regulations for the purposes of this section.

(2) The regulations may exclude things from being building elements for the purposes of this Act.

(3) In this section —

***above grade wall*** means a wall above the level of the ground surrounding a building.

***below grade wall*** means a wall below the level of the ground surrounding a building.

***building enclosure*** means the part of the building that physically separates the interior environment of the building from the exterior environment, including roof systems, above grade and below grade walls (including windows and doors).