CAS Ref: 10971969

Attn: Proper Officer
Balintore Developments Pty Ltd (ACN 167 706 112)
Level 4, 220 George Street
Sydney NSW 2000

Service: By registered post and by email

4 August 2023

Building Work Rectification Order

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

Balintore Developments Pty Ltd (ACN 167 706 112) is being given this Building Work Rectification Order (Order) in relation to address 75-83 Second Avenue, Campsie NSW 2194 (Lots A, B, C, D & E in DP 962671) (the Development).
Balintore Developments Pty Ltd (ACN 167 706 112) 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 serious 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. **Balintore Developments Pty Ltd (ACN 167 706 112)** is the developer of the residential apartment building known as **'DUO Campsie' 75-83 Second Avenue, Campsie NSW 2194 (Lots A, B, C, D & E in DP 962671) (the Development)** for the purposes of section 4(a) of the Act.

6. The Development consists of 2 buildings with 4 storeys for Building A and 3 storeys for Building B with a total of 38 sole occupancy units over a single level basement car park.

7. On 12 April 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matthew Whitton, under section 33 of the Act, require you **Balintore Developments Pty Ltd (ACN 167 706 112)** 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

Serious Defect (Reference No.)	Location of Serious Defect	General description of Serious Defect	Requirement under section 33(2)(a) to carry out the following specified building work	Time for compliance with Requirement (commencing from the date this order is given)
1.	Block A Unit GO1 Basement	Defective waterproofing system causing water penetration into the basement	The Developer is required to rectify the waterproofing system. Particular attention to be given, but not limited to the following areas: 1. Carry out rectification of the Bathroom waterproofing in unit G01 to comply with NCC Volume One BCA 2015 Section F Health and Amenity. 2. Make good any consequential damage. 3. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party waterproofing consultant reports.	2 months
2.	Block A Unit A G06 Unit A G05	The planter boxes adjacent to the units have been inadequately constructed with no protection boards, non-compliant membrane termination and lack of	The Developer is required to rectify the inadequately constructed planter boxes. Particular attention to be given, but not limited to the following areas:	3 months

		stormwater drainage causing water ingress	1. Rectify the system to comply with AS4654.2 Waterproofing membranes for external above ground use, design and installation and the NCC Volume One BCA 2015, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4. 2. Installation of a new waterproofing membrane in strict accordance with the manufacturer's specifications. 3. Ensure the new drainage overflows satisfy the design requirements of AS3500.3. 4. Ensure the discharge points for the overflows do not cause a loss of amenity to the residents or the general public. 5. Ensure any disturbed penetrations, junctions, terminations, and overflows comply with AS4654.2. 6. Make good any consequential damage. 7. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party waterproofing consultant reports .	
3.	Basement	Fire collars around penetrations throughout	The Developer is required to rectify the inadequately installed or absent fire collars.	2 months

		basement have not been properly installed or are absent	Particular attention to be given, but not limited to the following areas: 1. Rectification of the protection of service penetrations to comply with the NCC Volume One BCA 2015, Section 3 Fire resistance. 2. Make good any consequential damage. 3. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety reports.	
4.	Fire doors: All fire isolated stairways to the basement level Building A fire isolated stairway to ground floor Building B fire isolated stairway to ground floor	Door frames have been inadequately filled. Cavities are present around door frames or have been filled with an expanding foam.	The Developer is required to rectify the inadequately installed door frames. Particular attention to be given, but not limited to the following areas: 1. Developer to rectify and ensure the inadequately filled fire door frame complying with the NCC Volume One BCA 2015, and AS 1905.1 – Components for the protection of openings in fire-resistant walls, Part 1: Fire-resistant door sets. Particular attention to be given, but not limited to the following:	2 months

			a) All fire isolated door frame sets inadequately filled b) All fire isolated door frame sets with backfilled cavities 2. Make good any consequential damage. 3. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety reports.	
5.	Fire pump room	Masonry constructed wall within the fire pump room is not fire rated	The Developer is required to rectify the inadequately constructed wall within the fire pump room. Particular attention to be given, but not limited to the following areas: 1. Developer to carry out rectification of the fire safety defects in accordance with the NCC Volume One BCA 2015 and Australian Standard 2941 Fixed fire protection installations-Pumpset systems. Particular attention to be given, but not limited to the following: a) Proper fire resistance levels at the perimeter walls of fire isolated stairs Fire Pump Room and where required. 2. Make good any consequential damage.	2 months

			3. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety reports.	
6.	Building A: Unit A305	Inadequate construction of the metal roofing system has allowed water to ingress habitable areas of the building.	The Developer is required to rectify the inadequately constructed metal roofing system. Particular attention to be given, but not limited to the following areas: 1. Investigate and seal all penetrations through the metal roofing. 2. Make good any consequential damage 3. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party façade reports.	3 months
7.	Building A, lobby on ground level	The fire indicating panel has been installed incorrectly	The Developer is required to rectify the incorrectly installed fire indicating panel. Particular attention to be given, but not limited to the following areas:	3 months

			1. Rectify accordance with Australian Standard 1668.1 The use of ventilation and air conditioning in buildings – Fire and smoke control in buildings. 2. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party mechanical engineer reports.	

9. I, Matthew Whitton, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you **Balintore Developments Pty Ltd (ACN 167 706 112)** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

Table 2: Requirement in relation to specified standard

Serious Defect (Reference No.)	**Location of Serious Defect**	**Description of Serious Defect**	**Specified standard of building work**	**Requirement**	**Time for compliance with Requirement from the date of issue of this order**
8.	Basement	Steel reinforcement rods are insufficiently covered in the soffit	Reinforcements should be adequately covered to limit loss of materials	Within the time period specified in column 6, **Stage 1**	Stage 1: 1 month

				Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a structural design engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. **Stage 2** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.	Stage 2: 2 months
9.	Basement	Uncontrolled cracking and water ingress to basement carpark	Concrete structures should be uniform absent uncontrolled cracking and prevent water ingress	Within the time period specified in column 6, **Stage 1** Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au	Stage 1: 1 month Stage 2: 3 months

				The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a structural design engineer; ii) identify the source and location of water ingress; iii) provide a strategy for rectification of cracking and water ingress; iv) be prepared with consideration to this Order and the Reasons for this Order; and v) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. **Stage 2** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.	

Duration of this Order

10. This Order remains in force until it is revoked by the Secretary

11. This Order is given on the date that is listed above in accordance with section 67 of the Act.

Matthew Whitton
Assistant Building Commissioner
Building and Construction Compliance
NSW Fair Trading Department of Customer Service

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 4 August 2023 issued to **Balintore Developments Pty Ltd (ACN 167 706 112)** 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.

3. I have formed this belief after reviewing:

   a) An inspection report dated 10 May 2023 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 12 April 2023.

4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

Table 3 – Basis of reasonable belief as to serious defects

Serious Defect Reference No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1.	Waterproofing	Water is penetrating into the basement	Waterproofing is defective as it allows water to penetrate behind fittings and linings and into concealed spaces, ultimately arriving in the basement	NCC Volume One BCA 2015, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.7 Wet Areas, which states:	Penetrating water causing a slip hazard and loss of amenity and use of parking in the basement

				"To protect the structure of a building and to maintain the amenity of the occupants, water must be prevented from penetrating - *(a) behind fittings and linings; and* *(b) into concealed spaces, of sanitary compartments, bathrooms, laundries and the like."*	
2.	Waterproofing	Water ingress into habitable areas	Planter boxes have not been adequately constructed to prevent the penetration of water to adjacent unit	Australian Standard AS4654.2: Waterproofing membranes for external above ground use: Section 2 – Design and Installation, 2.13 Planter Boxes which states in part: *"The membrane shall be sealed to the drainage outlet. It shall extend vertically to a height of 100mm above the soil or fill level.* *Falls in the base of the planter shall be in accordance with Clause 2.5.2."* Australian Standard AS4654.2 appears as a standard referenced in the NCC Volume One BCA 2015, Section F Health and Amenity, Part F1 Damp and	Unhealthy and dangerous conditions and loss of amenity for occupants as well as undue dampness

				Weatherproofing, Performance Requirement FP1.4 which states in part - *"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-* *1. Unhealthy or dangerous conditions, or loss of amenity for occupants; and* *2. Undue dampness or deterioration of building elements."* Therefore, because the waterproofing to the planter boxes does not comply with the Australian Standard AS4654.2 and NCC Volume One BCA 2015 the Performance Requirement cannot be shown to have been satisfied.	
3.	Fire safety system	Fire collars have not been properly installed or are absent	Services that penetrate a building element must be protected by a properly installed tested system. There are multiple instances where fire collars have not been properly installed, or installed at all.	BCA 2015, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations, which states the following: "*...Where an electrical, electronic, plumbing, mechanical ventilation, air-*	The absence of fire protection increases the risk of spread of fire and smoke, leading to more extensive damage and potential loss of life. Fire protection systems help to slow the passage of fire and smoke, which can help

				conditioning, or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with any one of the following: *(a) Tested systems* *(i) The service, building element and any protection method at the penetration are identical with a prototype assembly of the service, building element and protection method which has been tested in accordance with AS 4072.1 and AS 1530.4 and has achieved the required FRL or resistance to the incipient spread of fire."* NCC Volume One BCA 2015, Section C Fire Resistance, Part C3 Protection of openings, Performance Requirement CP8 Fire protection of openings and penetrations, which states the following:	to contain the fire, reduce the spread of smoke, and buy more time for people to escape the building safely.

				"…*Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained — (a) where openings, construction joints and the like occur; and (b) where penetrations occur for building services."* And CP2 Spread of fire, which states*:* *" (a) A building must have elements which will, to the degree necessary, avoid the spread of fire — (i) to exits; and (ii) to sole-occupancy units and public corridors; and (iii) … (iv) in a building…"* And Australian Standard 4072.1 Components for the protection of openings in fire-resistant separating elements and 1530.4 Methods for fire tests on building materials, components and structures which may result in fire entering another section of the building rather than	

				being contained within the area of origin.	
4.	Fire safety system	Door frames around fire doors have been inadequately filled with expanding foam and evidence of cavities present	Fire doors must be fixed in a way that prevents the spread of fire. Doors have been filled and backfilled inadequately.	Australian Standard AS 1905.1-2015 Components for the protection of openings in fire-resistant walls, Part 1: Fire-resistant door sets, Section 5 Installation, 5.4 Allowable variations for fixing of doorframes, which states: "*Where is the door frame is to be fixed to the wall, rather than incorporated in the wall as construction progresses, and where the tested specimen construction is as described in clause 5.3, the following shall apply:* … *(d) Jamb cavities shall be fully grouted.* *The head cavity and side jamb cavity shall be grouted in a manner that will prevent a flame passage across the top and sides of the frame."* And Clause 5.3 Metal doorframe in masonry wall, 5.3.2 Backfilling of metal	The inadequately filled door frames increase the risk of spread of fire and smoke, leading to more extensive damage and potential loss of life. Fire doors help to slow the passage of fire and smoke, which can help to contain the fire, reduce the spread of smoke, and buy more time for people to escape the building safely.

				doorframes, states in part: *"Unless an alternative method of fixing has been demonstrated by a full-scale standard fire resistance test, metal door frames used in the construction of a fire-rated door set for masonry construction, frame head and jamb cavities shall be backfilled by thoroughly and progressively grouting with cement mortar, concrete, a non-shrink grout or with material with a temperature of fusion not less than 1000°C".* Australian Standard 1905.1 appears as a standard referenced in the NCC Volume One BCA 2015, Section C Fire resistance, Part C3 Protection of openings and the following Deemed-to-Satisfy provisions, C3.4 Acceptable methods of protection, which state: "*(a) ....* *(a) Fire doors, fire windows and fire shutters must comply*	

				with Specification C3.4" And Specification C3.4 Fire doors, smoke doors, fire windows and shutters, 2. Fire Doors, which states: *"A required fire door must—* *(a) Comply with AS 1905.1; and* *(b) Not fail by radiation through any glazed part during the period specified for integrity in the required FRL."* Deemed-to-Satisfy provision C3.4 is a pathway that can satisfy the NCC Volume One BCA 2015, Section C Fire resistance, Performance Requirement CP2 Spread of fire, which states: *"(a) A building must have elements which will, to the degree necessary, avoid the spread of fire—* *(i) to exits; and* *(ii) to sole-occupancy units and public corridors; and* *(iii) between buildings; and* *(iv) in a building."* And	

				NCC Volume One BCA 2015, Section C Fire Resistance Performance Requirement CP8 Fire protection of openings and penetrations, which states: "*Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained—* *(a)where openings, construction joints and the like occur; and* *(b)where penetrations occur for building services."*	
5.	Fire safety system	Masonry constructed wall within the fire pump room is not fire rated	Masonry wall within the fire pump room has not been constructed of adequately fire rated material	Australian Standard 2941:2013 Fixed fire protection installations-Pumpset systems, Appendix D The pump house or Pump room (Normative), D2 General, which states: *"A pump house or pump room shall –* *(a) ...* *(c) be identified by appropriate signs and other visual and audible aids, so that the room and its entrance can be readily located by the (d) be constructed with a*	The masonry wall is constructed using a material that does not meet the required fire rating which increases the risk of spread of fire and smoke, leading to more extensive damage and potential loss of life.

				minimum 2.1 m high internal clearance with adequate space for pump maintenance and replacement; and *(d) ...* *(e) have enclosing walls, roof and floor, and be weatherproof."* Australian Standard 2941:2013 appears as a standard referenced in the NCC Volume One BCA 2015, Section C Fire resistance, Part C1 Fire resistance and stability, Deemed-to-Satisfy provision C1.9 Non-combustible building elements, which states*:* *"(a) In a building required to be of Type A or B construction, the following building elements and their components must be non-combustible:* *...* *(iii) Non-loadbearing internal walls where they are required to be fire-resisting.* *...(e) The following materials may be used wherever a non-*	

				combustible material is required: *(i) Plasterboard.* *(ii) Perforated gypsum lath with a normal paper finish.* *(iii) Fibrous-plaster sheet.* *(iv) Fibre-reinforced cement sheeting.* *(v) Pre-finished metal sheeting having a combustible surface finish not exceeding 1 mm thickness and where the Spread-of-Flame Index of the product is not greater than 0.* *(vi) Sarking-type materials that do not exceed 1 mm in thickness and have a Flammability Index not greater than 5.* *(vii) Bonded laminated materials where—* *(A) each lamina, including any core, is non-combustible; and* *(B) each adhesive layer does not exceed 1 mm in thickness and the total thickness of the adhesive layers does not exceed 2 mm; and* *(C) the Spread-of-Flame Index and the Smoke-Developed Index of the bonded laminated material as a whole do not exceed 0 and 3 respectively."*	

				Deemed-to-Satisfy provision C1.9 is a pathway that can satisfy the NCC Volume One BCA 2015, Part B1 Structural provisions, Performance Requirements, BP1.2 Structural resistance, which states: *"The structural resistance of materials and forms of construction must be determined using five percentile characteristic material properties with appropriate allowance for —* *(a) known construction activities; and* *(b) type of material; and* *(c) characteristics of the site; and* *(d) the degree of accuracy inherent in the methods used to assess the structural behaviour; and* *(e) action effects arising from the differential settlement of foundations, and from restrained dimensional changes due to temperature, moisture, shrinkage, creep and similar effects."*	

6.	Building enclosure	Water ingress to habitable areas of the building	The metal roof has been inadequately constructed to prevent the ingress of water into the building	The inadequate construction of the metal roofing system does not comply with NCC Volume One BCA 2015, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states in part - *"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-* *(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and* *(b) Undue dampness or deterioration of building elements."*	Unhealthy and dangerous conditions and loss of amenity for occupants as well as undue dampness
7.	Mechanical services	The fire indicating panel has been installed incorrectly	On the fire indicating panel the exhaust fan and carpark supply fan both are illuminated as being "stopped", but were running at the time of inspection	The installation demonstrates a failure to comply with Australian Standard 1668.1 – 2015 The use of ventilation and air conditioning in buildings Part 1: Fire and smoke control in Buildings, Section 4 Smoke Control systems – General requirements, 4.11 Control and Indication, 4.11.3 Function which states:	Risk of incorrect information being provided by fire indicating panel during an emergency, affecting the ability to fight fire

				"A Fire fan control panel (FFCP) shall be provided to perform the following functions: *a) Control the automatic operation of air handling equipment (fans and zone smoke control dampers) during fire mode, in accordance with the requirements of this standard.* *b) –* *c) Provide manual controls to override the automatic operation of the ventilation systems in accordance with this standard* *d) Indicate the status of the air-handling system"*	
8.	Structure	Steel reinforcement rods are insufficiently covered in the soffit	Concrete must be prepared in a way that closely surrounds all reinforcements	NCC Volume One BCA 2015, Part B1 Structural Provisions, Performance Requirements BP1.1. The Deemed-to-Satisfy Provisions, B1.4 Determination of structural resistance to materials and forms of construction states: *"The structural resistance of material and forms of*	Exposed reinforcements could degrade and compromise the structural integrity of the concrete

				construction must be determined in accordance with the following, as appropriate: *(a) ….* *(b) Concrete construction (including reinforced and prestressed concrete): AS 3600."* AS 3600-2009 Concrete structures, Section 4 Design for Durability, Clause 4.3 Exposure Classification Requirements for concrete for exposure classifications A1, A2, B1, B2, C1, and C2, which states: *"The following are applicable:* *(a) The exposure classification for a surface of member shall be determined from Table 4.3 and Figure 4.3* *(b) For determining concrete quality requirements in accordance with Clauses 4.4 and 4.8 as appropriate, the exposure classification for the member shall be taken as the most*	

				severe exposure of any of its surfaces *(c) For determining cover requirements for corrosion protection in accordance with Clause 4.10.3, the exposure classification shall be taken as the classification for the surface from which the cover is measured."* To support AS 3600-2009 Concrete structures, Section 4 Design for Durability Clause 4.10 Requirements for cover to reinforcing steel and tendons, Clause 4.10.1 states: *"The cover to reinforcing steel and tendons shall be the greatest of the values determined from Clauses 4.8, 4.10.2 and 4.10.3, as appropriate, unless exceed by the requirements for fire resistance given in Section 5."* In support of AS 3600-2009 Concrete structures, Section 4 Design for Durability Clause 4.10.3.2 states: *"Where concrete is cast in formwork complying with AS*	

				3610 and compacted in accordance with Clause 17.1.3 of this Standard, the cover shall be not less than the value given in Tables 4.8.1, 4.8.2 and 4.10.3.2, as appropriate to the exposure classification." AS 3600-2009 Concrete structures, Section 17 Material and Construction Requirements, Clause 17.1.3 Handling, placing and compacting of concrete states in part: *" Concrete shall be handled, placed and compacted as to-* *(a) Limit segregation or loss of materials;* *(b) …..* *(c) ……..* *(d) Completely fill the formwork to the intended level, expel entrapped air and closely surround all reinforcement, tendons, ducts, anchorages, embedments and fixings; and …"*	
9.	Structure	Uncontrolled cracking and water ingress	Insufficient control of cracking in concrete structures could lead to compromise of the	Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design	Continued degradation of structural elements of the building as well as unhealthy and

		to basement carpark	structural performance, durability and appearance of the structure. If it is not rectified it will continue to crack and cause further damage. Water is penetrating into the basement through cracks in the soffit	for serviceability, 2.3.3, Cracking which states: *"2.3.3.1 General Cracking in concrete structures shall be controlled so that structural performance, durability and appearance of the structure are not compromised."* Australian Standard 3600 appears as a standard referenced in the NCC Volume One BCA 2015, Section B Structure, Deemed-to-Satisfy provision B1.4 – Determination of structural resistance of materials and forms of construction which states: *"The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate: … (b) Concrete: (i) Concrete construction (including reinforced and prestressed concrete): AS 3600."*	dangerous conditions for occupants due to water ingress

Consideration of written representations

5. On 21 June 2023, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Certifier and Owners Corporation. The served parties were invited to provide written representations relating to the Order to the Department by 12 July 2023. On 23 June 2023, the Secretary of the Owners Corporation provided written representations. No other representations were received.

6. The representations on behalf of the Owners Corporation concerned serious defect 6. After considering those representations, I have determined that it is appropriate to give an order in accordance with modifications to the proposed order.

7. In the circumstances where no other representations were received, I am satisfied that it is appropriate to give the Order.

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

8. 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 BCA and 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.

9. 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.

10. I am of the view that the periods above for Defect 1 through 9 (inclusive) are reasonable periods 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.

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*.

owners 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*).

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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).