Department of Customer Service

NSW GOVERNMENT

Attn: Proper Officer
Soho (Mt. Druitt) Pty Ltd
c/o- KPMG, 3 Parramatta Square
Level 16, 153 Macquarie Street
Parramatta NSW 2150

Service: By express post and email

DATE: 14 December 2023

Building Work Rectification Order

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

Soho (Mt. Druitt) Pty Ltd (ACN 167 080 104) is being given this Building Work Rectification Order (Order) in relation to 5-7 The Avenue, Mount Druitt NSW 2770 (SP93894).

Soho (Mt. Druitt) Pty Ltd is required to cause building work to be carried out to remediate the serious defects as set out 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 to 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 set out in **Attachment A** to this order.

4. Elizabeth Stewart, Acting Building Commissioner, Department of Customer Service is an authorised delegate of the Secretary of the Department.

5. Soho (Mt. Druitt) Pty Ltd (ACN 167 080 104) is the developer of the residential apartment building known as 5-7 The Avenue, Mount Druitt NSW 2770 (SP93894) (**the Development**) for the purposes of section 4(a) of the Act.

6. The Development comprises carparking and residential units. The Act applies to building work at the Development because it is a class 2 Development, is currently occupied and less than 10 years old.

7. On 21 April 2023, with the consent of the owners corporation, an authorised officer of the Department attended the Building (**Investigator**). The Investigator prepared a report on serious defects in the Building (**Inspection Report**).

Requirements in relation to Serious Defects

8. I, Elizabeth Stewart, under section 33 of the Act, require you Soho (Mt. Druitt) Pty Ltd (ACN 167 080 104) 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 Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
1.	Buildings A & B Lower Ground to Level 5 and Roof	The following observations were made: 1. Advised onsite that flooding occurs in Unit 5 at the Lower ground of Building B. 2. The terrace in unit 5 had no visible overflow provisions. 3. The upper floor balconies to Sole Occupancy Units that can be observed from ground level had no visible overflow provisions. 4. Podium terrace had no visible overflow provisions. 5. Roof slab had no visible overflow provisions.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 180 days
2.	Building B. Lower Ground Unit 5.	The following observations were made: 1. Sign of water ingress was observed in the living area adjacent to the terrace.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene	Stage 1 – 60 days Stage 2 – 180 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		2. No stepdown had been provided from the living area to the balcony or to the terrace. 3. Architectural drawings show an 85mm set down from the internal area to the terrace. Therefore, the construction does not comply with the approved drawings. 4. The lack of set down is a recurring problem on the Lower ground floor.	team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
3.	Buildings A & B. Level 5 & Roof.	The following observations were made: 1. The roof areas are bounded by concrete upstands / parapets of varying heights. 2. No overflow provisions were visible within the upstands / parapets. 3. The drainage outlets on the roof surface is covered by pebbles. 4. No evidence of Waterproofing membrane	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 180 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		terminating 100mm above the slab.		
4.	Building B - Level 5. (Slab over ventilation windows in level 4 unit)	The following observations were made: 1. Water was ponding on the cover slab. 2. No sign of drainage can be observed. 3. The cover slab does not have hobs as shown on the design drawings. 4. No overflow pipes have been provided	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 180 days
5.	Building B. Basement 1. Shotcrete walls	The following observations were made: 1. Significant signs of water ingress are observed on the southern internal wall of the stairwell of Stair 1 at the South eastern corner. 2. A heavy layer of calcite has formed. 3. Water ingress is observed on the eastern wall adjacent to the stairwell.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 180 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		4. The above walls are directly under the Lower ground terrace adjacent to unit 05. 5. The observed water leakage of the walls is possible evidence of a lack of waterproofing of the Lower Ground terraces. 6. This is a recurring problem.	Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
6.	Basement 1. Buildings B (Observing Soffit of Lower Ground Slab)	The following observations were made: 1. Cracked slab soffit and water leaking through the cracks are observed. 1. The slab adjacent to the western wall near stair 2. 2. Significant calcite formation can be observed. 3. A car has been covered with a protective cloth to prevent calcite from dropping on the body of the car. 1. The above slab is directly under the Lower ground terrace adjacent to unit 05. (See Element 1.1 above.)	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 180 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		2. The slab in the south-eastern corner is cracked, and water is leaking. 3. The above slab is directly under the Planter and landscape area on Lower Ground. 4. The observed water leakage through the slab cracks is possible evidence of a lack of waterproofing of the Lower Ground planters, landscape area and terraces. 5. This is a recurring problem.		
7.	Lower Ground. Building A.	The following observations were made: 1. Signs of extensive water flow into the lower ground fire exit door can be observed. (Refer to Image 1.8.1) 2. No stepdown has been provided from the floor to the external open stairs. 3. No grated drain has been provided at the doorway.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 180 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		4. No adequate drainage system is visible to prevent water from entering the building.	Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
8.	Block A – Lower Ground basement	Inadequate fire checking at multiple penetrations through the walls of basement levels.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
9.	Block B – Lower Ground Lobby (Multiple Occurrences)	The following observations were made: Fire door frames were found to be hollow when tapped indicating voids exist in the grout behind the frames that are not solid core filled.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 120 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
10.	Block A – Main Switch Room at Lower Ground Block B – Fire Exit	It was observed that the fire door installed had excessive gap underneath the door in the following areas: 1. Main Switch Room. 2. Fire Exit leading to Communal Courtyard. Door is in path of travel from Lower Ground Level exit.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
11.	Block A – Pump Room at Lower Ground	It was observed that exhaust ductwork had been installed to penetrate the fire resistant walls with absence of fire damper within the duct.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 120 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
12.	Block B – Gas Meter Room	It was observed that the pipe penetrating the gas meter room had unprotected voids.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
13.	Hydrant Booster at front of The Avenue	It was observed that the fire hydrant booster assembly was positioned less than 10 metres from the building and was not safeguarded by the required construction.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 120 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
14.	Block A – Hydrant Pump Room at Lower Ground	Sprinkler Block Plan is not current or compliant.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
15.	Hydrant Booster at front of The Avenue Block A - Lobby	Block Plans provided throughout are not current or compliant.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 120 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
16.	Block B – Lower Ground	It was observed that illuminated emergency exit signage was missing above the lobby door of Block B towards Eastern boundary.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
17.	Lower Ground. Building A.	Fire exit door with Caution sign indicating narrow stairway.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 120 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
18.	Basement 2. Stairwell at South West Corner	Honeycombed concrete can be observed under the stair soffit.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 150 days
19.	Building B. Basement.	The following observations were made: 1. Diagonal cracks on the Southern Concrete wall within the stairwell of Stair 2	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2.	Stage 1 – 60 days Stage 2 – 150 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
20.	Buildings A & B. Basement 1. Doorway to Stairs 1, 2 & 3.	The following observations were made: 1. Diagonal cracks can be observed over the doorway to the fire escape stairs. 2. The three locations have identical crack. 3. The crack width is up to 2.5mm. 4. The structural drawing S31 has specified 2N16 Extra trimmer bars around the opening. It would appear that the trimmer bars have not been correctly installed.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 150 days
21.	Lower Ground Floor Building A. South-eastern corner.	The following observations were made: 1. Diagonal and horizontal cracking up to 2mm wide in the basement walls above the capping beam along the eastern boundary.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au	Stage 1 – 60 days Stage 2 – 150 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		2. Diagonal cracking on the southern wall adjacent to Stair 5. 3. The walls have been documented as 200-thick reinforced wall with a single layer of N16 @200 vertical and N12 @ 200 horizontal.	Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
22.	Building A, Lower Ground Floor.	The post-tensioned floor slab has numerous cracks under the common area planters and terraces.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 150 days
23.	Building A. Basement B1.	The following observations were made: 1. Diagonal cracking in the lift shaft from the penetration for the service duct.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene	Stage 1 – 60 days Stage 2 – 150 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
		2. The lift shaft is 200 thick reinforced concrete. The diagonal cracking could indicate that the 2N16 Extra trimmers specified in the structural drawings have not been provided.	team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
24.	Building A. Lower Ground. Garbage Room & Electrical room enclosures.	The following observations were made: 1. Diagonal cracking over the doorway on the hoist shaft wall and the Lift shaft wall. 2. This is a recurring problem at penetrations.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 150 days
25.	Building B. Level 5.	The base plate of a steel column on Building B, Level 5 is highly corroded.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene	Stage 1 – 60 days Stage 2 – 150 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
			team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
26.	Building B2. Basement 2. Soffit of Ramp from B1 to Lower ground.	The following observations were made: 1. It was observed that the slab soffit has been saw-cut and chamfered by approximately 20-30 mm to increase clear headroom for the vehicles. 2. The Structural drawings have specified a minimum cover of 25mm. The cutting of the corner would reduce the cover, but no evidence of epoxy render or similar to enhance the protection can be observed. 3. This defect has been removed.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 150 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
27.	Block B – Electric Meter Room	It was observed that the electrical switchgear located at the electric meter room is located in inaccessible position.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
28.	Block A – Main Switch Room at Lower Ground	It was observed that segregation of cables and labelling of termination was not compliant with the installation standards	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement (from the date of issue of this Order)
29.	Block A - Unit 5 Balcony	The following observations were made: 1. Electrical connection to light fittings is exposed to weather and not securely mounted. 2. The minimum separation has not been achieved between services in multiple locations throughout the building. 3. This defect has been removed. 4. This defect has been removed.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days Stage 2 – 120 days
30.	Block A – Lower Ground Carpark	It was observed that the Fire Pump Room door is obstructed by the vehicle parked.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect to the Project Intervene team via email to ocaudits@customerservice.nsw.gov.au Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1	Stage 1 – 60 days Stage 2 – 120 days

Conditions of this Order

9. You must make good any consequential damage caused in carrying out the works specified in this Order.

10. A design that is prepared for a building element for building work or a design that is prepared for a performance solution for building work (including a building element) in this Order must comply with the *Design and Building Practitioners Act 2020* (**DBP Act**).

11. A suitably qualified person or specialist referred to in column 4 of Table 1 is a person who is a registered design practitioner under the DBP Act.

12. Where this Order requires you to submit a written report, then written report must:

    a. be prepared by a suitably qualified person or specialist; and

    b. be prepared with consideration to this Order and the Reasons for this Order; and

    c. detail the specific building work necessary to meet the codes and relevant standards specified in column 5 of Table 2; and

    d. be prepared with consideration to other building work already constructed at the time of this Order and not the subject of a serious defect including designs for that building work, and other building work required by this Order including designs for that building work, and manufacturer's specifications.

Duration of this Order

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

14. This order is given on the date that it is listed above in accordance with section 67 of the RAB Act.

Elizabeth Stewart
Acting NSW Building Commissioner
Building Commission NSW
Department of Customer Service

Reasons for the Building Work Rectification Order

1. I, Elizabeth Stewart, have formed a reasonable belief that the Development has a serious defect based on the following.

2. I have formed this belief after reviewing an Inspection Report (dated 1 June 2023) prepared by Authorised Officers of the Department of Customer Service, who conducted an inspection of the Development by consent of the owners corporation on 21 April 2023.

3. My reasonable belief is also based upon the following matters, set out in Table 2 below in respect of each serious defect identified in column 1 of Table 2 (where that reference corresponds to the reference set out in Table 1 above).

Reason why defect is a serious defect

Table 2 – basis of reasonable belief as to serious defects

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
1.	Waterproofing systems	The following observations were made: 1. Advised onsite that flooding occurs in Unit 5 at the Lower ground of Building B. 2. The terrace in unit 5 had no visible overflow provisions. 3. The upper floor balconies to Sole Occupancy Units that can be observed from ground level had no visible overflow provisions.	The lack of overflow provisions demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS/NZS3500.3 Plumbing and Drainage. Part 3: Stormwater drainage, Section 3.8 Balcony and Terrace Areas • Australian Standard AS/NZS3500.3 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface Drainage Systems –Design, Clause 5.3.1.1 Roof areas • AS 3500.3 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		4. Podium terrace had no visible overflow provisions. 5. Roof slab had no visible overflow provisions. 6. This is considered recurring.		Weatherproofing, Deemed to Satisfy Provision F1.0 • Deemed to Satisfy Provision F1.0 is a pathway that can satisfy BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4
2.	Waterproofing systems	The following observations were made: 1. Sign of water ingress was observed in the living area adjacent to the terrace. 2. No stepdown had been provided from the living area to the balcony or to the terrace. 3. Architectural drawings show an 85mm set down from the internal area to the terrace. Therefore, the construction does not comply with the approved drawings. 4. The lack of set down is a recurring problem on the Lower ground floor.	The inadequate waterproofing system termination details at doors and windows demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS4654.2, Waterproofing Membranes for External Above Ground Use, Section 2 - Design and installation, 2.8 Termination of membranes, 2.8.3 Doors and windows onto external waterproofed areas • Australian Standard AS1170.2 Structural design actions, Part 2 Wind Actions, Section 2 Calculation of Wind Actions, 2.1 General • AS 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed to Satisfy Provision F1.0 • Deemed to Satisfy Provision F1.0 is a pathway that can satisfy BCA Volume One, Section F Health and Amenity,

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				Part F1 Damp and Weatherproofing, Performance Requirement FP1.4
3.	Waterproofing systems	The following observations were made: 1. The roof areas are bounded by concrete upstands / parapets of varying heights. 2. No overflow provisions were visible within the upstands / parapets. 3. The drainage outlets on the roof surface is covered by pebbles. 4. No evidence of Waterproofing membrane terminating 100mm above the slab.	The lack of overflow provisions demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS/NZS3500.3 –2015 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface Drainage Systems –Design, Clause 5.3.1.1 Roof areas • AS 3500.3 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed to Satisfy Provision F1.0 • Deemed to Satisfy Provision F1.0 is a pathway that can satisfy BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4
4.	Waterproofing systems	The following observations were made: 1. Water was ponding on the cover slab. 2. No sign of drainage can be observed. 3. The cover slab does not have hobs as shown on the design drawings.	The water ponding on the roof surface due to the absence of drainage demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 4654.2-2012, Waterproofing Membranes for External Above Ground Use - Design and Installation, Section 2 - Design and installation • Australian Standard AS4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		4. No overflow pipes have been provided		Amenity, Part F1 Damp and Weatherproofing, Deemed-to Satisfy provision F1.4 • Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4
5.	Waterproofing systems	The following observations were made: 1. Significant signs of water ingress are observed on the southern internal wall of the stairwell of Stair 1 at the South-eastern corner. 2. A heavy layer of calcite has formed. 3. Water ingress is observed on the eastern wall adjacent to the stairwell. 4. The above walls are directly under the Lower ground terrace adjacent to unit 05. 5. The observed water leakage of the walls is possible evidence of a lack of waterproofing of	The uncontrolled water ingress demonstrates a failure to comply with the Building Code provisions referenced in column 5.	• BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 • BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements: FP1.3 Rainwater drainage systems

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		the Lower Ground terraces. 6. This is a recurring problem.		
6.	Waterproofing systems	The following observations were made: 1. Cracked slab soffit and water leaking through the cracks are observed. 2. The slab adjacent to the western wall near stair 2. Significant calcite formation can be observed. 3. A car has been covered with a protective cloth to prevent calcite from dropping on the body of the car. 4. The above slab is directly under the Lower ground terrace adjacent to unit 05. 5. The slab in the south-eastern corner is cracked, and water is leaking. 6. The above slab is directly under the Planter and landscape area on Lower Ground. 7. The observed water leakage through the slab cracks is possible	The uncontrolled water ingress demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 • BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements: FP1.3 Rainwater drainage systems • Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking • Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		evidence of a lack of waterproofing of the Lower Ground planters, landscape area and terraces. 8. This is a recurring problem.		
7.	Waterproofing systems	The following observations were made: 1. Signs of extensive water flow into the lower ground fire exit door can be observed. (Refer to Image 1.8.1) 2. No stepdown has been provided from the floor to the external open stairs. 3. No grated drain has been provided at the doorway. 4. No adequate drainage system is visible to prevent water from entering the building.	The inadequate fall gradient and lack of drainage demonstrates a failure to comply the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS/NZS3500.3 National Plumbing and Drainage Code Part 3, Section 5 Surface water drainage systems – Design, Clause 5.3.4 Entry into buildings. • Australian Standard AS4654.2, Waterproofing Membranes for External Above Ground Use, Section 2 - Design and installation, 2.8 Termination of membranes, 2.8.3 Doors and windows onto external waterproofed areas • Australian Standard AS4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements FP1.4
8.	Fire Safety Systems	Inadequate fire checking at multiple penetrations on the walls of carpark.	The inadequate fire-resisting sealing demonstrates a failure to comply with the Building Code provisions referenced in column 5.	• BCA Volume One, Section C Fire Resistance, Performance Requirements CP2 Spread of fire.

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				• CP8 Fire protection of openings and penetrations. • Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations. • Part C1 Fire Resistance and Stability, Specification C1.1 Fire-Resisting Construction, Part 3 Type A Fire-Resisting Construction, Clause 3.1 Fire-Resistance of Building Elements
9.	Fire Safety Systems	The following observations were made: 1. Fire door frames were found to be hollow when tapped indicating voids exist in the grout behind the frames that are not solid core filled. 2. This was typical throughout numerous fire door frame sets.	The voids in the grouted door frame demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS1905.1-Components for the protection of openings in fire-resistant wall Part 1: Fire resistant doorsets, Section 5 Installation, Clause 5.3 Metal doorframes in masonry walls, 5.3.2 Backfilling of metal door frames • Australian Standard AS1905.1 appears as a standard referenced in the BCA Volume One, Section C Fire resistance, Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2 Fire doors • Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors, is a pathway that can satisfy the BCA Volume One, Section C

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				Fire resistance, Performance Requirement CP2
10.	Fire Safety Systems	It was observed that the fire door installed had a large gap underneath the door in the following areas: 1. Main Switch Room. 2. Fire Exit leading to Communal Courtyard.	The inadequate clearance of fire doors demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS1905.1 Components of the protection of openings in fire-resistant walls Part 1 Fire resistant doorsets, Section 5 Installation, Clause 5.5 Clearances around door leaves, 5.5.1 Threshold and floor finish • Australian Standard AS1905.1 appears as a standard referenced in the BCA Volume One, Section C Fire Resistance, Specification C3.4 Fire doors, smoke doors, fire windows and shutters, 2 Fire doors • Deemed-to-Satisfy provision C3.4 is a pathway that can satisfy the BCA Volume One, Section C Fire Resistance, Performance Requirement CP2
11.	Fire Safety Systems	It was observed that exhaust ductwork had been installed that penetrates fire isolating walls where no fire damper has been installed within the duct.	The absence of a damper in a building element with a required FRL demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS4254.2 Ductwork for air handling systems in buildings Part 2: Rigid duct, Section 2 Duct construction and installation, Clause 2.1 Ductwork, 2.1.1 General • Australian Standard AS1682.2 Fire, smoke and air dampers, Part 2 Installation, Section 5

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				Selection, Clause 5.2 Fire dampers, 5.2.1 Integrity • Australian Standard AS4254 appears as a standard referenced in the BCA Volume One, Section C Fire resistance, Specification C1.10 Fire hazard properties, Clause 5 Air-handling ductwork • Specification C1.10 Fire hazard Photograph 2.4.1 – Overview of pump room exhaust duct. Page | 51 properties, Clause 5 Air-handling ductwork is a pathway that can satisfy the BCA Volume One, Section C Fire resistance, Performance Requirement CP2 • AS4254.2 Ductwork for air handling systems in buildings, Australian Standard AS1682.2 Fire, smoke, and air dampers and the BCA Volume One Deemed-to-satisfy provision Specification C1.10 Fire hazard properties, Clause 5 Air-handling ductwork
12.	Fire Safety Systems	It was observed that the pipe penetrating the gas meter room had large gaps to the perimeter and was not fire sealed.	The inadequate fire-resisting sealing demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• BCA Volume One, Section C Fire Resistance • CP2 Spread of fire, • CP8 Fire protection of openings and penetrations • Part C3 Protection of openings, Deemed-to-Satisfy provisions:

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				C3.15 Openings for service installations • Part C1 Fire Resistance and Stability, Specification C1.1 Fire-Resisting Construction, Part 3 Type A Fire-Resisting Construction, Clause 3.1 Fire-Resistance of Building Elements
13.	Fire Safety Systems	It was observed that the fire hydrant booster assembly was less than 10 metres from the building.	The fire hydrant installation demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS2419.1 Fire hydrant installations Part 1 System design, installation and commissioning, Section 3 Location and other provisions, Clause 3.2 Location of on-site fire hydrants, 3.2.2 External fire hydrants, 3.2.2.2 Location • Australian Standard AS2419.1 appears as a standard referenced in the BCA Volume One, Section E Services and equipment, Part E1.3 Fire hydrants • Deemed-to-Satisfy provision E1.3 is a pathway that can satisfy the BCA Volume One, Section E Services and equipment, Part E1 Fire fighting equipment, Performance Requirement EP1.3

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
14.	Fire Safety Systems	Sprinkler Block Plan is not current or compliant.	The absence of compliant block plans demonstrates a failure to comply the Australian Standard provisions referenced in column 5.	• Australian Standard AS2118.1 Automatic fire sprinkler systems, Part 1 General requirements, Section 8 Valves and Ancillary Equipment, Clause 8.3 Block Plan
15.	Fire Safety Systems	Block Plans provided throughout are not current or compliant.	The absence of compliant block plans demonstrates a failure to comply with the Australian Standard provisions referenced in column 5.	• Australian Standard AS2419.1 Fire hydrants installations, Part 1 System design, installation and commissioning, Section 7 Fire brigade booster assembly, Clause 7.11 Block plan
16.	Fire Safety Systems	It was observed that illuminated emergency exit signage was missing above the lobby door of Block B towards Eastern boundary	The failure to ensure the adequate installation of exit signage demonstrates a failure to comply with the Building Code provisions referenced in column 5.	• BCA Volume One, Section E Services and equipment, Part E4 Visibility in an emergency, exit signs and warning signs, Deemed-to Satisfy provision E4.5 Exit signs • Deemed-to-Satisfy provision E4.5 Exit signs is a pathway that can satisfy the BCA Volume One, Section E Services and equipment, Performance Requirement EP4.2 Identification of exits
17.	Fire Safety Systems	Fire exit door with Caution sign indicating narrow stairway.	The narrow dimensions of the required exit demonstrates a failure to comply with the Building Code provisions referenced in column 5.	• BCA Volume One, Section D Access and Egress, Part D1 Provision for Escape, D1.6 Dimensions of exits and paths of travel to exits

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
18.	Structural Systems	Honeycombed concrete can be observed under the stair soffit.	The honeycombing in the concrete installation demonstrates a failure to comply with the Australian Standard provisions referenced in column 5.	• Australian Standard AS3600 Concrete Structures as follows: o Section 4 – Design for durability, 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection, 4.10.3.7 Embedded items cover o Section 17 - Materials and construction requirements, 17.1.7- Rejection of concrete, 17.1.7.2 Hardened concrete o Section 17 - Materials and construction requirements, 17.1.3 Handling, placing and compacting of concrete
19.	Structural Systems	The following observations were made: 1. Diagonal cracks on the Southern Concrete wall within the stairwell of Stair 2	The cracking identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking • Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to Satisfy provision B1.4 - Determination of

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				structural resistance of materials and forms of construction
20.	Structural Systems	The following observations were made: 1. Diagonal cracks can be observed over the doorway to the fire escape stairs. 2. The three locations have identical crack. 3. The crack width is up to 2.5mm. 4. The structural drawing S31 has specified 2N16 Extra trimmer bars around the opening. It would appear that the trimmer bars have not been correctly installed.	The cracking identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking • Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction
21.	Structural Systems	The following observations were made: 1. Diagonal and horizontal cracking up to 2mm wide in the basement walls above the capping beam along the eastern boundary. 2. Diagonal cracking on the southern wall adjacent to Stair 5. 3. The walls have been documented as 200-thick reinforced wall with a single layer of N16 @200 vertical and N12 @ 200 horizontal.	The cracking identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking • Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
22.	Structural Systems	The post-tensioned floor slab has numerous cracks under the common area planters and terraces.	The cracking identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking • Australian Standard AS3600 appears as a standard referenced in the the BCA Volume One, Section B Structure, Deemed-to Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction
23.	Structural Systems	The following observations were made: 1. Diagonal cracking in the lift shaft from the penetration for the service duct. 2. The lift shaft is 200 thick reinforced concrete. The diagonal cracking could indicate that the 2N16 Extra trimmers specified in the structural drawings have not been provided.	The cracking identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking • Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction
24.	Structural Systems	The following observations were made: 1. Diagonal cracking over the doorway on the hoist shaft wall and the Lift shaft wall.	The cracking identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		2. This is a recurring problem at penetrations.		• Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction
25.	Structural Systems	The base plate of a steel column on Building B, Level 5 is highly corroded.	The corrosion identified demonstrates a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard 4100-1998 Steel structures, Section 3.5.6 Corrosion Protection. • Australian Standard AS4100 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4
26.	Structural Systems	The following observations were made: 1. It was observed that the slab soffit has been saw-cut and chamfered by approximately 20-30 mm to increase clear headroom for the vehicles. 2. The Structural drawings have specified a minimum cover of 25mm. The cutting of the corner would reduce the cover, but no	The unprotected reinforcement is a defect in a building element that is attributable to a failure to comply with the Building Code and Australian Standard provisions referenced in column 5.	• Australian Standard AS3600 Concrete structures, Section 4, Design for durability 4.10 Requirements for cover to reinforcing steel and tendons, 4.10,3 Cover for corrosion protection 4.10.3.1 General • Section 4 Design for Durability, 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection, 4.10.3.7 Embedded items cover

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		evidence of epoxy render or similar to enhance the protection can be observed. 3. <u>This defect has been removed.</u>		• Australian Standard AS3600 appears as a standard referenced in the BCA Volume One, Part B1 Structural provisions, BP1.1 Structural reliability
27.	Building Essential Services	It was observed that the electrical switchgear located at the electric meter room is located in inaccessible position.	The installation demonstrates a failure to comply with the Australian Standard provisions referenced in column 5.	• Australian Standard AS/NZS3000 Electrical Installations "Wiring Rules", Section 2 General arrangement, control and protection, Clause 2.10 Switchboard, 2.10.2 Location of Switch boards
28.	Building Essential Services	It was observed that segregation of cables and labelling of termination was not compliant with the installation standards	The inadequately segregation of cable installation and labelling demonstrates a failure to comply with the Australian Standard provisions referenced in column 5.	• Australian Standard AS/NZS3000 Electrical Installations "Wiring Rules", Section 3 Selection and installation of wiring systems, Clause 3.1 General, 3.1.2 Selection and installation • Australian Standard AS/NZS3000 Electrical Installations "Wiring Rules", Section 2 General arrangement, control and protection, Clause 2.9 Switchboards, 2.9.5 Equipment identification
29.	Building Essential Services	The following observations were made: 1. Electrical connection to light fittings is exposed to	The inadequate installation demonstrates a failure to comply with the Australian Standard provisions referenced in column 5.	• Australian Standard AS/NZS3000 Electrical Installations "Wiring Rules", Clause 1.5 Fundamental

Serious Defect Reference	Building element	General description of Serious Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		weather and not securely mounted. 2. The minimum separation has not been achieved between services in multiple locations throughout the building. 3. This defect has been removed. 4. This defect has been removed.		principles, 1.5.14 Protection against external influences
30.	Fire Safety System	It was observed that the Fire Pump Room door is obstructed by the vehicle parked.	The obstruction to the fire door demonstrates a failure to comply with the Building Code provisions referenced in column 5.	• BCA Volume One, Section D – Access and Egress D1.10 - Discharge from exits

4. I am of the view the periods above for Defect 1 through to Defect 30 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.

5. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the defect and failure to adhere to the Building Code of Australia, Australian Standards & the approved plans and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to make the building work rectification order to carry out the building work described above within the specified period.

6. I have considered all of the circumstances. I accept that the Order requires considerable further building 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 in having the development constructed to the Building Code of Australia and Australian Standards.

Other matters considered relevant

7. I am aware that obtaining reports from third parties will pose time constraints and costs on the developer and the impact on the period of time it will take to give effect to the rectification work. However, I balance this risk against the serious defects outlined in this Order and the serious consequences these serious defects pose.

8. I am aware that there are residents occupying this location as the Building is completed which will delay rectification work.

Consideration of written representations

9. On 6 September 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, Certifier and Owners Corporation. The served parties were invited to provide representations by 27 September 2023.

10. The following responses were received:

    a. From the Developer, on 27 September 2023;

    b. From the Owner of Unit 44 on 25 September 2023;

    c. From the Owner of Unit 9 on 22 September 2023;

11. The Developer provided a document commenting on each serious defect. In some cases the Developer provided a proposed staged methodology to remediate the defect identified. In some cases the Developer disagreed with the serious defect or questioned why a report was necessary.

12. I have considered the Developer's representations and made amendments to the Order by removing aspects of the serious defects as set out above. I also note the following:

    a. I consider that it is appropriate to include defect 13, as the Developer's representations do not provide sufficient evidence that the serious defect is not a serious defect.

b. I consider it appropriate to include the requirement to obtain reports throughout the Order, as block plans and schematics should be produced that are accurate and have the required information, which can be reviewed by the Department.

c. Although an alternative solution has been provided for defect 17 that appears to remedy that defect, a fire engineer needs to provide the alternate solution and the certifier has to add it to the fire schedule. Likewise, it is appropriate to obtain fire engineer signoff in relation to defect 30.

13. I have considered the representations of the Lot Owners. I am satisfied that the Order as currently drafted reflects the serious defects identified in the building as set out in the inspection report dated 1 June 2023.

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

14. I have considered all of the circumstances. I accept that the order requires considerable further 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 in having the development constructed to the Building Code of Australia and Australian Standards with respect to building elements.

15. Considering these potential consequences as outlined in this order, I give greater weight to the seriousness of the defects and failure to adhere to the Australian Standards and Building Code of Australia, and the benefits arising from remediating them and I find that it is appropriate, in the exercise of my discretion, to require Soho (Mt. Druitt) Pty Ltd (ACN 167 080 104) to carry out the building work described, within the period specified in the above Order.

16. I have considered and 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 at the development in having the building constructed to the Building Code of Australia and Australian Standards. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the defect and failure to adhere to the Building Code of Australia, Australian Standards and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to make the building work rectification order to carry out the building work described above within the specified period.

Notes about this Order

- **A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.**

- **It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For and individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.**

- **You may appeal to the Land and Environment Court against this Order within 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.**

- **You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.**

- **The Secretary has given the following persons notice of the making of this building work rectification order:**

    - **the relevant local council,**

    - **if the local council is not the certifier in relation to the building work—the principal certifier,**

    - **if you are not the owner of the land concerned—the owner of the land concerned,**

    - **if the order relates to a strata building—the relevant owners corporation,**

    - **any other person prescribed by the regulations.**

- **This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.**

- **Annexure A**

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.

building element, as defined in the *Design and Building Practitioners Act 2020* (NSW), 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).

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.

Section 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).