

Attn. The Proper Officer Romeciti Eastwood Holdings Pty Ltd ACN 604 473 261 Part Ground B03 78 Waterloo Road MACQUARIE PARK NSW 2113

Service: By registered post and by email

5 May 2023

Building Work Rectification Order

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

Romeciti Eastwood Holdings Pty Ltd (ACN 604 473 261) is being given this Building Work Rectification Order ("Order") in relation to 3 Smith Street, Ryde NSW 2112 (SP98152) ("the Building").

Romeciti Eastwood Holdings Pty Ltd is required to cause building work to be carried out to remediate the potential serious defects as set out in paragraph 8 of this Order.

Failure to comply with 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 the Building or that the Building has a serious defect, they may order the developer to rectify building work to remediate the serious defect or potential defect.
- 3. David Chandler is an authorised delegate of the Secretary of the Department.
- 4. Romeciti Eastwood Holdings Pty Ltd (ACN 604 473 261) is the developer of the residential apartment building known as 3 Smith Street, Ryde 2112 (**the Building**) for the purposes of section 4(a) of the Act.
- 5. Under section 3 of the Act 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.
- 6. Under section 6(1) of the *Design and Building Practitioners Act* 2020 a 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.

Decision to issue a building work rectification order

7. I, David Chandler, am the decision maker for this Building Work Rectification Order (the Order). I have decided to issue the Order to Romeciti Eastwood Holdings Pty Ltd (ACN 604 473 261) because I have formed a reasonable belief under section 33(1) of the Act that building work at the Building has serious defects as set out in this Order.

Description of serious defect

8. **Defect 1 – Planter boxes**

On 20 May 2022, authorised officers of the Department conducted an inspection pursuant to section 20 of the Act in the Building. When inspecting the planter boxes of the Building it was observed that the construction of the planter boxes waterproofing and overflow (drainage to stormwater system) had insufficient membrane height (minimum of 100 mm above the soil level) and drainage.

The insufficient membrane height in the planter boxes is a serious defect because it is a failing in a building element that is attributable to a failure to comply with Australian Standard 4654.2-2012 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 100 mm above the soil or fill level".

Australian Standard 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 FP1.4 which states:

"Waterproofing membranes for external above ground use must comply with AS 4654.1 and AS 4654.2".

Deemed-to-Satisfy provision FP1.4 is a pathway that can satisfy the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4, which states:

"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."

Therefore, because the installation does not comply with the referenced Australian Standard 4654.2, the BCA Volume One Performance Requirement cannot be shown to have been satisfied.

9. Defect 2 – Unit G05

On 20 May 2022, authorised officers of the Department conducted an inspection pursuant to section 20 of the Act in the Building. When inspecting the common areas of the Building it was observed that there was internal water staining on the ceiling within the plaster lining, and water infiltration marks were evident which had emanated from the facade.

The moisture which has penetrated the Building is a serious defect because it is a failing in a building element that is attributable to a failure to comply with the **BCA Volume One**, **Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing**, which states:

"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."

10. Defect 3 – Rooftop

On 20 May 2022, authorised officers of the Department conducted an inspection pursuant to section 20 of the Act in the Building. When inspecting the rooftop areas of the Building, it was observed that:

- a. The Waterproofing upward termination of membranes to the penetrations on the rooftop slab area failed to achieve the required height above the anticipated water level.
- b. Inadequate preparation between waterproofing layers which is not in accordance with the installation specifications. This issue has caused bubbling of the membrane,

membrane detachment and water ponding throughout the roof. Falls should be in accordance with AS 4654.2-2012, which nominates 1/100mm.

c. There is inadequate termination of the external above ground waterproofing membrane at fixings for balustrade supports, harness anchor points, air conditioning plant and equipment installations and the like.

The water ponding on the roof surface is a serious defect because it is a defect in a building element that is attributable to a failure to comply with Australian Standard 4654.2-2012, Waterproofing Membranes for External Above Ground Use - Design and Installation, Section 2 - Design and installation, which states:

"Figure 2.10 note 1:

All pipes, dusts and vents should be located within a collar mechanically fixed to the substrate as an extension to the penetration. Alternatively, a collar may be cast into the substrate to form the penetration. A separate collar should be used for each penetration."

The waterproofing membrane has not been applied to the wall and floor junction to an appropriate height in accordance with Australian Standard 4654.2-2012 Waterproofing Membranes for External Above Ground Use, Section 2 Design and Installation, 2.8 Termination of membranes, 2.8.1.1 Height, which states:

"Where the membrane termination is to prevent water entry, the finished height of the membrane above the finished surface level shall be sufficient to prevent water, including wind driven, flowing over the top of the membrane."

An appropriate fillet has not been installed to the wall and floor junction in accordance with Australian Standard4654.2-2012 Waterproofing Membranes for External Above Ground Use, Section 2 Design and Installation, 2.7 Fillets, which states in part:

"Fillets shall be used when a membrane changes from a horizontal to vertical or vertical to vertical plane"

11. Defect 4 – Fire stop penetrations throughout the building

On 20 May 2022, authorised officers of the Department conducted an inspection pursuant to section 20 of the Act in the Building. When inspecting the basement and common areas of the Building, it was observed that the service penetrations through the fire resisting wall and/or floor elements have not been installed using a tested fire stopping methodology to prevent the spread of fire (fire rated collar, etc).

The inadequate fire-resistance of penetrations is a serious defect because it is a failing in a building element that is attributable to a failure to comply with the **BCA Volume One**, **Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations**, which states:

"Where an electrical, electronic, plumbing, mechanical ventilation, air-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.

(b) ...

(c) Compliance with Specification C3.15 ..."

Deemed-to-Satisfy provisions C3.15 and specification C3.15 are pathways that can satisfy the BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, 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." 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."

12. Defect 5 – Water penetration in the basement

On 20 May 2022, authorised officers of the Department conducted an inspection pursuant to section 20 of the Act in the Building. When inspecting the basement areas of the Building, it was observed that there are instances of water penetration into Basement 1, which results in water ingress, stalactites, and staining. The water penetration is primarily emanating from the perimeter slab of the ground level.

The water which has penetrated the Building is a serious defect because it is a failing in a building element that is attributable to a failure to comply with the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing, which states:

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.

13. Defect 6 – Fire door frames

On 20 May 2022, authorised officers of the Department conducted an inspection pursuant to section 20 of the Act in the Building. When inspecting the fire stairs of the Building, it was observed that the fire door frame is not core backfilled/ suitably fire rated, it omits contrasting sounds when tapped indicating inconsistent and inadequate filling of the fire door frames. Most of the doors are missing the compliance verification tag.

The failure to ensure the information provided in the fire tags is a serious defect because it is a failing in a building element that is attributable to a failure to comply with Australian Standard 1905.1-2005 Components for the protection of openings in fire-resistant walls – Fire-resistant door sets, Section 6 Marking and other documentation, 6.1 Marking of fire resistant door sets, 6.1.4 Information requirements which states:

- "6.1.4.1 Doorframe The following information shall be shown on the tag fixed to the doorframe: (a) Number and year of the Standard the door set has been tested to. (b) Business name of the doorframe manufacturer. (c) Fire resistance level (FRL) of the door set, in minutes. (d) Business name or name of the person certifying the doorframe as meeting the requirements of this Standard. Year of manufacture."
- "6.1.4.2 Door leaf The following information shall be shown on the tag fixed to the door leaf:

- (a) Number and year of the Standard the door set has been tested to.
- (b) Fire resistance level (FRL) of the door set in minutes
- (c) Business name of the manufacturer of the door leaf.
- (d) Business name or name of the person certifying the door set as meeting the requirements of this Standard.
- (e) Year of manufacture. Unique doorset number."

The inadequate core filling of fire door frames demonstrates a failure to comply with BCA Volume One, Section C Fire Resistance, Performance Requirement CP2 Spread of Fire and CP8 Fire Protection of openings and penetrations, 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

"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."

Building Work to be Carried Out

NOTE: The *Design and Building Practitioners Act 2020* applies to the remediation work under this order. In brief, it requires that there be declared designs by registered practitioners before building work commences and that the designs be uploaded to the NSW Planning Portal. Any variations made to the building work must be reflected in the declared and uploaded designs.

14. Romeciti Eastwood Holdings Pty Ltd (ACN 604 473 261) must carry out building work, or cause building work to be carried out as follows:

a. Remediate Defect 1 by:

Developer to carry out rectification of the waterproofing defects in accordance with the BCA Volume One and Australian Standard 4654.2 Waterproofing membranes for external above ground use, figure 2.11 Typical Planter box construction.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

b. Remediate Defect 2 by:

Developer to identify the source of the water ingress and rectify wall floor joint in accordance with AS4654.2 Waterproofing membranes for external above ground use.

Developer to make good any resultant consequential damage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

c. Remediate Defect 3 by:

Developer to carry out rectification of the waterproofing defects to rooftop membrane in accordance with the BCA Volume One and Australian Standard 4654.2 Waterproofing membranes for external above ground use.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

d. Remediate Defect 4 by:

Developer to rectify the omission of the fire collars.

Developer is to provide a fire safety schedule from an accredited certifier listing all the fire safety measures, and the minimum standard of performances.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

e. Remediate Defect 5 by:

Developer is to rectify wall floor joint in accordance with AS4654.2.

Developer to make good any resultant consequential damage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

f. Remediate Defect 6 by:

Developer to carry out rectification of the fire safety defects in accordance with the BCA Volume One and Australian Standard 1905.1 Components for the protection of openings in fire-resistant walls – Fire-resistant door sets.

Particular attention to be given, but not limited to the following:

- 1. Proper installation of fire tags;
- 2. Core fill any hollow fire door frames; and
- 3. Make good any resultant consequential damage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

Period for Compliance with Order

15. The work specified in paragraph 14 of this Order must be completed within 180 days of the date of this Order.

Conditions of this Order

16. Romeciti Eastwood Holdings Pty Ltd (ACN 604 473 261) must notify Joshua Jackett in writing, by email sent to projectintervene@customerservice.nsw.gov.au within 2 business days of the work required by this Order being completed.

Duration of this Order

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

David Chandler NSW Building Commissioner Office of the Building Commissioner Department of Customer Service

REASONS FOR THE ORDER

Reasonable belief and serious defects

- 1. I, David Chandler, an authorised delegate of the Secretary of the Department, have formed a reasonable belief for the purposes of section 33(1) of the Act in relation to the Defects in the Order, that in the Building has serious defects.
- 2. Defect 1 The failure to adequately waterproof the planter boxes as described above in paragraph 8 of the Order is a serious defect in a building element (waterproofing) that is required to achieve compliance with Australian Standard 4654.2-2012 Waterproofing Membranes for External Above Ground Use (specifically, Section 2 Design and Installation, 2.13 Planter Boxes). Australian Standard 4654.2-2012 is also referenced in the BCA (specifically, Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4). I have formed this belief after reviewing a copy of section 1.1 of the Audit Report dated 30 May 2022. I have also reviewed photographs of the planter box depicting the insufficient membrane height.
- 3. Defect 2 The failure to prevent water penetration damage from water emanating through the plasterboard ceiling of Unit G05 is, as described above in paragraph 9 of the Order, causing undue dampness and deterioration of the Building, is a serious defect in a building element (waterproofing) because it fails to comply with BCA (specifically, Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4). I have formed this belief after reviewing a copy of section 1.2 of the Audit Report dated 30 May 2022. I have also reviewed photographs depicting water damage on the ceiling of Unit G05.
- 4. **Defect 3** The failure to adequately waterproof the rooftop slab areas as described above in paragraph 10 of the Order is a serious defect in a building element (waterproofing) because it fails to comply with Section 2 of Australian Standard 4654.2: Waterproofing Membranes for External Above Ground Use (specifically, Figure 2.10 note 1 and Section 2.8: Termination of membranes, Section 2.8.1.1 Height). I have formed this belief after reviewing a copy of section 1.3 of the Audit Report dated 30 May 2022. I have also reviewed photographs depicting the lack of membrane and water ponding, and inadequate upward termination of the external above ground waterproofing membrane.
- 5. Defect 4 The failure to fire stop the penetrations in the fire-resisting wall/floor elements with a known fire stopping methodology to prevent the spread of fire is, as set out in paragraph 11 of the Order, is a serious defect in a building element (fire safety system) in that it fails to comply with the BCA (specifically, Volume One, Section C:Fire resistance, Part C3 Protection of Openings). I have formed this belief after reviewing a copy of section 2.1 of the Audit Report dated 30 May 2022. I have also reviewed photographs of the communication room showing no fire penetration provision, and voids in the concrete in the Hydrant Pump and Sprinkler Valve Room, the fire stairs and the wall behind the Car space 103.
- 6. **Defect 5** The failure to prevent water penetration damage into Basement 1 is, as described above in paragraph 12 of the Order, causing undue dampness and deterioration of the Building, is a serious defect in a building element (waterproofing) because it fails to comply with *BCA* (specifically, *Volume One, Section F; Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP.1.4*). I have formed this belief after reviewing a copy of section 2.2 of the Audit Report dated 30 May 2022. I have also reviewed a photograph depicting the water ingress above the Unit G02 storage cage.
- 7. **Defect 6** The failure of most of the doors to have correct verification tags is, as particularised in paragraph 13 of the Order, a serious defect in a building element (fire safety systems) in that it fails to comply with *Australian Standard 1905.1:2005: Components for the Protection of Openings in Fire-Resistant Walls* (specifically, *Section 6: Marking and Other*

Documentation, Section 6.1: Marking of Fire-Resistant Doorsets, Section 6.1.4: Information Requirements). The inadequate core filling of the fire door frames is, as particularised in paragraph 13 of the Order, a serious defect in a building element (fire safety systems) in that it fails to comply with BCA Volume One, Section C Fire Resistance, Performance Requirement CP2 Spread of Fire and CP8 Fire Protection of openings and penetrations). I have formed this belief after reviewing a copy of section 2.3 of the Audit Report dated 30 May 2022. I have also reviewed a photograph showing a door with no tag installation.

Period for compliance

8. I am of the view that a period of 180 days is a reasonable period for compliance in all the circumstances for the rectification work required by the Order to be carried out. I have formed this belief balancing the risks that the serious defect poses against the period of time it will take to give effect to the rectification work. I am aware that there are residents occupying this location as the Building is completed which will delay rectification work. I am of the view that 180 days is sufficient to conduct the following works:

Defect	Rectification Works
1	See paragraphs 14.a of the Order
2	See paragraphs 14.b of the Order
3	See paragraphs 14.c of the Order
4	See paragraphs 14.d of the Order
5	See paragraphs 14.e of the Order
6	See paragraphs 14.f of the Order

Consideration of written representations

- 9. On 21 November 2022, a notice of intention to issue the Order and a draft copy of the Order was served on the Developer, City of Ryde Council ("Local Council"), the Owners of Strata Plan No 98152 ("Owners Corporation") and Maurice Freixas ("Certifier") and the Office of the Registrar General. The parties were invited to provide submissions relating to the draft copy of the Order by 15 December 2022.
- 10. No submissions were received from the Developer, Local Council, the Owners Corporation, the Certifier or the Office of the Registrar General by 15 December 2022 or by the date of this Order.

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

- 11. I have considered all of the circumstances. I accept that the Order requires considerable further construction work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers of the Building in having the Building being:
 - a. appropriately waterproofed so as to prevent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements; and
 - b. compliant with fire safety standards so as to resist and reduce the spread of fire within the Building.

12. 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 Building Code of Australia and the Australian Standards, and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to require Romeciti Eastwood Holdings Pty Ltd (ACN 604 473 261) to carry out the building work described in paragraph 14 of the Order within the period specified in paragraph 15 of the Order.