



Attn: Proper Officer
Nutek Investments Pty Ltd (ACN 609 230 962)
148 Coats Road
POSSUM BRUSH NSW 2430

CAS Ref: 11058500

Service: By registered post and by email

28 November 2023

Building Work Rectification Order

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

Nutek Investments Pty Ltd (ACN 609 230 962) is being given this Building Work Rectification Order (Order) in relation to address 68 Beecroft Road, Beecroft (DP 101277) (the Development).

Nutek Investments Pty Ltd (ACN 609 230 962) is required to cause building work to be carried out to remediate the serious and/or potential 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 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. **Nutek Investments Pty Ltd (ACN 609 230 962)** is the developer of the residential apartment building known as ‘**Allure Apartments**’ 68 Beecroft Road, Beecroft (DP 101277) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development consists of two levels of residential apartments, namely seven (7) sole occupancy units, over a basement level carpark.
7. On 28 March 2023, authorised officers conducted a lawful inspection of the Development.
8. 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 1 below and under section 34(1A) of the Act require that you **Nutek Investments Pty Ltd (ACN 609 230 962)** do the things specified in column 5 of Table 1 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 1:

Table 1: 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
1.	Electrical switch room in basement.	The switch room is below ground level. The waterproofing membrane to the ground floor external wall has been graded below ground level, which allows water to saturate external walls and enter the switch room.	Ensure the waterproofing is applied sufficiently so as to prevent the penetration of water into the switch room.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered civil engineer or a registered drainage 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. 	<p>Stage 1: 1 month</p> <p>Stage 2: 3 months</p>

				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.	
2.	Floor waste installations of all balconies.	Outlets to the drainage system of the floor waste installations are not adequately secure nor waterproof.	Ensure the waterproofing is applied sufficiently and drainage system is secure so as to prevent the penetration of water into the habitable areas below.	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 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, namely a registered drainage design practitioner or a registered façade 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: 1 month Stage 2: 3 months

				Stage 1, make good any resultant consequential damage, and repair water damaged ceilings including bedroom ceiling of unit 2.	
3.	Fire hydrants located along the length of the southern side of the development.	External fire hydrants are inaccessible as they have been placed along the southern side boundary where pedestrian access to the building has not been provided.	Ensure external fire hydrants are accessible via a pedestrian access.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered architect or registered fire safety/systems engineer; ii) provide an access path design in compliance with the relevant parts of the BCA and Australian Standards; iii) be prepared with consideration to this Order and the Reasons for this Order; and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p>

				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.	
4.	External wall on the southern boundary.	The red strobe light located on the outside of the building to indicate a fire alarm is not visible from the main approach to the building, and is not located at the designated entry point to the building.	Ensure the red strobe light is visible from the main approach to the building, and located at the designated entry point.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered architect or registered fire safety/systems 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. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p>

				Stage 1 and make good any resultant consequential damage.	
5.	Doorway inside the foyer near the side exit facing the southern boundary.	An emergency exit sign has been installed above the doorway. This exit does not lead to a road or open space.	Ensure that where an emergency exit sign is installed, that exit leads to a road or open space.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered architect or registered fire safety/systems 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. <p>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.</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p>
6.	Paths of travel from the	The entrance doorway of each	Ensure that the extended travel	Within the time period specified in column 6,	Stage 1:

	entrance doorway of each unit to the exits throughout the building.	unit is more than 6 metres from an exit.	distances which have been assessed as non-compliant are reduced to less than 6 metres.	<p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered fire safety/systems engineer; ii) include an assessment of the building's ability to comply with Performance Requirement DP4 of the BCA; iii) be prepared with consideration to this Order and the Reasons for this Order; and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>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.</p>	<p>1 month</p> <p>Stage 2:</p> <p>6 months</p>
7.	Penetrations through fire-resisting	Penetrations through fire-resisting building	Ensure penetrations through fire-resisting building elements	Within the time period specified in column 6,	Stage 1:

	building elements throughout the building.	elements have not been fire-stopped in accordance with a tested system.	have been fire-stopped in accordance with a tested system.	<p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered fire safety/systems engineer; ii) include an assessment of all the services penetrations through the fire-resisting elements; iii) be prepared with consideration to this Order and the Reasons for this Order; and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>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.</p>	<p>1 month</p> <p>Stage 2: 3 months</p>
8.	Main switchboard room located in basement.	The main switchboard room does not achieve the required fire-resistance level as	Ensure the main switch board achieves the required fire-resistance level.	<p>Within the time period specified in column 6,</p> <p>Stage 1</p>	<p>Stage 1: 1 month</p>

		it has not been separated from the remainder of the building, has penetrations within it which have not been installed in accordance with a tested system, and metal tags installed on the fire doors show a FRL NA/60/30 which is less than the FRL required.		<p>Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered fire safety/systems engineer; ii) include an assessment of fire-proofing of the switch room; iii) be prepared with consideration to this Order and the Reasons for this Order; and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>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.</p>	<p>Stage 2:</p> <p>3 months</p>
9.	Bounding wall construction in the roof space between unit 5 and unit 6.	The bounding masonry wall separating units 5 and 6 does not extend to the roof sheeting causing a gap between the	Ensure the bounding masonry wall extends to the roof sheeting so that there is no gap.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p>	<p>Stage 1:</p> <p>1 month</p> <p>Stage 2:</p>

		top of the wall and the underside of the roof sheeting.		<p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered fire safety/systems 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. <p>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.</p>	3 months
10.	Exit door on basement level near internal stairs.	The exit door at the bottom of the internal stairs on the basement level swings against the direction of egress.	Ensure the subject exit door swings with the direction of egress.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist 	<p>Stage 1: 1 month</p> <p>Stage 2: 3 months</p>

				<p>appropriate to the subject areas of the building, namely a registered fire safety/systems engineer;</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>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.</p>	
11.	Main switch room on basement level.	Main switch room has not been provided with a means of ventilation.	Ensure the main switch room is provided with a means of ventilation.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <p>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, namely a registered mechanical engineer;</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 3 months</p>

				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.	
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Duration of this Order

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

10. 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 28 November 2023 issued to **Nutek Investments Pty Ltd (ACN 609 230 962)** 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 18 April 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 28 March 2023;
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.

Table 2 – 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	The switch room is below ground level. The waterproofing membrane to	The waterproofing membrane is not sufficiently installed to prevent the penetration of water to the switch room. The waterproofing	The insufficient waterproofing demonstrates a failure to comply with BCA 2016 Volume One Section F Health and Amenity, Part F1 Damp and Weatherproofing,	Excessive moist conditions in the walls of the mail electrical switch room.

		the ground floor external wall has been graded below ground level, which allows water to saturate external walls and enter the switch room.	membrane is at times below ground level.	Performance Requirement FP1.4 which states: <i>"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."</i>	
2.	Waterproofing.	Outlets to the drainage system of the floor waste installations are not adequately secure nor waterproof.	The inadequately secured and waterproofed outlets have caused the penetration of water into the ceiling of unit 2. Balconies must be sufficiently waterproof to prevent the penetration of water to other areas of the building.	The penetration of water due to inadequately secured and waterproofed outlets demonstrates a failure to comply with BCA 2016 Volume One Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states: <i>"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</i>	Water penetration into the balconies and ceilings, as evidenced by the water staining and flaking paint of the bedroom ceiling of unit 2 which is directly below the floor waste from the balcony of unit 5.

				<p><i>(b) Undue dampness or deterioration of building elements.”</i></p> <p>And</p> <p>Australian Standard 4654.2, section 2.10 Drains which states: <i>“The membrane shall be connected to the stormwater drainage system through a turn down of the membrane into the inlet of the system as shown in figure 2.15. An alternative connection may have a flange to which the membrane is clamped or attached.”</i></p>	
3.	The fire safety systems for a building within the meaning of the Building Code of Australia.	External fire hydrants are inaccessible as they have been placed along the southern side boundary where pedestrian access to the building has not been provided.	Hydrants should be installed in a location that provides pedestrian access to a building to allow attending fire brigade personnel efficient access during case of fire.	<p>The improper hydrant location demonstrates a failure to comply with BCA 2016 Volume One Section E Services and Equipment Part E1 Fire Fighting Equipment, Performance Requirement EP1.3 which states: <i>“A fire hydrant system must be provided to the degree necessary to facilitate the needs of the fire brigade”.</i></p> <p>And</p>	In case of a fire the fire brigade will not be able to access the external fire hydrants.

				<p>AS2419.1 Fire hydrant Installations Part 1: System Design, Installation and Commissioning, Section 3 Hydrant location, coverage and related provisions, 3.5 External fire hydrants, 3.5.3 Location of external fire hydrants, 3.5.3.1 General states:</p> <p><i>“The location of external fire hydrants shall be in accordance with the following: Each external fire hydrant shall be located in a position that provides pedestrian access to the building.</i></p>	
4.	The fire safety systems for a building within the meaning of the Building Code of Australia.	The red strobe light located on the outside of the building to indicate a fire alarm is not visible from the main approach to the building, and is not located at the designated entry point to the building.	The external alarm indication has not been placed at the designated building entry point.	<p>The improper location of the external alarm demonstrates a failure to comply with clause 2.2.1 Designated Building Entry Point (DBEP) of AS1670.1-2015 which states:</p> <p><i>“A DBEP shall be selected for each building and identified with an external alarm indication in accordance with Clause 3.8”.</i></p>	In case of a fire, the fire brigade will not be able to quickly locate the fire indicator panel.

5.	The fire safety systems for a building within the meaning of the Building Code of Australia.	The doorway which has been designated with an exit sign does not lead to a road or open space.	The doorway has been installed with an emergency exit sign. The doorway does not lead to a road or open space, which could cause confusion and delay egress.	<p>The construction of the emergency exit demonstrates a failure to comply with BCA 2016 Volume One Section E Services and Equipment Part E4 Visibility in an Emergency, Exit Signs and Warning Systems, Performance Requirement EP4.2 which states:</p> <p><i>“To facilitate evacuation, suitable signs or other means of identification must, to the degree necessary –</i></p> <p><i>(a) Be provided to identify the location of exits and</i></p> <p><i>(b) Guide occupants to exits; ...”</i></p> <p>And D1.7(b):</p> <p><i>“Each fire-isolated stairway or fire-isolated ramp must provide independent egress from each storey served and discharge directly, or by way of its own fire-isolated passageway-</i></p> <p><i>(i) to a road or open space”</i></p> <p>D1.10(b) of BCA 2016</p> <p><i>“If a required exit leads to an open space, the path of travel</i></p>	In case of a fire or emergency, occupants may use the exit to escape, however because it does not lead to the road or open space, occupants may be required to re-enter the building to find a more suitable exit.
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				<p><i>to the road must have an unobstructed width throughout of not less than –</i></p> <p><i>(i) The minimum width of required exit; or</i></p> <p><i>(ii) 1m,</i></p> <p><i>Whichever is the greater”</i></p>	
6.	The fire safety systems for a building within the meaning of the Building Code of Australia.	The entrance doorway of each unit is more than 6 metres from an exit.	The entrance doorway of each unit is more than 6 metres from an exit. The entrance doorway of each unit must not be more than 6 metres from an exit to allow occupants to evacuate safely.	<p>The excessive travel distance demonstrates a failure to comply with the BCA 2016 Volume One Section E Access and Egress, Performance Requirement DP4 which states:</p> <p><i>“Exits must be provided from the building to allow occupants to evacuate safely, with their number, location and dimensions being appropriate to –</i></p> <p><i>(a) The travel distance; and</i></p> <p><i>(b) The number, mobility and other characteristics of occupants; and</i></p> <p><i>(c) The function or use of the building;...”</i></p> <p>Clause D1.4(a) of the BCA</p> <p><i>“(a) Class 2 and 3 buildings –</i></p> <p><i>(i) The entrance doorway of any sole-occupancy unit must be not more than –</i></p>	The extended distance of travel from the entrance of each unit to the exits may extend the time taken to escape or reduce the chance to escape from the building in case of a fire or emergency.

				<i>(A) 6 m from an exit or from a point from which travel in different directions to 2 exits is available; or ..."</i>	
7.	The fire safety systems for a building within the meaning of the Building Code of Australia.	Penetrations through fire-resisting building elements have not been fire-stopped in accordance with a tested system.	Penetrations through fire-resisting building elements have not been fire-stopped. Building elements which are provided to resist the spread of fire must be protected so that an adequate level of performance is maintained.	<p>The lack of fire-stopping of penetrations demonstrates a failure to comply with BCA 2016 Volume One Section C Fire Resistance, Performance Requirement CP2 which states:</p> <p><i>"(a) a building must have elements which will, to the degree necessary, avoid the spread of fire -</i></p> <ul style="list-style-type: none"> <i>(i) To exits; and</i> <i>(ii) To sole occupancy units and public corridors; and</i> <i>(iii) Between buildings; and</i> <i>(iv) In a building."</i> <p>And</p> <p>Performance Requirement CP8 which states:</p> <p><i>"Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that</i></p>	In case of fire, unprotected penetrations allow for the spread of that fire.

				<p><i>an adequate level of performance is maintained –</i></p> <p><i>(a) Where openings, construction joints and the like occur; and</i></p> <p><i>(b) Where penetrations occur for building services.</i></p>	
8.	The fire safety systems for a building within the meaning of the Building Code of Australia.	The main switchboard room does not achieve the required fire-resistance level as it has not been separated from the remainder of the building, has penetrations within it which have not been installed in accordance with a tested system, and metal tags installed on the fire doors show a FRL	The main switchboard room has not been separated from the remainder of the building, does not have fire doors which meet the required FRL, and has penetrations within it which have not been protected to the degree necessary so that an adequate level of performance is maintained.	<p>The lack of separation of the switchboard room demonstrates a failure to comply with BCA 2016 Volume One Section C Fire Resistance, Performance Requirement CP2 which states:</p> <p><i>“(a) a building must have elements which will, to the degree necessary, avoid the spread of fire - –</i></p> <p><i>(i) To exits; and</i></p> <p><i>(ii) To sole occupancy units and public corridors; and</i></p> <p><i>(iii) Between buildings; and</i></p> <p><i>(iv) In a building.”</i></p> <p>And</p>	In case of fire, fire could spread to the main switchboard room which provides power to the fire safety systems in the building, resulting in the failure of these systems.

		NA/60/30 which is less than the FRL required.		<p>Performance Requirement CP8 which states: <i>"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 –</i></p> <p>(c) <i>Where openings, construction joints and the like occur; and</i></p> <p>(d) <i>Where penetrations occur for building services."</i></p> <p>Clause C2.13(b) of BCA 2016</p> <p>(b) <i>A main switchboard located within the building which sustains emergency equipment operating in the emergency mode must –</i></p> <p>(i) <i>be separated from any other part of the building by construction having an FRL of not less than 120/120/120; and</i></p> <p>(ii) <i>have any doorway in that construction protected with a self-closing fire door having an FRL of not less than</i></p>	
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				-/120/30.	
9.	The fire safety systems for a building within the meaning of the Building Code of Australia.	The bounding masonry wall separating units 5 and 6 does not extend to the roof sheeting causing a gap between the top of the wall and the underside of the roof sheeting.	The bounding masonry wall separating units 5 and 6 has a gap between the top of the wall and the underside of the roof sheeting. Building elements must avoid the spread of fire to sole occupancy units.	<p>The improperly constructed bounding masonry wall demonstrates a failure to comply with BCA 2016 Volume One Section C Fire Resistance, Performance Requirement CP2 which states:</p> <p><i>“(a) a building must have elements which will, to the degree necessary, avoid the spread of fire - -</i></p> <p><i>(i) To exits; and</i></p> <p><i>(ii) To sole occupancy units and public corridors; and</i></p> <p>Table 3 of Specification C1.1 which requires fire rated building elements between or bounding sole-occupancy units.</p>	In case of fire, the gap may allow for fire to spread between units 5 and 6.
10.	The fire safety systems for a building within the meaning of the Building Code of Australia.	The exit door at the bottom of the internal stairs on the basement level swings against the	The exit door swings against the direction of egress. Exit doors must swing in the direction of egress so as to avoid the risk of occupants having their egress impeded.	The improper swing of the exit door demonstrates a failure to comply with BCA 2016 Volume One Section E D Access and Egress, Performance Requirement DP2 which states:	In case of a fire or emergency, the exit door may hinder the escape of occupants where a large number are attempting to

		direction of egress.		<p><i>“So that people can move safely to and within a building, it must have –</i></p> <p><i>(b) Any doors installed to avoid the risk of occupants –</i></p> <p><i>(i) Having their egress impeded; or</i></p> <p><i>(ii) Being trapped in the building; and...”</i></p> <p>D2.20(b) Swinging Doors of BCA 2016</p> <p><i>A swinging door in a required exit or forming part of a required exit –</i></p> <p><i>(b) must swing in the direction of egress unless...</i></p>	escape at the same time.
11.	Those aspects of the mechanical, services for a building that are required to achieve compliance with the BCA.	The main switch room has not been provided with a means of ventilation.	The main switch room does not have a means of ventilation. Switch rooms must be provided with a means of ventilation with outdoor air.	<p>The lack of ventilation in the switch room demonstrates a failure to comply with BCA 2016 Volume One Section E Access and Egress, Performance Requirement FP4.3 Outdoor air supply which states:</p> <p><i>“A space in a building used by occupants must be provided with means of ventilation with</i></p>	Poor indoor air quality in the main switch room.

				<i>outdoor air which will maintain adequate air quality."</i>	
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Consideration of written representations

5. On 19 October 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.
6. The Office of the Developer, Local Council, Office of the Registrar General and Certifier were invited to provide written representations relating to the Order to the Department by 26 October 2023. No submissions were received.
7. The Owners Corporation was invited to provide written representations relating to the Order to the Department by 9 November 2023. On 5 November 2023, an email from a representative of the Owners Corporation was received. That email contained a series of questions unrelated to the terms of this Order.
8. I am satisfied that the Developer has been given an opportunity to provide representations concerning the Order. In circumstances where the Developer has made no submissions in response to the draft, I am satisfied that it is appropriate to give the Order.

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

9. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the 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.
10. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.
11. I am of the view that the periods above for Defect 1 through 11 (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*).

Design and Building Practitioners Act 2020.

6 Building elements

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

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

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

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