

Attn: Proper Officer
JKN Hills Pty Ltd (ACN 159 864 089)
121 Majors Bay Road
CONCORD NSW 2137

Service: By registered post and by email

28 September 2023

Building Work Rectification Order

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

JKN Hills Pty Ltd (ACN 159 864 089) is being given this Building Work Rectification Order (Order) in relation to address 299-309 Old Northern Road, Castle Hill NSW 2154 (Lot 1 DP 1226863, SP 97992) (the Development).
JKN Hills Pty Ltd (ACN 159 864 089) 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 (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. **JKN Hills Pty Ltd (ACN 159 864 089)** is the developer of the residential apartment building known as ‘**Atmosphere**’ **299-309 Old Northern Road, Castle Hill NSW 2154 (Lot 1 DP 1226863, SP 97992)** for the purposes of section 4(a) of the Act.
6. The Development consists of a mixed use development consisting of 2 residential buildings containing 701 sole occupancy units, 4 commercial retail spaces and underground parking.
7. On 19 July 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

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 2 below and under section 34(1A) of the Act require that you **JKN Hills Pty Ltd (ACN 159 864 089)** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

Table 2: Requirement in relation to specified standard

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work (s 34(1)(a))	Requirement (s 34(1A))	Time for compliance with Requirement from the date of issue of this order (s 39(1))
1.	Fire doors throughout the residential areas of the building	Fire doors are not self-closing and do not latch appropriately when closed.	Ensure all fire doors throughout the building self-close appropriately and latch when closed.	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being fire safety; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 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 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>Stage 2 Ensure building work is carried out 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 3 Engage the fire engineer consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
2.	Fire doors throughout the building and basement	Fire doors have been installed with gaps of more than 10mm at base of door and between the leaf/head or leaf/each stile of more than 3mm	Ensure fire doors are installed without excessive gaps to ensure an adequate FRL is met	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being fire safety; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>iii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
3.	Egress from Residential fire isolated stairways serving tower B	The egress pathway from the fire isolated stairways in building B is less than 1m in width.	Ensure all egress pathways have a minimum width of 1 metre.	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>areas of the building being a fire engineer consultant;</p> <p>ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023;</p> <p>iii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
4.	<p>Throughout the Building.</p> <p>Defect was specifically observed in doors to fire isolated stairway and exit door</p>	<p>Doors to fire-isolated stairways have a steps or ramps at the door thresholds. The egress from the fire isolated stairway contains a step exceeding 190mm.</p>	<p>Ensure that the doorway to a fire isolated stairway does not have a ramp or threshold step.</p>	<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>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

	from fire isolated stairway to Terminus Street.			<ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being a fire engineer consultant ; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; iii) be prepared with consideration to this Order and the Reasons for this Order; iv) identify all locations throughout the building where this serious defect exists, and v) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
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5.	<p>Throughout Basement 1</p> <p>Defect was specifically observed in fire rated wall adjacent to lift 7 and 8</p>	Copper and metal pipes penetrating walls and soffit are not fire stopped	Ensure all penetrations in whole building are fire stopped to achieve the required FRL	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being fire safety; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; iii) be prepared with consideration to this Order and the Reasons for this Order; iv) identify all locations throughout the basement where this serious defect exists, and v) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Ensure building work is carried out to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>
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				<p>and make good any resultant consequential damage.</p> <p>Stage 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
6.	<p>Building B</p> <p>Fire isolated stair</p>	<p>There appears to be combustible plasterboard within the fire isolated stair. Water has damaged the material with visible holes present.</p>	<p>Ensure the fire isolated stair is constructed of appropriately fire rated material and achieves the requisite FRL</p>	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being a fire engineer consultant; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 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 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
7.	Building B Basement fire pump room	The sprinkler pipe penetrating unknown plasterboard into the fire pump room is not fire stopped	Ensure all penetrations are fire stopped to achieve the required FRL	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being fire safety; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 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 	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>defect and meet the specified standard.</p> <p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
8.	Common hallway in Buildings A and B	Smoke dampers have not been installed in the lobby relief shaft for the stair pressurisation system and in some instances are blocked by plasterboard	Ensure smoke dampers are installed in the lobby relief shaft and ensure they are not blocked or covered by obstructions.	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being fire safety; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; iii) be prepared with consideration to this Order and the Reasons for this Order; and 	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
9.	Basement levels 1, 2, 3, 4 and 5	Ventilation grilles have been installed without fire dampers	Ensure fire dampers are installed to all ventilation grilles.	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being fire safety; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>iii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Ensure building work is carried out 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 3 Engage the FER Consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
10.	Concrete slabs in basement levels 2, 3, and 4	The concrete slabs have moved laterally and vertically by up to 40mm. There is spalling to the slab edges and the dowel between slabs has no fire protection sleeves.	Ensure concrete movement does not affect the serviceability of the building structure and performs adequately under all reasonably expected design actions	<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, being a structural engineer;</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 3 months</p> <p>Stage 3: 6 months</p>

				<ul style="list-style-type: none"> ii) be prepared with consideration to this Order and the Reasons for this Order; iii) provide the location, number, sizes and the capacity of props required, and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Install propping to the joint areas of concern in accordance with the written report submitted in compliance with stage 1.</p> <p>Stage 3 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.	Roof top hydrant pump room Tower A	Hydrant pump room is accessed via fire isolated stair and discharges to the podium level. It should discharge to an open space.	Ensure the fire isolated stair egress from the hydrant pumproom is to an open space not the podium level of the building.	<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, being a registered certifier holding 	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>

				<p>unrestricted accreditation, or a specialist appropriate to the subject areas of the building being a fire engineer consultant;</p> <p>ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023;</p> <p>iii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Ensure building work is carried out 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 3 Engage the fire engineer consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	
12.	Basement Level 1 sprinkler valve	Sprinkler system is accessed via the fire control room. It should have direct access to a road or open space.	Ensure the sprinkler system has direct access 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>Stage 1: 1 month</p> <p>Stage 2: 6 months</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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being a fire engineer consultant; ii) –be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 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 Ensure building work is carried out 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 3 Engage the fire engineer consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.</p>	<p>Stage 3: 6.5 months</p>
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13.	Fire isolated stair B – levels 20 and Basement 1	Goings and risers have inconsistent dimensions and are outside the permissible range	Ensure all stairways have consistent goings and risers throughout the building	<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, being a registered certifier holding unrestricted accreditation, or a specialist appropriate to the subject areas of the building being a fire engineer consultant; ii) be prepared with consideration given to the Hills Shire Council Fire Safety order dated 3 August 2023; 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 Ensure building work is carried out 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 3</p>	<p>Stage 1: 1 month</p> <p>Stage 2: 6 months</p> <p>Stage 3: 6.5 months</p>
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				Engage the fire engineer consultant to undertake progressive inspection of remedial works and provide a report setting out compliance with the building work undertaken at stage 2.	
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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 September 2023 issued to **JKN Hills Pty Ltd (ACN 159 864 089)** 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 25 July 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 19 July 2023;
 - (b) The Hills Shire Council Fire Safety order dated 3 August 2023.
4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

Table 3 – Basis of reasonable belief as to serious defects

Serious Defect Reference No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1.	Fire safety system	Fire doors do not self-close and do not latch appropriately when closed	A fire door should self-close and properly latch to form a seal when closed to prevent the spread of smoke and fire.	The defective installation of the fire doors demonstrates a failure to comply with the Australian Standard AS 1905.1-2015 Components for the protection of openings in fire-resistant	Fire could spread through open/unsealed fire doors, creating a risk of injury or death to occupants during fire.

				<p>walls, Part 1: Fire-resistant door sets, Section 2 Design Requirements, 2.1 General Requirements, 2.1.3 Self-closure and self-latching, which states:</p> <p><i>" The doorset shall be self-closing and all doorsets other than sliding doorsets shall be self-latching."</i></p> <p>2.1.4.3 Self-closing, which sets:</p> <p><i>"Fire doorsets shall be self-closing. The self-closing device shall close the door from any angle of swing. Automatic doorsets incorporating permissible variation hold-open devices shall revert to self-closing on operation of a sensing device installed in accordance with the requirements of Clause 5.6.3 or, in the event of power failure to the hold-open device, the leaf or leaves fail-safe to the closed position.</i></p> <p><i>NOTE: Self-closing devices should be of a quality capable of withstanding the anticipated use (see AS 4145.5 and AS 5007)."</i></p>	
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				<p>Australian Standard 1905.1:2015 appears as a standard referenced in the BCA Volume One, Part C3 Protection of openings, Deemed-to-Satisfy provision C3.4 Acceptable methods of protection, which states:</p> <p><i>"(a) Where protection is required, doorways, windows and other openings must be protected as follows:</i></p> <p><i>(i) Doorways —</i></p> <p><i>(A) internal or external wall-wetting sprinklers as appropriate used with doors that are self-closing or automatic closing; or</i></p> <p><i>(B) –/60/30 fire doors that are self-closing or automatic closing."</i></p> <p>C3.5 Doorways in fire walls, which states:</p> <p><i>"(a) The aggregate width of openings for doorways in a fire wall, which are not part of a horizontal exit, must not exceed ½ of the length of the fire wall, and each doorway must be protected by —</i></p> <p><i>(i) 2 fire doors or fire shutters, one on each side of the doorway, each of which</i></p>	
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				<p>has an FRL of not less than $\frac{1}{2}$ that required by Specification C1.1 for the fire wall except that each door or shutter must have an insulation level of at least 30; or</p> <p>(ii) a fire door on one side and a fire shutter on the other side of the doorway, each of which complies with (i); or</p> <p>(iii) a single fire door or fire shutter which has an FRL of not less than that required by Specification C1.1 for the fire wall except that each door or shutter must have an insulation level of at least 30.</p> <p>(b) A fire door or fire shutter required by (a)(i), (ii) or (iii) must be self-closing, or automatic closing in accordance with (c) and (d).</p> <p>C3.7 Protection of doorways in horizontal exits, which states:</p> <p>"(a) A doorway that is part of a horizontal exit must be protected by either —</p> <p>(i) a single fire door that has an FRL of not less than that</p>	
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				<p>required by Specification C1.1 for the fire wall except that the door must have an insulation level of at least 30; or</p> <p>(ii) in a Class 7 or 8 building — 2 fire doors, one on each side of the doorway, each with an FRL of not less than ½ that required by Specification C1.1 for the fire wall except that each door must have an insulation level of at least 30.</p> <p>(b) Each door required by (a) must be self-closing, or automatic-closing in accordance with the following:</p> <p>(i) The automatic-closing operation must be initiated by the activation of a smoke detector, or any other detector deemed suitable in accordance with AS 1670.1 if smoke detectors are unsuitable in the atmosphere, installed in accordance with the relevant provisions of AS 1670.1 and located on each side of the fire wall not more than 1.5 m horizontal distance from the opening.</p>	
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				<p>(ii) Where any other required suitable fire alarm system, including a sprinkler system (other than a FPAA101D system) complying with Specification E1.5, is installed in the building, activation of the system in either fire compartment separated by the fire wall must also initiate the automatic-closing operation."</p>	
2.	Fire safety system	Fire doors have been installed with excessive gaps around the door	Excessive gaps will allow smoke and fire to penetrate through.	<p>The defective installation of the fire doors demonstrates a failure to comply with the Australian Standard AS 1905.1-2015 Components for the protection of openings in fire-resistant walls, Part 1: Fire-resistant door sets, which provides:</p> <p><i>"5.5 Clearances Clause 5.5.2 Sill and floor finish:</i></p> <p><i>Clearances between the bottom of all door leafs and the floor shall be as follows</i></p> <p><i>(a) Between the leaf and the top of non any floor covering- not less than 3mm and not more than 10mm.</i></p>	Fire could spread through unsealed fire doors, creating a risk of injury or death to occupants during fire.

				<p>(b) <i>Between the leaf and the top of the non-combustible sill-</i></p> <p>(i) <i>not more than 10mm where there is no combustibles floor covering; and</i></p> <p>(ii) <i>not more than 25mm where there is no combustible floor covering present."</i></p>	
3.	Fire safety system	The egress pathway from the fire isolated stairways is less than 1m in width.	<p>So that occupants can safely evacuate the building, paths of travel to exits must have dimensions appropriate to the number, mobility and other characteristics of occupants and the function or use of the building.</p> <p>Reducing the width of egress path delay the evacuation of the occupants.</p>	<p>The insufficient width of the exit path of travel demonstrates the failure to comply with BCA 2015 D1.6 which provides:</p> <p><i>"In a required exit or path of travel to an exit-</i></p> <p>(a) <i>The unobstructed height throughout must be not less than 2m, except the unobstructed height of any doorway may be reduced to not less than 1980mm; and</i></p> <p>(b) <i>The unobstructed width of each exit or path of travel to an exit except for doorways, must be not less than-</i></p> <p>(i) <i>1m; or..."</i></p>	In case of fire, evacuation may be delayed due to reduced egress pathway width.

4.	Fire safety system	The egress from the fire isolated stairway contains a threshold ramp and steps exceeding 190mm	A fire exit should be free of trip hazards to allow safe evacuation of residents and attendance of fire brigade personnel	<p>The defective installation of the fire doors demonstrates a failure to comply with BCA 2015 Part D Clause D2.15 which provides:</p> <p><i>“The threshold of a doorway must not incorporate a step or ramp at any point closer to the doorway than the width of the door leaf unless —</i></p> <p><i>(a) in patient care areas in a Class 9a health-care building, the door sill is not more than 25 mm above the finished floor level to which the doorway opens; or</i></p> <p><i>(b) in a Class 9c building, a ramp is provided with a maximum gradient of 1:8 for a maximum height of 25 mm over the threshold; or</i></p> <p><i>(c) in a building required to be accessible by Part D3, the doorway —</i></p> <p><i>(i) opens to a road or open space; and</i></p> <p><i>(ii) is provided with a threshold ramp or step ramp in accordance with AS 1428.1; or</i></p> <p><i>NSW D2.15(d),(e)</i></p> <p><i>(d) in other cases —</i></p> <p><i>(i) the doorway opens to a road or open space, external</i></p>	The threshold step creates a trip hazard that may cause injury during evacuation or attendance of fire brigade personnel
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				<i>stair landing or external balcony; and (ii) the door sill is not more than 190 mm above the finished surface of the ground, balcony, or the like, to which the doorway opens"</i>	
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5.	Fire safety system	There are unsealed penetrations through a fire rated wall and floor	Service penetrations through a fire rated wall should be sealed to prevent the spread of smoke and fire	<p>The unsealed penetrations demonstrate a failure to comply with Deemed-to-Satisfy provision C3.15 Openings in floors and ceiling for services from the BCA 2015 Volume One which states:</p> <p><i>“(a) Where a service passes through —</i> <i>(i) a floor that is required to have an FRL with respect to integrity and insulation; or</i> <i>(ii) a ceiling required to have a resistance to the incipient spread of fire, the service must be installed in accordance with (b).</i> <i>(b) A service must be protected —</i> <i>(i) in a building of Type A construction, by a shaft complying with Specification C1.1; or</i> <i>(ii) in a building of Type B or construction, by a shaft that will not reduce the fire performance of the building elements it penetrates; or</i> <i>(iii) in accordance with C3.15.</i> <i>(c) Where a service passes through a floor which is required to be protected by a fire-protective covering,</i></p>	Fire and smoke could spread through unsealed penetrations, creating a risk of injury or death to occupants during fire.
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				<p><i>the penetration must not reduce the fire performance of the covering.”</i> And</p> <p>Australian Standard AS 4072.1-2005 which states:</p> <p><i>“Scope and General</i> 1.1 Scope This standard sets out minimum requirements for the construction, installation and application of fire resistance tests to scaling systems-</p> <p>(a) Around penetrations through separating building elements that are required to have a fire resistance level (FRL). Or , if applicable , a resistance to the incipient spread of fire; and</p> <p>(b) At control joint between building elements that are required to have a fire resistance level (FRL)”</p>	
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6.	Fire safety system	There are combustible materials within the fire isolated stair	A fire isolated stair must be appropriately constructed of fire rated material to achieve the requisite FRL	<p>The construction using combustible material demonstrates a failure to comply with the BCA 2015 Clause C1.10 Fire hazard properties which provides:</p> <p><i>“(a) The fire hazard properties of the following linings, materials and assemblies in a Class 2 to 9 building must comply with Specification C1.10:</i></p> <p><i>(i) Floor linings and floor coverings.</i></p> <p><i>(ii) Wall linings and ceiling linings. “</i></p>	The fire isolated stair does not meet the appropriate FRL, creating a risk of rapid spread of fire.
7.	Fire safety system	There is an unsealed penetration into the fire pump room	Service penetrations through a fire rated wall should be sealed to prevent the spread of smoke and fire	<p>The unsealed penetrations demonstrate a failure to comply with Deemed-to-Satisfy provision C3.12 Openings in floors and ceiling for services from the BCA which states:</p> <p><i>“(a) Where a service passes through —</i></p> <p><i>(i) a floor that is required to have an FRL with respect to integrity and insulation; or</i></p> <p><i>(ii) a ceiling required to have a resistance to the incipient spread of fire, the service must be installed in accordance with (b).</i></p>	Fire and smoke could spread through unsealed penetrations, creating a risk of injury or death to occupants during fire.

				<p><i>(b) A service must be protected –</i> <i>(i) in a building of Type A construction, by a shaft complying with Specification C1.1; or</i> <i>(ii) in a building of Type B or construction, by a shaft that will not reduce the fire performance of the building elements it penetrates; or</i> <i>(iii) in accordance with C3.15.</i> <i>(c) Where a service passes through a floor which is required to be protected by a fire-protective covering, the penetration must not reduce the fire performance of the covering.”</i></p> <p>And Australian Standard AS 4072.1-2005 which states:</p> <p><i>“Scope and General</i> 1.1 Scope <i>This standard sets out minimum requirements for the construction, installation and application of fire resistance tests to scaling systems-</i> <i>(a) Around penetrations through separating building elements that are required to</i></p>	
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				<p><i>have a fire resistance level (FRL). Or, if applicable, a resistance to the incipient spread of fire; and</i></p> <p><i>(b) At control joint between building elements that are required to have a fire resistance”</i></p>	
8.	Fire safety system	Smoke dampers have not been installed in the lobby relief shaft	Smoke dampers must be installed to prevent the spread of smoke and fire within ventilation shafts	<p>The absence of smoke dampers demonstrates a failure to comply with BCA 2015 Clause E2.2 which provides:</p> <p><i>“An air-handling system which does not form part of a smoke hazard management system in accordance with Table E2.2a or Table E2.2b and which recycles air from one fire compartment to another fire compartment or operates in a manner that may unduly contribute to the spread of smoke from one fire compartment to another fire compartment must</i></p> <p><i>(i) be designed and installed to operate as a smoke control system in accordance with AS/NZS 1668.1; or</i></p>	Fire and smoke could spread through the relief shaft, causing a risk of injury or death.

				<p>(ii) (A) incorporate smoke dampers where the air-handling ducts penetrate any elements separating the fire compartments served; and</p> <p>(B) be arranged such that the air-handling system is shut down and the smoke dampers are activated to close automatically by smoke detectors complying with clause 4.10 of AS/NZS 1668.1; and for the purposes of this provision, each sole-occupancy unit in a Class 2 or 3 building is treated as a separate fire compartment.</p> <p>(c) Miscellaneous air-handling systems covered by Sections 5 and 11 of AS/NZS 1668.1 serving more than one fire compartment (other than a carpark ventilation system) and not forming part of a smoke hazard management system must comply with that Section of the Standard.</p> <p>(d) A smoke detection system must be installed in accordance with Clause 5 of Specification E2.2a to operate AS/NZS 1668.1</p>	
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				<p><i>systems that are provided for zone smoke control and automatic air pressurisation for fire-isolated exits.”</i></p> <p>AS 1668.1-1998 is referenced in the above clause.</p>	
9.	Fire safety system	Ventilation grilles have been installed without fire dampers and are blocked	Fire dampers must be installed to prevent the spread of smoke and fire within ventilation shafts	<p>The absence of fire dampers demonstrates a failure to comply with BCA 2015 Clause E2.2 which provides:</p> <p><i>“An air-handling system which does not form part of a smoke hazard management system in accordance with Table E2.2a or Table E2.2b and which recycles air from one fire compartment to another fire compartment or operates in a manner that may unduly contribute to the spread of smoke from one fire compartment to another fire compartment must</i></p> <p><i>(i) be designed and installed to operate as a smoke control system in accordance with AS/NZS 1668.1; or</i></p> <p><i>(ii) (A) incorporate smoke dampers where the air-handling ducts penetrate any elements separating</i></p>	Fire and smoke could spread through the relief shaft, causing a risk of injury or death.

				<p>the fire compartments served; and</p> <p>(B) be arranged such that the air-handling system is shut down and the smoke dampers are activated to close automatically by smoke detectors complying with clause 4.10 of AS/NZS 1668.1; and for the purposes of this provision, each sole-occupancy unit in a Class 2 or 3 building is treated as a separate fire compartment.</p> <p>(c) Miscellaneous air-handling systems covered by Sections 5 and 11 of AS/NZS 1668.1 serving more than one fire compartment (other than a carpark ventilation system) and not forming part of a smoke hazard management system must comply with that Section of the Standard.</p> <p>(d) A smoke detection system must be installed in accordance with Clause 5 of Specification E2.2a to operate AS/NZS 1668.1 systems that are provided for zone smoke control and automatic air pressurisation for fire-isolated exits.”</p>	
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				AS 1668.1-1998 is referenced in the above clause.	
10.	Structural	The concrete slabs have moved laterally and vertically and show evidence of spalling. There is not fire protection on dowel between slabs.	The amount of tolerable gaps between the concrete slabs has not been mentioned in the approved drawing and the absence of proper joints and fillers between the gaps of concrete slab.as per AS 3600 Section 19.1.4.	<p>The significant movement of the concrete slabs demonstrates a failure to comply with <i>Structural Drawing no S0715 Rev D dated 14/10/2016 by Australian Consulting Engineers Drawing title “Basement 1 Section Sheets 6”</i></p> <p>The absence of proper joints and fillers between the gaps of concrete slab demonstrates a failure to comply with AS 3600 Section 19.1.4 which provides the function of a filler with respect to different conditions.</p>	Widening of the gaps between the concrete slabs might spread fire and smoke among the floors. The serviceability of the driveway and parking of vehicles might be hampered due to vertical movement of joint. This may make the structure not fit for its intended purpose.
11.	Fire safety system	The hydrant pump room is accessed via the fire isolated stairway and discharges to podium level.	Fire isolated egress from a fire pump room should be to an open space, not the podium level of the building.	<p>The improper exit demonstrates a failure to comply with AS 2419.1-2005 Section 6 Clause 6.4.2 which provides:</p> <p><i>“Internal pumprooms Pumprooms located within a building shall have-</i></p> <p><i>(a) A door opening to a road or open space, or a door opening to</i></p>	Inefficient access to the fire hydrant room (noting its location) will hinder the ability of the fire service to fight a fire efficiently and effectively.

				<i>fire –isolated passage or stair which lead to a road or open space;”</i>	
12.	Fire safety system	The sprinkler system is accessed via the fire control room.	A sprinkler system should be directly accessible from a road or open space.	<p>The improper access point to the sprinkler system demonstrates a failure to comply with BCA 2015 Specification E1.5 Clause 6 which provides:</p> <p><i>“6. Sprinkler valve enclosures</i> <i>(a) Sprinkler alarm valves must be located in a secure room or enclosure which has direct egress to a road or open space.</i> <i>(b) All sprinkler valve rooms and enclosures must be secured with a system suitable for use by the fire brigade”</i></p>	Inefficient access to the fire sprinkler room (noting its location) will hinder the ability of the fire service to fight a fire efficiently and effectively.
13.	Fire safety system	Goings and risers in the fire isolated stair have inconsistent dimensions and are outside the permissible range	The inconsistent goings and risers present a trip hazard for evacuating persons and attending fire brigade personnel.	<p>The inconsistent goings and risers demonstrate a failure to comply with BCA 2015 Part D2 Clause D2.13 which provides:</p> <p><i>“(a) A stairway must have –</i> <i>(i) not more than 18 nor less than 2 risers in each flight; and</i> <i>(ii) except as permitted by (b) and (c), going (G), riser (R) and quantity (2R + G) in</i></p>	During an evacuation, a person could trip, causing injury and delaying evacuation

				<p><i>accordance with Table D2.13; and</i></p> <p><i>(iii) except as permitted by (b) and (c), goings and risers that are constant throughout in one flight; and</i></p> <p><i>(iv) risers which do not have any openings that would allow a 125 mm sphere to pass through between the treads;"</i></p>	
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Consideration of written representations

5. On 28 August 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 served parties were invited to provide written representations relating to the Order to the Department by 25 September 2023. The following submissions were received:
 - (a) From a representative of the Hills Shire Council on 21 September 2023, supporting the issue of the Order;
 - (b) From Fire Risk Solutions Pty Ltd, on behalf of the Owners Corporation, on 26 September 2023, and
 - (c) From Traxial Consulting, who have undertaken investigations in relation to the movement joint defect (serious defect 10).
7. In relation to the representations made by Fire Risk Solutions Pty Ltd on behalf of the Owners Corporation, amendments were requested to:
 - (a) The periods for compliance;
 - (b) The required specialisations of persons who could provide reports and confirm compliance of works;
 - (c) Enforcement actions in relation to this order, noting previous non-compliance, and
 - (d) Standards of performance.
8. I have considered those submissions and note the following:
 - (a) The periods for compliance have not been amended, noting the significant volume of work required to undertake rectification works. The interests of the Owners Corporation have the work completed quickly must be balanced with the volume of work required and the capacity of the Developer to arrange that work to be undertaken;
 - (b) The required specialisations have been amended where relevant;
 - (c) Enforcement is separate to the issue of this Order, and
 - (d) The standards of performance requested in the representations of Fire Risk Solutions are not appropriate for inclusion in the Order.

9. 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?

10. 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.
11. 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.
12. I am of the view that the periods above for Defect 1 through 13 (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).