

Attn: Proper Officer  
Alta Vale Residential Pty Ltd  
ACN 147 009 685  
01' SE17, L17, 219-227 Elizabeth Street  
SYDNEY NSW 2000

Service: By registered post

DATE: 25 March 2024

## Building Work Rectification Order

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

Alta Vale Residential Pty Ltd (ACN 147 009 685) is being given this Building Work Rectification Order (Order) in relation to 291 George Street, Waterloo NSW 2017 (SP 96906).

Alta Vale Residential Pty Ltd (ACN 147 009 685) is required to cause building work to be carried out to remediate the serious defects as set out below in this Order.

Failure to comply with the requirements in this Order is a criminal offence.

#### **Terms of this Order - requirements in relation to serious defects**

1. I, Elizabeth Stewart, under section 33(1)(b) of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (RAB Act), require you **Alta Vale Residential Pty Ltd (ACN 147 009 685)** to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each serious defect at **291 George Street, Waterloo NSW 2017 (SP 96906)** described in columns 1, 2 and 3 of Table 1. Each requirement must be complied with by the time set out in column 5 of Table 1:

**Table 1: Requirements in respect of Serious Defects**

<b>Serious Defect Reference Number</b>	<b>Location of Serious Defect</b>	<b>General description of Serious Defect</b>	<b>Requirement</b>	<b>Time for compliance with Requirement</b>
1.	Common Area, External foyer / corridor / access	The horizontal floor surface does not have adequate drainage outlets. Accumulation of excess water throughout the area.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 4 Months</p>
2.	Common Area, External foyer / corridor / access	The fire door frames were hollow when tapped indicating voids exist in the grout behind the frames, that are not solid core filled.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>
3.	Ground Floor, external door towards external common area	The door / roller shutter installed in the fire resisting wall contained large gaps and was not sealed.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			<p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
4.	Ground Floor, Stairs (Fire Isolated)	The unobstructed width between walls in the fire isolated corridor measured less than 1m in width	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>
5.	Ground Floor, Stairs (Fire Isolated)	Unsealed gaps were observed in the fire resisting wall.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
6.	Ground Floor, Foyer / Lobby	A fire sprinkler system block plan has not been installed.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>
7.	Level 5, Rooftop	Emergency exit signage was missing / not visible.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>
8.	Ground Floor, in front of entry of Unit 1	The pump room is located below the entry of Unit 1 and could only be accessed through a hatch and ladder.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			<p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
9.	Rooftop and external wall on western elevation	<p>Uncontrolled cracking of 2mm to 4mm in the rooftop slab and external wall on the western elevation.</p> <p>Some cracks have migrated through the full depth of the external wall with water permeating through to the units.</p>	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 3 Months</p>
10.	Level 4, Unit 2 and Unit 17 Bedroom / Room and Toilet / Bathroom	Traces of water ingress were observed in Unit 2 and Unit 17 bedrooms during heavy rain from external wall adjacent to units.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 4 Months</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			<p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
11.	All Levels, Communications Room / Cupboard	Segregation of cables was not compliant with the installation standards.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>
12.	Levels 1, 2, 3, and 4, Common Area, External foyer / corridor / access	Inadequate sound pressure level on building occupant warning system.	<p>Within the time period specified in column 5:</p> <p>Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p>	<p>Stage 1 – 2 Months</p> <p>Stage 2 – 2 Months</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			<p>Submit a written report and designs to rectify the serious defect via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	

#### Conditions of this Order

2. You must make good any consequential damage caused in carrying out the works specified in this Order.
3. A design that is prepared for a building element for building work or a design that is prepared for a performance solution for building work (including a building element) in this Order must comply with the *Design and Building Practitioners Act 2020 (DBP Act)*.
4. A suitably qualified person or specialist referred to in column 4 of Table 1 is a person who is a registered design practitioner under the DBP Act.
5. Where this Order requires you to submit a written report, then written report must:
  - a. be prepared by a suitably qualified person or specialist; and
  - b. be prepared with consideration to this Order and the Reasons for this Order; and
  - c. detail the specific building work necessary to meet the codes and relevant standards specified in column 5 of Table 2; and
  - d. be prepared with consideration to other building work already constructed at the time of this Order and not the subject of a serious defect including designs for that building work, and other building work required by this Order including designs for that building work, and manufacturer's specifications.

**Duration of this Order**

6. This Order remains in force until it is revoked by the Secretary.
7. This order is given on the date that it is listed above in accordance with section 67 of the RAB Act.



Elizabeth Stewart

**A/Executive Director Building Operations**

**Building Commission NSW**



# Reasons for the Building Work Rectification Order

8. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*.
9. Under section 33 of the RAB 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 a residential apartment building or that a residential apartment building has a serious defect, they may order the developer of that building to carry out or not carry out specified building work or to take other specified action to eliminate, minimise or reduce the serious defect or potential serious defect.
10. Section 3 of the RAB Act defines a serious defect. Section 3 of the RAB Act also defines to term “building element” by reference to the *Design and Building Practitioners Act 2020 (DBP Act)*. Section 4 of the RAB Act defines the term “developer”. Section 6 of the RAB Act provides the building work to which the RAB Act applies. Relevant excerpts from sections 3, 4 and 6 of the RAB Act and section 6 of the DBP Act are set out in **Attachment A** to this Order.
11. I Elizabeth Stewart, Acting Executive Director, Assistant Building Commissioner, Department of Customer Service, is an authorised delegate of the Secretary of the Department.
12. Alta Vale Residential Pty Ltd (ACN 147 009 685) (**Developer**) is the developer of the residential apartment building known as 291 George Street, Waterloo NSW 2017 (SP 96906) (**the Development**) for the purposes of section 4(a) of the RAB Act.
13. The Development comprises carparking, restaurant, retail, and residential units. The RAB Act applies to building work at the Development because it is a class 2 building, is currently occupied and is less than 10 years old.
14. On 2 June 2023, with the consent of the owners corporation for the Development, a third party consultant engaged by the Department attended the Development (**Investigator**). The Investigator prepared a report on serious defects in the Development dated 13 June 2023 (**Inspection Report**).
15. I, Elizabeth Stewart, have formed a reasonable belief that the Development has serious defects based on the following:
16. I have reviewed the Inspection Report.
17. My reasonable belief is also based upon the following matters, set out in Table 2 below in respect of each serious defect identified in column 1 of Table 2 (where that reference corresponds to the reference set out in Table 1 above).



**Table 2 – basis of reasonable belief as to serious defects**

<b>Serious Defect Reference</b>	<b>Building element</b>	<b>Defect</b>	<b>Reason why defect is a serious defect</b>	<b>Applicable approved plan, Code or Australian Standard</b>
1.	Waterproofing Systems	The horizontal floor surface does not have adequate drainage outlet causing accumulation of excess water throughout the area.	The absence of an adequate drainage system demonstrates a failure to comply with the Australian Standards referenced in column 5, which require, among other things, that drainage systems for the disposal of surface water must convey surface water to an appropriate stormwater drainage and avoid the ponding of water.	<ul style="list-style-type: none"> <li>• Australian Standard AS/NZS 3500.3 –2015 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface water drainage system – Design, 5.3 Layout – General criteria.</li> <li>• Australian Standard AS4654.2 - Waterproofing Membranes for External Above Ground Use, Section 2 Design and installation, 2.5 Substrate, 2.5.2 Falls.</li> <li>• Australian Standard AS4654.2 appears as a standard referenced in the BCA Volume One, Part F Damp and Weatherproofing, Performance Requirements FP1.3 and FP1.5.</li> </ul>
2.	Fire Safety Systems	The fire door frames were hollow when tapped, indicating voids exist in the grout behind the frames that are not solid core filled.	The voids in the grouted door frame demonstrate a failure to comply with the Australian Standards referenced in column 5, which require, among other things, that fire doors are to comply with and door frames are to be appropriately fixed and filled as per the tested specimen.	<ul style="list-style-type: none"> <li>• Australian Standard AS1905.1- Components for the protection of openings in fire-resistant wall Part 1: Fire resistant door sets, Section 5 Installation, 5.3 Metal doorframes in masonry walls, 5.3.2 Backfilling of metal door frames.</li> <li>• Australian Standard AS1905.1 appears as a standard referenced in the Building Code of Australia (BCA) Volume One,</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				<p>Section C Fire resistance, Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors</p> <ul style="list-style-type: none"> <li>• Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors, is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Performance Requirement CP2</li> </ul>
3.	Fire Safety Systems	The door / roller shutter installed in the fire resisting wall contained large gaps and was not sealed.	The inadequate sealing of the roller shutter demonstrates a failure to comply with the Building Code provisions referenced in column 5, which require, among other things, that the fire doors have an FRL of not less than ½ required by Specification C1.1 for the fire wall except that each door have an insulation level of at least 30.	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Section 3 Fire resistance, Part C3 Protection of openings, Deemed-to-satisfy provision C3.5 Doorways in fire walls</li> </ul>
4.	Fire Safety Systems	The unobstructed width between walls in the fire isolated corridor measured less than 1m in width.	The width demonstrates a failure to comply with the Building Code provisions referenced in column 5, which require, among other things, that the unobstructed width of the path of travel is not less than 1m.	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Section D Access and egress – Part D1.6 Dimensions of exist and paths of travel</li> </ul>
5.	Fire Safety Systems	Unsealed gaps were observed in the fire resisting wall.	The gaps demonstrate an unprotected area and a failure to comply with the Building Code provisions referenced in column 5,	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Specification C1.1 Fire Resisting Construction, Part</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
			which require, among other things, that construction joints, spaces and the like in and between building elements are required to be fire-resisting and must be protected.	<p>3 Type A Fire-Resisting Construction.</p> <ul style="list-style-type: none"> <li>Building Code of Australia (BCA) Volume One, Section 3 Fire resistance, Part C3 Protection of openings, Deemed-to-satisfy provision C3.16 Construction joints.</li> <li>Deemed-to-satisfy provision C3.16 Construction joints is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Performance Requirement CP8.</li> </ul>
6.	Fire Safety Systems	A fire sprinkler system block plan has not been installed.	The absence of a compliant fire sprinkler block plans demonstrates a failure to comply with the Australian Standards referenced in column 5, which require, among other things, that fire sprinkler system block plans are installed.	<ul style="list-style-type: none"> <li>Australian Standard AS2118.1 Automatic Fire Sprinkler Systems, Section 8 Valves and Ancillary Equipment, Clause 8.3 Block Plan</li> </ul>
7.	Fire Safety Systems	Emergency exit signage was missing / not visible.	The failure to ensure the adequate installation of exit signage demonstrates a failure to comply with the Building Code provisions referenced in column 5, which require, among other things, that exit signs are to be readily apparent to persons occupying or visiting the building.	<ul style="list-style-type: none"> <li>Building Code of Australia (BCA) Volume One, Section E Services and equipment, Part E4 Visibility in an emergency, exit signs and warning signs, Deemed-to-Satisfy provision E4.5 Exit signs.</li> <li>Deemed-to-Satisfy provision E4.5 Exit signs is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section E Services and</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				equipment, Performance Requirement EP4.2 Identification of exits.
8.	Fire Safety Systems	The pump room is located below the entry of Unit 1 and could only be accessed through a hatch and ladder.	The inadequate access to pump room demonstrates a failure to comply with the Building Code provisions and the Australian Standards referenced in column 5, which requires, among other things, that an internal pump room located within the building shall have a door opening to a road or open space, or a door opening to fire-isolated passage or stair which leads to a road or open space.	<ul style="list-style-type: none"> <li>Australian Standard AS2419.1 Fire Hydrant Installation, Part 1 System Design, Installation and Commissioning, Section 6 Pumpsets, Clause 6.4.2 Internal pump rooms.</li> <li>Building Code of Australia (BCA) Volume One, Section E Services and equipment, Part E1 Fire Fighting Equipment, Clause E1.3 Fire Hydrants. - Building Code of Australia (BCA) Volume One, Section C Fire Resistance, Part C2.12 Separation of equipment.</li> </ul>
9.	Structural Systems	<p>Uncontrolled cracking of 2mm to 4mm in the rooftop slab and external wall on the western elevation.</p> <p>Some cracks have migrated through the full depth of the external wall with water permeating through to the units.</p>	The cracking identified demonstrates a failure to comply with the Australian Standards referenced in column 5, which requires, among other things, that general cracking in concrete structures to be controlled so that the structural performance, durability and appearance of the structure are not compromised.	<ul style="list-style-type: none"> <li>Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking. –</li> <li>Australian Standard AS3600 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4 Determination of structural resistance of materials and forms of construction</li> </ul>
10.	Building Enclosure	Traces of water ingress were observed in Unit 2 and Unit 17	The uncontrolled water ingress demonstrates a failure to comply	<ul style="list-style-type: none"> <li>BCA Volume One, Section F Health and Amenity, Part F1</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		bedrooms during heavy rain from external wall adjacent to units.	with the Building Code provisions referenced in column 5, which requires, among other things, that a roof or external wall prevent the penetration of water, undue dampness or deterioration of building elements and unhealthy or dangerous conditions, or loss of amenity to occupants.	Damp and Weatherproofing, Performance Requirement FP1.4.
11.	Building Essential Services	Segregation of cables was not compliant with the installation standards.	The inadequately supported cable installation demonstrates a failure to comply with the Australian Standards referenced in column 5, which requires, among other things that cables are to be effectively segregated.	<ul style="list-style-type: none"> <li>Australian Standard AS/NZS3000 Electrical Installations "Wiring Rules", Section 3 Selection and installation of wiring systems</li> </ul>
12.	Building Essential Services	Inadequate sound pressure level on building occupant warning system.	<p>The inadequate sound pressure level demonstrates a failure to comply with the Building Code provisions referenced in column 5, which requires, among other things, that:</p> <ul style="list-style-type: none"> <li>(a) for alarms installed in public corridors and other internal public spaces, the sound pressure level be not less than 85 dB(A) at the door providing access to the sole-occupancy unit; or</li> <li>(b) for smoke detectors <u>smoke detectors</u> installed within each sole-occupancy unit and in public corridors and</li> </ul>	<ul style="list-style-type: none"> <li>Building Code of Australia (BCA) Volume One, Section E Services and Equipment, Clause 6 Building Occupant Warning System.</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
			other internal public spaces, the sound pressure level be not less than 100 dB(A) at the door providing access to the sole-occupancy unit.	

### Why is it appropriate to give this Order?

18. I am aware that the Development is occupied which may delay the Developer doing the things ordered to be done by this Order. I have taken this into account when specifying the time periods in column 5 of Table 1. I am of the view the periods above for serious defects reference numbers 1 to 12 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by this 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.
19. The potential consequence of the serious defects set out in this Order are that they may negatively impact the amenity of the Development for owners and occupiers of the Development and may reduce the ability of the Development being used for its intended purposes by owners and occupiers of the Development such as a reduction in the habitability of apartments by their residents.
20. Considering the potential consequences, I give greater weight to the seriousness of each defect and failure to adhere to the Building Code of Australia, Australian Standards and the approved plans and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to make this Order requiring the Developer to carry out the building works or take the actions described above within the periods described above.
21. I have considered all of the circumstances. I accept that this Order requires considerable further building works and actions that are likely to be costly, and I give this consideration moderate weight. However, the cost to the Developer must be balanced against the benefit to the owners and occupiers of the Development in having the Development constructed according to approved plans, the Building Code of Australia and Australian Standards.
22. I am aware that obtaining reports from third parties required by this Order will pose time constraints and costs on the Developer. However, I balance these considerations against the serious defects outlined in this Order and the consequences these serious defects pose.



## Consideration of written representations

23. On 11 September 2023 a notice of intention to issue the Order and a draft copy of the Order ("Order") was served on the Developer, Local Council, the Owners Corporation and Private Certifier. The parties were invited to provide submissions relating to the draft copy of the Order by 02 October 2023.
24. The Owners Corporation provided written submissions by way of email dated 22 November 2023 ("**Owners Corporation Representations**") which included, among other things, that Defect 10 identified in the draft copy of the Order did not encompass Unit 14 which is below Unit 17 (One of the affected Units listed in the Order that was identified as one of the locations containing Defect 10).
25. City of Sydney Council provided written submissions by way of email dated 09 January 2024 ("**Council Representations**") which included, among other things, that there is currently an Order on the subject address from City of Sydney, and in this Order there are defects that have not been identified in the draft copy of the Building Rectification Order from the Building Commission and that I may wish to consider them. I did so.
26. No written submissions from the other parties were received.
27. I have reviewed and considered the Owners Corporation and Council's Representations.
28. I make the following observations in relation to the Owners Corporation Representations; I acknowledge that Defect 10 listed in the draft copy of the Order can be categorised as systemic and that inspections will need to be carried out to satisfy the Department that all locations of this recurring defect have been identified. In saying that, the Final Building Work Rectification Order has been updated to reflect that for all Defects where this is applicable.
29. I make the following observations in relation to the Council's Representations:
  - a) I acknowledge that there may be defects that have not been listed in the draft copy of the Building Rectification Order from the Building Commission that may be present in the Order served by City of Sydney.
  - b) I am of the view that the serious defects as set out in this Order and contained in the Audit Report are reasonable and appropriate and reflect the actions required to rectify the serious defects.
  - c) I am of the view that the Building Commission would hold the right to conduct further investigations and issue further orders should this pathway need to be pursued.

## **Conclusion**

30. Having regard to the above and the benefits arising from eliminating, minimising or remediating the serious defects, I find that it is appropriate, in the exercise of my discretion, to make this Order.

### Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this Order within 1 Month after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.
- You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.
- The Secretary has given the following persons notice of the making of this building work rectification order:
  - the relevant local council,
  - if the local council is not the certifier in relation to the building work—the principal certifier,
  - if you are not the owner of the land concerned—the owner of the land concerned,
  - the Registrar-General,
  - if the order relates to a strata building—the relevant owners corporation,
  - any other person prescribed by the regulations.
- This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.

## Annexure A

**serious defect**, in relation to a building, means—

- (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the Building Code of Australia, the relevant Australian Standards or the relevant approved plans, or
- (b) a defect in a building product or building element that—
  - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
  - (ii) causes or is likely to cause—
    - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
    - (B) the destruction of the building or any part of the building, or
    - (C) a threat of collapse of the building or any part of the building, or
- (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (d) the use of a building product (within the meaning of the Building Products (Safety) Act 2017) in contravention of that Act.

**building element**, as defined in the *Design and Building Practitioners Act 2020* (NSW), means any of the following—

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

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

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

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

a **developer**, in relation to building work, means any of the following persons, but does not include any person excluded from this definition by the regulations—

- (a) the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out,
- (b) if the building work is the erection or construction of a building or part of a building—the owner of the land on which the building work is carried out at the time the building work is carried out,
- (c) the principal contractor for the building work within the meaning of the Environmental Planning and Assessment Act 1979,
- (d) in relation to building work for a strata scheme—the developer of the strata scheme within the meaning of the Strata Schemes Management Act 2015,
- (e) any other person prescribed by the regulations for the purposes of this definition.

**Section 6 - Act applies only to residential apartment building work**

- (1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that—
  - (a) is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the Environmental Planning and Assessment Act 1979, or is required to be authorised by a construction certificate or complying development certificate, and
  - (b) has not been completed or has been completed within the period of 10 years before the exercise of that function.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the Building Code of Australia).