

Attn. the Proper Officer
Denwol Glebe Pty Limited
ACN 166 437 789
49 – 51 Greek Street
Glebe NSW 2037

Service: By express post and by email

12 January 2024

Building Work Rectification Order

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

Denwol Glebe Pty. Limited (ACN 166 437 789) is being given this Building Work Rectification Order (“Order”) in relation to 89 Bay Street, Glebe NSW 2037 (SP94023), 2J Wentworth Park Road, Glebe NSW 2037 (SP94024) and 2F Wentworth Park Road, Glebe NSW 2037 (SP94021) (“the Building”).

Denwol Glebe Pty. Limited (ACN 166 437 789) is required to cause building work to be carried out to remediate the potential serious defects as set out in paragraphs 8 to 15 of this Order.

Failure to comply with this Order is a criminal offence.

Background

1. The Department of Customer Service (the Department) administers the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (the Act).
2. Under section 33 of the Act, if the Secretary of the Department or their authorised delegate has a reasonable belief that building work was carried out in a manner that could result in a serious defect in the Building or that the Building has a serious defect, they may order the developer to rectify building work to remediate the serious defect or potential defect.

3. Elizabeth Stewart, Acting Executive Director Building Operations and Assistant Building Commissioner is an authorised delegate of the Secretary of the Department. With the consent of the owners corporation, a consultant engaged by the Department attended the Building (**Investigator**) on 6 September 2022. The Investigator prepared a report on serious defects in the Building (**Audit Report**).
4. Denwol Glebe Pty. Limited(ACN 166 437 789) is the developer of the residential apartment buildings at 89 Bay Street, Glebe NSW 2037 (SP94023), 2J Wentworth Park Road, Glebe NSW 2037 (SP94024) and 2F Wentworth Park Road, Glebe NSW 2037 (SP94021) (together, "**the Building**") for the purposes of section 4 of the Act.
5. Under section 3 of the Act a serious defect in relation to a building, means –
 - (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
 - (b) a defect in a building product or building element that:
 - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
 - (ii) causes or is likely to cause—
 - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
 - (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
 - (d) the use of a building product (within the meaning of the *Building Products (Safety) Act2017*) in contravention of that Act.
6. Under s 6(1) of the *Design and Building Practitioners Act 2020* a building element means any of the following:
 - (a) the fire safety systems for a building within the meaning of the *Building Code of Australia*,
 - (b) waterproofing,
 - (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
 - (d) a component of a building that is part of the building enclosure,

- (e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the *Building Code of Australia*,
- (f) other things prescribed by the regulations for the purposes of this section.

Decision to issue a building work rectification order

7. I, Elizabeth Stewart, am the decision maker for this Building Work Rectification Order **(the Order)**. I have considered the Audit Report and have decided to issue the Order to Denwol Glebe Pty. Limited ACN 166 437 789 because I have formed a reasonable belief under s 33(1) of the Act the Building has serious defects as set out in this Order.

Descriptions of serious defects

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

8. Defect 1 – Waterproofing			
Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the rooftop of 89 Bay Street, Glebe NSW 2037 (SP94023) – Building 2H, the Investigator observed the following:</p> <ol style="list-style-type: none"> There were inadequate falls to the roof membrane. Large volumes of water were ponding on the rooftop. <p>I have formed the belief that the inadequate falls to the roof membrane and water ponding on the rooftop as described above is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:</p>	<p>Australian Standard 4654.2-2012, Waterproofing Membranes for External Above Ground Use - Design and Installation, Section 2 - Design and installation, which states:</p> <p><i>“Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be retained on the finished surface with the exception of residual water remaining due to surface tension. The fall shall be in the structural substrate, or formed by a screed over the structural substrate.”</i></p> <p>And</p> <p>Australian Standard 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.4 which states:</p> <p><i>“Waterproof membranes for external above ground use must comply with AS4654 Parts 1 and 2.”</i></p> <p>And</p> <p>Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</p> <p><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></p>	<p>Developer to:</p> <ol style="list-style-type: none"> Developer to carry out rectification of the waterproofing defects in accordance with the BCA Volume One and Australian Standard 4654.2. Make good any consequential damage. <p>Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.</p>	<p>Within 150 days of issuance of this Order.</p>

9. Defect 2 – Waterproofing			
Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the rooftop of 89 Bay Street, Glebe NSW 2037 (SP 94023) -Building 2H, the Investigator observed that the rooftop substrate was not smooth and was not adequate to accept the application of the applied liquid waterproofing membrane.</p> <p>I have formed the belief that the defective substrate to which the membrane has been applied and as described above is a serious defect because it is a defect in a building element (waterproofing systems) that is attributable to a failure to comply with the following:</p>	<p>Australian Standard 4654.2- 2012 Waterproofing Membranes for External Above Ground Use, Section 2 Design and Installation, 2.5 Substrate, 2.5.3.1 Fully bonded or liquid- applied, which states:</p> <p><i>“The preparation of the substrate for fully bonded or liquid- applied membranes shall result in the surface of the substrate being smooth, without protrusions, voids or formwork distortions, and clean, dry, and free from dust and contamination.”</i></p> <p>And</p> <p>Australian Standard 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.4 which states:</p> <p><i>“Waterproofing membranes for external above ground use must comply with AS 4654.1 and AS 4654.2”.</i></p> <p>Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4, which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) Undue dampness or deterioration of building elements.”</i></p> <p><i>Therefore, because the installation does not comply with the referenced Australian Standard 4654.2, the BCA Volume One Performance Requirement cannot be shown to have been satisfied.</i></p>	<p>Developer to:</p> <ol style="list-style-type: none"> Developer to carry out rectification of the waterproofing defects in accordance with the BCA Volume One and Australian Standard 4654.2 Waterproofing membranes for external above ground use. Make good any consequential damage. <p>Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.</p>	<p>Within 150 days of issuance of this Order.</p>

10. Defect 3 – Waterproofing

Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the rooftop of 89 Bay Street, Glebe NSW 2037 (SP 94023) - Building 2H, the Investigator observed that several penetrations had no upward turn on the waterproofing, specifically around the 90mm pipe penetrations.</p> <p>I have formed the belief that the absence of upward turns on the waterproofing, specifically around the 90mm pipe penetrations, representing inadequate protections on the penetrations to the rooftop, as described above, is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:</p>	<p>Australian Standard 4654.2-2012, Waterproofing Membranes for External Above Ground Use - Design and Installation, Section 2 - Design and installation, which states:</p> <p><i>"All pipes, dusts and vents should be located within a collar mechanically fixed to the substrate as an extension to the penetration. Alternatively, a collar may be cast into the substrate to form the penetration. A separate collar should be used for each penetration."</i></p>	<p>Developer to carry out rectification of the waterproofing defect in accordance with the BCA Volume One and Australian Standard 4654.2 Waterproofing membranes for external above ground use.</p> <p>Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.</p>	<p>Within 150 days of issuance of this Order.</p>

11. Defect 4 – Fire Safety Systems

Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the basement levels of the various buildings comprising the Building, the Investigator made the following observations:</p> <ol style="list-style-type: none"> Several penetrations were installed without fire collars. large areas of slab had been cut out between levels calling into question the compartmentalization between levels. <p>Further the Investigator noted that although he did not have access to the roof deck, the Investigator was advised by a resident of the Building that significant water ingress issues occur during heavy rain.</p> <p>I have formed the belief that the insufficient waterproofing system and as described above is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:</p>	<p>Australian Standard AS 4654.2-2012 Waterproofing membranes for external above-ground use: Part 2 – Design and installation, Appendix A Vertical upward termination which states:</p> <p><i>“The vertical height may be determined by either of the following methods:</i></p> <p><i>(a) Vertical upward termination to be at a height above finished level not less than specified in Table A1.”</i></p> <p>Appendix A is referred to in the Australian Standard AS 4654.2 Waterproofing membranes for external above-ground use: Part 2 Design and installation, 2.8 Termination of membranes, 2.8.1 Upward terminations, 2.8.1.1 Height which states:</p> <p><i>“Where the membrane termination is to prevent water entry, the finished height of the membrane above the finished surface level shall be sufficient to prevent water, including wind driven, flowing over the top of the membrane.</i></p> <p><i>NOTE: For information on termination heights, see Appendix A.”</i></p> <p>Australian Standard AS 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.4 which states:</p> <p><i>“Waterproof membranes for external above ground use must comply with AS4654 Parts 1 and 2.”</i></p> <p>Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p>	<p>Developer to rectify the omission of the fire collars. Developer is to provide a fire safety schedule from an accredited certifier listing all the fire safety measures.</p>	<p>Within 150 days of issuance of this Order.</p>

	<p>(b) <i>Undue dampness or deterioration of building elements.”</i></p> <p>Therefore, because the installation does not comply with the referenced Australian Standard AS 4654.2, the BCA Volume One Performance Requirement cannot be shown to have been satisfied.</p> <p>And</p> <p>Australian Standard AS 3700-2011 Masonry Structures, Section 4 General design aspects, 4.7 Prevention of moisture penetration, 4.7.3 Damp- proof courses (DPCs) and flashings which states:</p> <p><i>“DPCs or flashings shall be incorporated into masonry construction where it is necessary –</i></p> <ul style="list-style-type: none"> (a) <i>to provide a barrier to the upward or downward passage of moisture through masonry;</i> (b) <i>to prevent moisture from entering into the interior of a building from the exterior;</i> (c) <i>to prevent moisture passing across a cavity to the inner leaf; or to shed moisture through masonry to the outer face.”</i> <p>Therefore, because the installation does not comply with the referenced Australian Standard AS 4654.2, the BCA Volume One Deemed-to-Satisfy provision cannot be shown to have been satisfied.</p>		
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12. Defect 5 – Structural Systems

Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the basement of the Building, the Investigator observed the following:</p> <ol style="list-style-type: none"> 1. uncontrolled cracking of 2mm to 4mm in the basement slabs and soffits; 2. some cracking had occurred immediately adjacent to the sawn joint and was not contained within the joint; and 3. some cracks had migrated through the full depth of the suspended post tension slab with water permeating through. <p>I have formed the belief that the uncontrolled cracking as described above is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:</p>	<ol style="list-style-type: none"> 1. The Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking which states: <i>"2.3.3.1 General Cracking in concrete structures shall be controlled so that structural performance, durability and appearance of the structure are not compromised."</i> and, 2. Australian Standard 3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to- Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction which states: <i>"The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate: ... (b) Concrete: (i) Concrete construction (including reinforced and prestressed concrete): AS 3600.</i> 	<p>Developer to rectify the cracking defects in accordance with BCA Volume One and Australian Standard 3600 Concrete Structures. Particular attention to be given, but not limited to the following areas:</p> <ol style="list-style-type: none"> 1. conduct remedial rectification work to the structural concrete slab in coordination with the project structural design engineer; and 2. attention to the monitoring of the cracking to ensure long term stability. <p>Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports</p>	<p>Within 150 days of issuance of this Order.</p>

13. Defect 6 – Structural Systems			
Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the basement area of the Building, the Investigator observed:</p> <ol style="list-style-type: none"> 1. Areas of the slab had not been properly vibrated and it had created some areas of honeycombing within the slab; and 2. cold joints had been identified within the slab areas without suitable joint preparation. <p>I have formed the belief that the cold joints and honeycombing in the concrete installation as described above is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:</p>	<p>Australian Standard 3600:2009: Concrete Structures and the following: 1. Section 4 - Design for durability, 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection, 4.10.3.7 Embedded items cover, which states:</p> <p><i>“Embedded items, as defined in Clause 14.2, shall be protected from corrosion or deterioration. The cover to embedded items that are not corrosion resistant shall be as given in Table 4.10.3.2 and 4.10.3.3, as applicable.</i></p> <p>And</p> <p>Section 17 - Materials and construction requirements, 17.1.7-Rejection of concrete, 17.1.7.2 Hardened concrete, which states:</p> <p><i>“Hardened concrete shall be liable to rejection if–</i></p> <ol style="list-style-type: none"> 1. <i>it does not satisfy the requirements of Clause 17.1.6;</i> 2. <i>it is porous, segregated, or honeycombed, or contains surface defects outside the specified limits.</i> 3. <i>it fails to comply with the other requirements of this Standard.”</i> 	<p>Developer to consult with structural engineer to ensure patched area of the slab are rectified in accordance with engineer's recommendation.</p> <p>Developer to demonstrate compliance of remediation works by providing evidence including but not limited to Structural engineers' inspection report, repair recommendations comprehensive photographs of works in progress, engineers' approval/signoff on post rectification.</p>	<p>Within 150 days of issuance of this Order.</p>

14. Defect 7 – Structural Systems

Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the basement of the Building, the Investigator observed the following:</p> <ol style="list-style-type: none"> that there was exposed and unprotected reinforcement in the slab-on-ground where voids had been cut out without properly treating the reinforcement). <p>I have formed the belief that the exposed and unprotected reinforcement as described above is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:</p>	<p>Australian Standard 3600-2009, Concrete structures, Section 4, Design for durability 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection 10.4.3.1 General which states:</p> <p><i>"For corrosion protection, the cover shall be not less than the value given in accordance with Clauses 4.10.3.2 to 4.10.3.7."</i></p> <p>In accordance with clauses 4.10.3.2 to 4.10.3.7 depending on exposure classification and concrete characteristic strength, required cover varies between 20mm to 70 mm.</p>	<p>Developer to rectify the defect by providing appropriate protection to the exposed reinforcements in accordance with the BCA Volume One and Australian Standard 3600 – Concrete Structures</p> <p>Developer demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates.</p>	<p>Within 150 days of issuance of this Order.</p>

15. Defect 8 – Building Essential Services

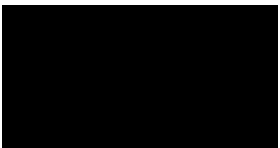
Description of serious defect	Applicable performance requirements	Remediation work to be carried out or caused to be carried out by the Developer	Time period for compliance
<p>When inspecting the rooftop of 89 Bay Street, Glebe NSW 2037 (SP 94023) -Building 2H, the Investigator observed the following:</p> <ol style="list-style-type: none"> the cables were not correctly supported within conduits at adequate spacing); and the cables were run through large areas there water was ponding. <p>I have formed the belief that the cables were run through large areas where water was ponding:</p>	<p>Australian Standard 3000 - 2018 - Electrical installations - Wiring Rules, Section 3 Selection and installation of wiring systems, sub section 3.1 Application, clause 3.1.2 Selection, and installation, which states:</p> <p><i>"Wiring systems are not installed to perform the following functions or have the following features:</i></p> <p><i>1.7Protect against physical contact...</i></p> <p><i>1.8Satisfy current carrying capacity...</i></p> <p><i>1.9Provide reliability and electrical continuity...</i></p> <p><i>1.10 Provide adequate strength of supports suspensions and fixings...."</i></p>	<p>Developer to rectify the electrical wiring and the air conditioning refrigeration pipework in accordance with the BCA Volume One, Australian Standard 3000 – Wiring Rules and Australian Standard 5141.1 Residential heating and cooling systems-Minimum application and requirements for energy efficiency performance and comfort criteria.</p> <p>Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.</p>	<p>Within 150 days of issuance of this Order.</p>

Conditions of this Order

16. The Developer must notify in writing, by email sent to Ocaudits@customerservice.nsw.gov.au within 2 business days of the work required by this Order being completed.
17. Making good any consequential damage caused in carrying out the works specified in this Order.
18. For any building work to address a serious defect in this Order you must comply with the requirements of the Design and Building Practitioners Act 2020 (NSW).

Duration of this Order

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



Elizabeth Stewart
Acting Executive Director
Building Operations and Assistant Building Commissioner
Building Commission NSW

Reasons for the Building Work Rectification Order

Reasonable belief and serious defects

I, Elizabeth Stewart, an authorised delegate of the Secretary of the Department, have formed a reasonable belief for the purposes of s 33(1) of the Act in relation to Defects 1 to 8 in the Order, that the Building has serious defects.

1. **Defect 1** - the inadequate falls to the roof membrane and water ponding on the rooftop of the Building 2H as described in paragraph 8 of the Order, is a serious defect because it is a deficiency in a building element (waterproofing systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 8 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 1.1 in which I also observed a photograph which depicted water ponding on the rooftop and as otherwise particularised in section 1.1 of the Audit Report and paragraph 8 of the Order.
2. **Defect 2** - the defective substrate to which the membrane has been applied on the rooftop of the Building 2H as described in paragraph 9 of the Order, is a serious defect because it is a deficiency in a building element (waterproofing systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 9 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 1.2 in which I also observed a photograph which depicted delamination of waterproofing membrane and as otherwise particularised in section 1.2 of the Audit Report and paragraph 9 of the Order.
3. **Defect 3** - the inadequate protections on the penetrations to the rooftop of the Building 2H as described in paragraph 10 of the Order, is a serious defect because it is a deficiency in a building element (waterproofing systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 10 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 1.3 in which I also observed a photograph which depicted inadequate protections on the penetrations to the rooftop and a figure (1.3b) from AS4654.2 showing the proper application of penetration collars and as otherwise particularised in section 1.3 of the Audit Report and paragraph 10 of the Order.
4. **Defect 4** - the penetrations and inadequate fire-resisting sealing in the basement levels of the Building as described in paragraph 11 of the Order, is a serious defect because it is a deficiency in a building element (fire safety systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 11 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 2.1 in which I also observed a photograph which depicted a typical penetration through the slab without appropriate fire collar/protection and as otherwise particularised in section 2.1 of the Audit Report and paragraph 11 of the Order.
5. **Defect 5** - the uncontrolled cracking in the basement of the Building as described in paragraph 12 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 12 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated

14 November 2022 section 3.1 in which I also observed photographs which depicted structural cracking to the basement level slabs and as otherwise particularised in section 3.1 of the Audit Report and paragraph 12 of the Order.

6. **Defect 6** - the cold joints and honeycombing in the concrete installation in the basement area of the Building as described in paragraph 13 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 13 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 3.2 in which I also observed a photograph which depicted evidence of honeycombing, cold joints and cracking to support beams in the storage areas and as otherwise particularised in section 3.2 of the Audit Report and paragraph 13 of the Order.
7. **Defect 7** - the exposed and unprotected reinforcements in the basement of the Building as described in paragraph 14 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 14 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 3.3 in which I also observed a photograph which depicted exposed large areas of reinforcement to the basement areas where voids had been cut out without properly treating the reinforcement and as otherwise particularised in section 3.3 of the Audit Report and paragraph 14 of the Order.
8. **Defect 8** - the inadequately supported cable installation on the rooftop of the Building 2H as described in paragraph 17 of the Order, is a serious defect because it is a deficiency in a building element (building essential services) that are required to achieve compliance with the performance requirements as particularised in paragraph 17 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 14 November 2022 section 5.1 in which I also observed photographs which depicted cables within conduits being unsupported and sitting in ponded water on the rooftop level and as otherwise particularised in section 5.1 of the Audit Report and paragraph 17 of the Order.

9. **Consideration of written representations**

- (a) On 6 April 2023 a notice of intention to issue the Order and a draft copy of the Order was served on the Developer, City of Sydney Council ("**Local Council**"), the Owners of Strata Plans No 94023, 94024, and 94021 (together, "**Owners Corporation**") and MSA Consultants ("**Private Certifier**"). The parties were invited to provide submissions relating to the draft copy of the Order by 27 April 2023
- (b) The Developer provided the Department with written submissions dated 24 April 2023 ("**Developer Representations**") which included, among other things, the following:
 - i. That the Developer had not undertaken a detailed assessment of the issues identified;
 - ii. That the Developer did not consider it necessary for an Order under the Act to be made, as:
 - (a) the Developer is presently or has attended to addressing Defects 1, 2, 3, 4 (in part), 5, 6, 7, and 8 (in part);

(b) part of Defect 4 is not a 'serious defect' as defined in the RAB Act; and

(c) part of Defect 8 relates to building work in respect of which the Developer submits it is not the Developer for the purposes of the RAB Act;

iii. That the Developer is presently attending to rectification of Defects 1 – 3 (Waterproofing Systems) and the work required to rectify such defects is dependent on weather conditions and availability of specialist contractors. The Developer requested 210 days to rectify these Defects due to potential delays caused by inclement weather;

iv. That in relation to Defect 4 – Fire Safety Systems:

(a) the Developer is presently attending to rectification of one penetration (which the Developer has identified as a redundant temporary electrical service which should be removed and sealed). The Developer submits there are no further penetrations missing a fire collar. The Developer accepts the period of 150 days to rectify the Defect;

(b) the Developer submits that the basement slabs have been constructed as designed and in line with construction certificate documentation, and that such voids are designed to provide air supply to the basement car park. The Developer submits this is not a 'serious defect' or indeed a defect at all.

v. That in relation to Defect 5 – Structural Systems, the rectification works are ongoing, and the Developer accepts the period of 150 days to rectify the defect;

vi. That in relation to Defect 6 – Structural Systems, the rectification works are ongoing, and the Developer accepts the period of 150 days to rectify the defect;

vii. That in relation to Defect 7 – Structural Systems, the rectification works are ongoing, and the Developer accepts the period of 150 days to rectify the defect;

viii. That in relation to Defect 8 – Building Essential Services, the Developer accepts that one (1) conduit installed is unsupported (being the conduit shown in the photograph along with the Developer's submissions, and will rectify this, accepting the period of 150 days to rectify same.

The Developer rejects responsibility for the remaining unsupported conduits and submits those conduits were not installed by the Developer or the Builder or anyone on behalf of those parties. The Developer submits that those remaining unsupported conduits were installed on behalf of the retail tenant.

ix. The Developer has requested the proposed terms of an enforceable undertaking under section 28 of the RAB Act. This was option was not finalised.

(c) No representations were received from the Owners Corporation, the Council, or the Private Certifier.

- (d) I have reviewed and considered the Developer Representations.
- (e) I make the following observations in relation to the Developer Representations:
 - i. I acknowledge that the Developer has purportedly commenced undertaking remediation works in respect of a number of the serious defects alleged,
 - ii. Whilst the Developer is purportedly in the process of rectifying all or part of the serious defects alleged, I have not been provided with supporting evidence outlining the progress of those remediation works to resolve the matters the subject of the Audit report and the Order, the Developer has not provided any supporting evidence showing engagement of any specialist contractors or expert consultants or definitive timeframes for rectification other than the time periods outlined in the submissions.
 - iii. The Developer does not appear willing to give an undertaking to rectify the serious defects at the Building.
 - iv. I do not consider that the making of this Order would unnecessarily cause prejudice to the Developer.
- (f) The Owners of Strata Plans No 94021 provided the Department with a response dated 13 June 2023 in which they confirmed there were no objections for the proposed Order.

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

- (a) I have considered all of the circumstances. I accept that the order requires considerable further construction work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers of the units which comprise the Building in having the Building constructed to the approved plans and in accordance with the Building Code of Australia and the relevant Australian Standards so as to ensure in respect of:
 - (i) Defect 1 – that the rooftop of the Building 2H be appropriately weatherproofed and waterproofed so as to prevent the penetration of water, and unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
 - (ii) Defect 2 – that the rooftop substrate of the Building 2H are appropriately weatherproofed and waterproofed so as to prevent the penetration of water, and unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
 - (iii) Defect 3 – that the penetrations on the rooftop of the Building 2H be appropriately waterproofed so as to prevent the penetration of water, and unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;

- (iv) Defect 4 – that the penetrations in the basement levels of the Building be rectified by installing appropriate fire collar / protection so as to resist and reduce the spread of fire within the Building;
 - (v) Defect 5 – that the cracking in the basement of the Building be rectified so as to ensure structural performance and durability of the Building;
 - (vi) Defect 6 – that the cold joints and honeycombing in the basement areas of the Building be rectified so as to protect the Building from corrosion or deterioration and to ensure the structural reliability and durability of the Building;
 - (vii) Defect 7 – that the unprotected reinforcement in the basement of the Building be appropriately rectified so as to preserve the structural reliability and durability of the Building;
 - (viii) Defect 8 – that the inadequately supported cable installations on the rooftop of the Building 2H be rectified so as to provide reliability and electrical continuity.
- (b) Considering these potential consequences as outlined in this order, I give greater weight to the seriousness of the defects and failure to adhere to the approved plans and the benefits arising from remediating the defect and I find that it is appropriate, in the exercise of my discretion, to require **Denwol Glebe Pty. Limited** to carry out the building work described in paragraphs 8 - 15 of the Order within the time period specified in paragraphs 8 – 15 of the 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 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.

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

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

- **the relevant local council,**
- **if the local council is not the certifier in relation to the building work—the principal certifier,**
- **if you are not the owner of the land concerned—the owner of the land concerned,**
- **if the order relates to a strata building—the relevant owners corporation,**
- **any other person prescribed by the regulations.**

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

- **Annexure A**

serious defect, in relation to a building, means—

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

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

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

(3) In this section—

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

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

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

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

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

Section 6 - Act applies only to residential apartment building work

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