

Attn: Proper Officer  
JT Interior Lining (NSW) Pty Ltd (ACN 112 579 147)  
U 405 65 York St  
Sydney NSW 2000

Service: By express post

DATE: 12 January 2024

## Building Work Rectification Order

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

JT Interior Lining (NSW) Pty Ltd (ACN 112 579 147) (JT Interior Lining) is being given this Building Work Rectification Order (Order) in relation to 13A Third Ave, Campsie NSW 2194 (SP 92072).

JT Interior Lining 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.

## 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 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 set out in **Attachment A** to this order.
4. Elizabeth Stewart, Department of Customer Service is an authorised delegate of the Secretary of the Department.
5. JT Interior Lining (NSW) Pty Ltd (ACN 112 579 147) is the developer of the residential apartment building known as 13A Third Ave, Campsie NSW 2194 (SP 92072) (**The Development**) for the purposes of section 4(a) of the Act.
6. The Development comprises carparking and residential units. The Act applies to building work at the Development because it is a class 2 Development, is currently occupied and less than 10 years old.
7. On 13 September 2022, with the consent of the owners corporation, Authorised Officers of the Department of Customer Service attended the Building (**Authorised Officers**). The Authorised Officers prepared a report on serious defects in the Building (**Inspection Report**).

## Requirements in relation to Serious Defects

8. I, Elizabeth Stewart, under section 33 of the Act, require you JT Interior Lining (NSW) Pty Ltd (ACN 112 579 147) to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each respective serious defect 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	Roof	<p>The following observations were made:</p> <ul style="list-style-type: none"> <li>• Inadequate falls of roof to water discharge point.</li> <li>• Large volumes of ponding water to roof areas.</li> <li>• Lift over run and fire stair over runs have not been waterproofed.</li> </ul>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 180 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
2	Multiple Units throughout the complex	<p>The following observations were made:</p> <ul style="list-style-type: none"> <li>At the balcony and entry doors, there is an inadequate termination height of the waterproofing system at the balcony doors.</li> <li>Also noted was the absence of waterproof membrane and water bar to rear of doors.</li> </ul>	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 180 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
3	Multiple Units throughout the complex	No overflow provisions were observed on the Balconies.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
4	Basement 1 - multiple locations	The substrate was not smooth and not adequate to accept the application of the liquid applied waterproof membrane.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 180 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
5	Fire Pumproom	The fire damper has not been adequately installed and passes through hollow block walls that have not been framed or enclosed with fire rated materials. The fire damper has been installed with less than 75 mm clearance from the soffit and the wall.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
6	Main switchroom basement 1	Several penetrations were observed to have been installed without fire collars. A PVC drainage pipe enters the southern wall and extends through the northern wall.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>



Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
7	Diesel pump exhaust	Defective installation of the diesel pump exhaust was observed.	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 90 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
8	Fire stairs	Unstopped penetrations between the adjoining wall of the fire compartment and the fire isolated staircase were observed.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
9	Whole of building – including service risers	<p>The following observations were made:</p> <ul style="list-style-type: none"> <li>• Several penetrations in the basement levels were installed without fire collars.</li> <li>• Observed in multiple locations that penetrations and openings in the concrete slabs separating levels of the building have not been provided with compliant fire stopping measures.</li> <li>• There is an unprotected PVC pipe penetrating the concrete soffit above the passageway between the basement car park and the main switch room.</li> </ul>	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 150 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
10	Basement 1 fire stairs	Door jambs have not been adequately core filled and have been installed with large gaps around fire frames.	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
11	Basement 1	Hollow voids within concrete walls and associated permanent plastic formwork were observed. The voids appear to be a wholesale defect through the development, it is highly likely to have compromised the structural integrity and reinforcement concrete cover.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 180 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
12	Basement 1	Uncontrolled cracking of 2mm to 4mm was observed in the basement slabs and soffits. Some cracking has occurred adjacent the sawn joint and not contained within the joint. Some cracks have migrated through the full depth of the suspended post tension slab, with water permeating through.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 180 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
13	Whole of building	Composite aluminium cladding has been installed to various wall sections and spandrel panels throughout the project.	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 180 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
14	Basement 1	Water had entered the interior of the building at the stormwater outlet pits leading to ground level to the street.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>



Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
15	Front entrance	The pipework was observed to be unsupported.	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 90 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
16	Unit balconies	There are horizontal components on the air conditioner condenser units which create toeholds/steps between 150mm and 760mm from the balcony surface.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and drawings prepared for the raised defect to project intervene team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and registered specialist</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii) detail the specific building work necessary to meet the codes and relevant standard.</li> <li>iv) be prepared with consideration to relevant design and installation specification and manufacture's recommendation</li> </ul> <p>Stage 2.</p> <p>Rectify the works in accordance with the specialist report and drawings provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>

### **Conditions of this Order**

9. Making good any consequential damage caused in carrying out the works specified in this Order.
10. 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**

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



Elizabeth Stewart  
**A/Executive Director**

**Building Operations and Assistant Building Commissioner**

# Reasons for the Building Work Rectification Order

1. I, Elizabeth Stewart, have formed a reasonable belief that the Development has a serious defect based on the following.
2. I have formed this belief after reviewing an Inspection Report (dated 8 November 2022) prepared by Authorised Officers of the Department of Customer Service, who conducted an inspection of the Development by consent of the owners corporation on 13 September 2022.
3. 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).

## Reason why defect is a serious defect

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

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
1	Waterproofing Systems	Inadequate falls of the Roof to drainage points and large volumes of ponding were observed to roof areas. Additionally, lift over run and fire stair over runs have not been waterproofed.	The inadequate waterproofing on the Roof is attributable to a failure to comply with the Australian Standard and Building Code provisions referenced in column 5. These require falls in finishes to ensure water drains to the drainage outlet and that roofs and external walls prevent the penetration of water.	<ul style="list-style-type: none"> <li>• Australian Standard 4654.2-2012, Waterproofing Membranes for External Above Ground Use - Design and Installation, Section 2 - Design and installation;</li> <li>• 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; and</li> <li>• Deemed-to-Satisfy provision F1.4 is a pathway that can</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				satisfy the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4.
2	Waterproofing Systems	It was observed in multiple units throughout the complex that there is an inadequate termination height of waterproofing systems at balcony and entry doors. Additionally, an absence of waterproofing membrane and water bar was observed to rear of doors.	The inadequate waterproofing system termination details at the balcony and entry doors is attributable to a failure to comply with the Australian Standard and Building Code provisions referenced in column 5. These require adequate sub-sill flashing and a membrane termination height above the finished surface level.	<ul style="list-style-type: none"> <li>Australian Standard 4654.2:2012, Waterproofing Membranes for External Above Ground Use, Section 2 - Design and installation, 2.8 Termination of membranes, 2.8.3 Doors and windows onto external waterproofed areas, and 2.8.1 Upward terminations, 2.8.1.1. Height;</li> <li>Australian Standard 1170.2:2002 Structural design actions, Part 2 Wind Actions, Section 2 Calculation of Wind Actions, 2.1 General; and</li> <li>AS 4654.2 and 1170.2 appear as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing.</li> </ul>
3	Waterproofing Systems	No overflow provisions were observed on the Balconies across Multiple Units throughout the complex.	The lack of overflow provisions is attributable to a failure to comply with the Australian Standard provision referenced in column 5.	<ul style="list-style-type: none"> <li>Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
			This requires stormwater to be collected and conveyed in gutters and downpipes.	weatherproofing - FP1.4 Weatherproofing <ul style="list-style-type: none"> <li>• Building Code of Australia (Vol 1): Section F Health and Amenity, Part F1 Damp and weatherproofing - FP1.3 Rainwater Drainage System</li> <li>• Australian/ New Zealand Standard 3500.3: Plumbing and stormwater drainage, Section 5 Surface drainage systems, 5.4 General method, Clause 5.4.1 Basis</li> </ul>
4	Waterproofing Systems	The substrate in basement 1 was not smooth and not adequate to accept the application of the liquid applied waterproof membrane, this was observed in multiple locations in basement 1.	The defective substrate is attributable to a failure to comply with the Australian Standard and Building Code provisions referenced in column 5. These require substrates for liquid-applied membranes to result in smooth surfaces, without protrusions, to allow for adequate waterproofing which prevents water penetration.	<ul style="list-style-type: none"> <li>• 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;</li> <li>• 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; and</li> <li>• 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</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				Weatherproofing, Performance Requirement FP1.4.
5	Fire Safety Systems	The fire damper in the Fire Pumproom was observed to have not been correctly installed, with less than 75mm of clearance from the soffit and wall. Additionally, it passes through hollow block walls which have not been framed and enclosed with fire rated materials.	The penetration detailing and inadequate installation of the fire damper is attributable to a failure to comply with the Building Code provisions referenced in column 5. These require that building elements provided to resist the spread of fire be protected so that an adequate level of performance is maintained where penetrations occur for building services.	<ul style="list-style-type: none"> <li>• BCA Volume One, Section 3 Fire resistance, Part C3 Protection of openings, Deemed-to-satisfy provision C3.15 Openings for service installations; and</li> <li>• Deemed-to-satisfy provision C3.15 Openings for service installations is a pathway that can satisfy the BCA Volume One, Section C Fire resistance, Performance Requirement CP8.</li> </ul>
6	Fire Safety Systems	Several penetrations in the Main Switchroom in Basement 1 were observed to have been installed without fire collars. PVC drainage pipes were observed to enter the southern wall, extending through the northern wall.	The inadequate fire-resistant sealing is attributable to a failure to comply with the Building Code and Australian Standard provisions referenced in column 5. These require that building elements provided to resist the spread of fire be protected so that an adequate level of performance is maintained where penetrations occur for building services.	<ul style="list-style-type: none"> <li>• BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations;</li> <li>• BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Performance Requirement CP8 Fire protection of openings and penetrations; and</li> <li>• AS/NZS 3000 – 2018 Wiring rules, Section 2 General arrangement, control and protection, 2.10 Switchboards, 2.10.2 Location of switchboards, 2.10.2.1 General.</li> </ul>

<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>
7	Fire Safety Systems	The installation of the diesel pump exhaust was observed to be defective.	The defective diesel pump exhaust installation is attributable to a failure to comply with the Australian Standard provisions referenced in column 5. These require the installation of engine pump-sets to be capable of safely discharging the pump exhaust gases, with the discharge outlet not less than 2.7m above a road or open space.	<ul style="list-style-type: none"> <li>Australian Standard AS/NZS 1668.1, The use of ventilation and air conditioning in buildings, Part 1: Fire and smoke control in buildings and 6.11.3 External pump rooms or enclosures.</li> </ul>
8	Fire Safety Systems	Unstopped penetrations were observed between the adjoining wall of the fire compartment and the fire isolated staircase at the Fire Stairs.	The inadequate installation of penetrations within the Fire Stairs is attributable to a failure to comply with the Building Code provisions referenced in column 5. These require that building elements provided to resist the spread of fire be protected so that an adequate level of performance is maintained where penetrations occur for building services.	<ul style="list-style-type: none"> <li>BCA Volume One, Section C Fire Resistance, Performance Requirement CP2 Spread of Fire and CP8 Fire Protection of openings and penetrations.</li> </ul>
9	Fire Safety Systems	Service riser penetrations across the building were observed without adequate fire collars or compliant fire stopping measures.	The inadequate fire-resistant sealing is attributable to a failure to comply with the Building Code provisions referenced in column 5. These require that building elements provided to resist the spread of fire be protected so that an adequate level of performance is maintained where penetrations occur for building services.	<ul style="list-style-type: none"> <li>BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations; and</li> <li>BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Performance Requirement CP8 Fire protection of openings and penetrations.</li> </ul>



<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>
10	Fire Safety Systems	Door jambs in the Basement 1 fire stairs were observed to have not been adequately core filled and having been installed with large gaps around fire frames.	The inadequate fire-proofing of doors at the Basement 1 fire stairs are attributable to a failure to comply with the Building Code provision referenced in column 5. This requires that building elements provided to resist the spread of fire be protected so that an adequate level of performance is maintained where penetrations occur for building services.	<ul style="list-style-type: none"> <li>• BCA Volume One, Section C Fire Resistance, Performance Requirement CP2 Spread of Fire and CP8 Fire Protection of openings and penetrations.</li> </ul>
11	Structural Systems	Hollow voids within concrete walls and associated permanent plastic formwork were observed at Basement 1. The voids appear to be a wholesale defect in the concrete placement throughout the development and are highly likely to compromise the structural integrity and reinforcement concrete cover.	The observed voids and inadequate compaction are attributable to a failure to comply with the Building Code provision referenced in column 5. This requires buildings or structures to withstand, with appropriate degrees of reliability, reasonably expected design actions and be designed to sustain local damage.	<ul style="list-style-type: none"> <li>• BCA Volume 1: Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1.</li> </ul>
12	Structural Systems	Cracking was observed to the basement slabs and soffits across Basement 1.	The observed cracking is attributable to a failure to comply with the Australian Standard and Building Code provisions referenced in column 5. These require cracking to be controlled so that structural performance is 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; and</li> <li>• Australian Standard 3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to-Satisfy provision</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				B1.4 - Determination of structural resistance of materials and forms of construction.
13	Building Enclosure	Composite aluminium cladding has been installed to various wall sections and spandrel panels throughout the Development.	The use of aluminium composite panels with a core compromised of greater than 30% of polyethylene is attributable to a failure to comply with the Building Code provisions referenced in column 5. These require buildings of Type A construction to have external walls, common walls and flooring to be non-combustible. Additionally, a notice was issued on 10 August 2018 by the Commissioner of Fair Trading NSW under s 9(1) of the <i>Building Products (Safety) Act 2017</i> to prohibit the use of aluminium composite panels with a core compromised greater than 30% polyethylene, this was enacted as retrospective legislation.	<ul style="list-style-type: none"> <li>• BCA Volume One, Section C Fire resistance, Specification C1.1 Fire Resisting Construction, Deemed-to-Satisfy Provisions 3 Type A Fire Resisting Construction; and</li> <li>• Deemed-to-Satisfy Provision Specification C1.1 is a pathway that can satisfy the BCA Volume One, Section C Fire Resistance, Performance Requirement CP2 Spread of Fire.</li> </ul>
14	Building Essential Services	Water had entered the interior of the building at the stormwater outlet pits leading to ground level.	The penetration of water is attributable to a failure to comply with the Building Code provision referenced in column 5. This requires that roofs and external walls prevent the penetration of water that could cause unhealthy or dangerous conditions, loss of amenity and undue dampness or deterioration of building elements.	<ul style="list-style-type: none"> <li>• BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing.</li> </ul>

<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>
15	Building Essential Services	Pipework at the front entrance was observed to be unsupported.	The inadequate pipe system installation is attributable to a failure to comply with the Australian Standard provisions referenced in column 5. These require water services installed above ground to be retained in position by brackets, clips or hangers.	<ul style="list-style-type: none"> <li>• Australian Standard 3500.1:2018 Plumbing and drainage, Part 1: Water services, Section 5 Installation of cold-water services, 5.6 Support and fixing above ground, 5.6.1 General; 5.6.2 Brackets, clips and hangers; 5.6.3 Limitations of pipe supports; 5.6.4 Spacing; and</li> <li>• Australian Standards 2419.1:2017 Fire hydrant installations, Part 1: System design, installation and commissioning, Section 10 Pipe supports, 10.5 Requirements for pipe-support components, 10.5.4 U-hangers/saddles (clips); 10.7 Location of supports, 10.7.1 Horizontal pipework; 10.7.2 Vertical pipework.</li> </ul>
16	Building Essential Services	Horizontal components on the air conditioner condenser units on the Unit Balconies create toeholds between 150mm and 760mm from the balcony surface.	The horizontal elements observed near the Unit Balcony balustrades are attributable to a failure to comply with the Building Code provisions referenced in column 5. These require that horizontal elements between 150mm and 760mm above the floor must not facilitate climbing where people could fall from a height.	<ul style="list-style-type: none"> <li>• BCA Volume One, Section D Access and egress, Part D2 Construction of exits, deemed to satisfy provision D2.16 Barriers to prevent falls, Table D2.16a Barrier construction 3. Barrier climb ability (c); and</li> <li>• Deemed-to-Satisfy provision D2.16 and table D2.16a Barrier construction, is a pathway that can satisfy the BCA Volume</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				One, Section D Access and egress, Part D Damp and Weatherproofing, Performance Requirement FP1.7.

4. I am of the view the periods above for Defect 1 through to Defect 16 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.
5. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the defect and failure to adhere to the Building Code of Australia, Australian Standards & 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 the building work rectification order to carry out the building work described above within the specified period.
6. I have considered all of the circumstances. I accept that the Order requires considerable further building 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 in having the development constructed to the Building Code of Australia and Australian Standards.

#### **Other matters considered relevant**

7. I am aware that obtaining reports from third parties will pose time constraints and costs on the developer and the impact on the period of time it will take to give effect to the rectification work. However, I balance this risk against the serious defects outlined in this Order and the serious consequences these serious defects pose.
8. I am aware that there are residents occupying this location as the Building is completed which will delay rectification work.

#### **Consideration of written representations**

9. On 8 June 2023 a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Private Certifiers Australia Pty Ltd, and Owners Corporation.
10. The served parties were invited to provide written representations relating to the Order to the Department. The Developer, Office of the Registrar General, Private Certifiers Australia Pty Ltd, and Owners Corporation were given until 29 June 2023, and the Local Council was given until 27 June 2023. The following was received:
  - (a) Response from Private Certifiers Australia Pty Ltd on 8 June 2023;
  - (b) Submissions from Gillard Consulting Lawyers on behalf of the Developer on 29 June 2023;
  - (c) Response from the Owners Corporation acknowledging receipt of the NOI.
11. In relation to the response from Private Certifiers Australia Pty Ltd, they stated that:

- (a) the certifier, Wayne Treble had retired, was no longer accredited, and did not work at the company;
  - (b) The company had no records of issuing certificates for the development;
  - (c) They believe the certifier was from Private Building Certifiers Pty Ltd which has since been placed into administration and wound up.
12. I have considered that response and note the following:
- (a) According to the Construction Certificate and Final Occupation Certificate, the certifier was Wanye Treble of Private Building Certifiers Pty Ltd ABN 63 701 967 756.
  - (b) Private Building Certifiers Pty Ltd had their ABN cancelled in 2018.
13. In relation to the submissions from Gillard Consulting Lawyers on behalf of the Developer, they stated:
- (a) In relation to serious defects 1, 2, 4-7, 9-12, and 14-16 they would consent to the wording in the proposed form by way of an undertaking;
  - (b) In relation to serious defect 3 they would consent to the wording in the proposed form by way of an undertaking, subject to the response to matter raised in relation to serious defect 13;
  - (c) In relation to serious defect 8, they rely upon the Installation Certificate and the Structural Certificate issued by Metal Stairs Pty Ltd and Global Engineers Pty Ltd respectively, and that they were likely to consent to an undertaking which has '*appropriately particularised required actions*';
  - (d) In relation to serious defect 13, the composite aluminium cladding was compliant and not prohibited at the time of installation, and is therefore not a serious defect;
14. I have considered those submissions and note the following:
- (a) In relation to serious defect 13, there were relevant performance requirements in the NCC which were applicable at the time the building was constructed. These could be met by either meeting the deemed to satisfy (DTS) requirements, or through a performance solution. Neither the DTS requirements nor the performance solution have been met.
  - (b) In relation to serious defects 1-12, and 14-16 no undertaking has since been provided.
15. Having regard to the submissions by the Developer, I am satisfied that it is appropriate to give the Order.

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

16. I have considered all of the circumstances. I accept that the order requires considerable further 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 in having the development constructed to the Building Code of Australia and Australian Standards with respect to building elements.
17. 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 Australian Standards and Building Code of Australia, and the benefits arising from remediating them and I find that it is appropriate, in the exercise of my discretion, to require JT Interior Lining (NSW) Pty Ltd (ACN 112 579 147) to carry out the building work described, within the period specified in the above Order.
18. I have considered and 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 at the development in having the building constructed to the Building Code of Australia and Australian Standards. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the defect and failure to adhere to the Building Code of Australia, Australian Standards and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to make the building work rectification order to carry out the building work described above within the specified period

### **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,**
  - **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).