

IMPORTANT:

Work required by this Order cannot be carried out until any Stop Work Orders for the building have been revoked or modified to allow the work to be carried out.

Attn: Robert Huang
PSR Crownview Investment Pty Ltd
(ACN 601 764 578)
Suite 1301, 51 Crown Street
Wollongong NSW 2500

Service: By express post and by email

DATE: 20 March 2024

Building Work Rectification Order

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

PSR Crownview Investment Pty Ltd (ACN 601 764 578) (Crownview) is being given this Building Work Rectification Order (Order) in relation to 373 Crown Street & 2 Parkinson Street, Wollongong NSW 2500 (Lot 100 DP 1214547) (the Development).

Crownview 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 Development, 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. Mr David Chandler OAM, NSW Building Commissioner, Department of Customer Service is an authorised delegate of the Secretary of the Department.
5. PSR Crownview Investment Pty Ltd (ACN 601 764 578) (**Crownview**) is being given this Building Work Rectification Order (**Order**) in relation to 373 Crown Street & 2 Parkinson Street, Wollongong NSW 2500 (Lot 100 DP 1214547) (the **Development**) for the purposes of section 4(c) 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.
7. On 29 February 2024, the NSW Building Commissioner, Mr David Chandler OAM, and authorised officer, Mr Michael Hall, carried out an inspection of the building for the purposes of carrying out sample destructive testing of the bathroom and balcony areas.
8. On the 08 March 2024 the Notice of Intention to issue this Building Work Rectification Order was given in accordance with section 44 of the RAB Act.

Requirements in relation to Serious Defects

9. I, Mr David Chandler OAM, under section 33 of the Act, require you Crownview 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

Column 1	Column 2	Column 3	Column 4	Column 5
Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
1	All balconies	The vertical upward termination heights of the waterproofing on the balconies at the external walls is not sufficient if subjected to the strong winds associated with being close to an ocean. Strong winds will blow wind driven rain over the vertical termination height of the waterproofing.	<p>The vertical upward termination heights of the waterproofing are required to be installed in accordance with the Building Code of Australia and Appendix A of AS 4654.2.</p> <p>Stage 1 Submit a written report to the Building Commission NSW via email to buildingcommissioner@customerservice.nsw.gov.au.</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced waterproofing specialist approved by the Building Commission NSW, ii) be prepared with consideration to this Order and the Reasons for this Order; and, iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1 2 months</p> <p>Stage 2 6 months</p>

Column 1	Column 2	Column 3	Column 4	Column 5
Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
2	Glass balustrades	Many balcony balustrade glass assemblies do not contain markings to confirm if the glazing is compliant.	The balcony balustrade glass assemblies are required to be properly marked in accordance with the Building Code of Australia and clause 5.23.3 of AS 1288 or be replaced with compliant glazing.	3 months
3	All bathroom areas	The notched vertical channels in the adhesive behind the wall tiles in the shower area will allow moisture to travel down the wall behind the tile into concealed spaces causing the notched channels at the base of the wall to fill with water and to corrode the structure, fittings and linings.	<p>The bathroom wall tiling is to be installed in accordance with the Building Code of Australia and clause 5.6 of AS 3958.</p> <p>Stage 1 Submit a written report to the Building Commission NSW via email to buildingcommissioner@customerservice.nsw.gov.au.</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced waterproofing specialist approved by the Building Commission NSW, ii) be supported by water testing results for at least 10 bathrooms, iii) be prepared with consideration to this Order and the Reasons for this Order; and, iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	<p>Stage 1 2 months</p> <p>Stage 2 6 months</p>

Column 1	Column 2	Column 3	Column 4	Column 5
Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.	
4	Roof	Roof flashings have not been installed correctly, steel fixings are rusting due to their location to the ocean and mastic joints have been used instead of proper plumbing which will lead to undue dampness or deterioration of building elements.	Plumbing and drainage work is to be installed in accordance with Part F1 of the Building Code of Australia. Stage 1 Submit a written report to the Building Commission NSW via email to buildingcommissioner@customerservice.nsw.gov.au . The written report required to be submitted must: <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced waterproofing specialist approved by the Building Commission NSW, ii) be prepared with consideration to this Order and the Reasons for this Order; and, iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	Stage 1 2 months Stage 2 3 months

Column 1	Column 2	Column 3	Column 4	Column 5
Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.	

Conditions of this Order

10. Make good any consequential damage caused in carrying out the works specified in this Order.
11. 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).
12. Work required by this Order cannot be carried out until any Stop Work Orders have been revoked.

Duration of this Order

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



Mr David Chandler OAM

Building Commissioner
Building Commission NSW

Reasons for the Building Work Rectification Order

14. I, Mr David Chandler OAM, have formed a reasonable belief that the Development has the serious defects based on the following.
15. I have formed this belief after carrying out destructive testing on 29 February 2024 of the bathroom and balcony areas in accordance with section 24 of the Act.
16. My reasonable belief is also based upon the following matters, set out in Table 2 below in respect of each serious defect identified in column 1 of Table 2 (where that reference corresponds to the reference set out in Table 1 above).

Table 2 – basis of reasonable belief as to serious defects

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
1	Waterproofing	The vertical upward termination heights of the waterproofing on the balconies at the external walls is not sufficient for a building which will be subjected to the strong winds associated with being close to an ocean.	The applicable version of the Building Code of Australia requires weatherproofing of a roof and <i>external wall</i> (including openings around <i>windows</i> and doors) to prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants and undue dampness or deterioration of building elements.	Clause FP1.4 of the National Construction Code Building Code of Australia Volume One and AS 4654.2.
2	Building enclosure	The balcony balustrade glass assemblies do not contain markings to confirm if the glazing is compliant.	The applicable version of the Building Code of Australia requires glazing to be identified with markings.	Clause B1.4 of the National Construction Code Building Code of Australia Volume One and AS 1288.
3	Waterproofing	The notched vertical channels in the adhesive behind the wall tiles in the shower area will allow moisture to travel down the wall behind the tile into concealed spaces	The applicable version of the Building Code of Australia requires wet areas to protect the structure of the building. To maintain the amenity of the occupants, water must also be prevented from penetrating behind	Clause FP1.7 of the National Construction Code Building Code of Australia Volume One and AS 3958:2023.

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		causing the notched channels at the base of the wall to fill with water and to corrode the structure, fittings and linings.	fittings and linings, and into concealed spaces of <i>sanitary compartments</i> , bathrooms, laundries and the like.	
4	Building enclosure	Roof flashings have not been installed correctly, steel fixings are rusting due to their location to the ocean and mastic joints have been used instead of proper plumbing which will lead to undue dampness or deterioration of building elements.	A roof must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants and undue dampness or deterioration of building elements.	Part F1 of the Building Code of Australia.

17. I am of the view that the time periods set out in column 5 of Table 1 for Defects 1 through 4 (inclusive) are reasonable periods for compliance in all the circumstances for the work 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 give effect to the rectification work.
18. 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.
19. 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

20. 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.

Consideration of written representations

21. I have considered the representations received from Robert Huang from PSR Crownview Investment Pty Ltd dated 15 March 2024 pursuant to section 47 of the Act.

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

22. 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 Crownview to carry out the building work described, within the period specified in the above Order.
23. 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—

- (e) the fire safety systems for a building within the meaning of the Building Code of Australia,
- (f) waterproofing,
- (g) 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),
- (h) a component of a building that is part of the building enclosure,
- (i) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the Building Code of Australia,
- (j) 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—

- (k) the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out,
- (l) 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,
- (m) the principal contractor for the building work within the meaning of the Environmental Planning and Assessment Act 1979,
- (n) 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,
- (o) 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).