

Alset Design & Development Pty Ltd  
ACN 132 568 533  
Suite 706, 289-293 King Street  
MASCOT NSW 2020

Service: By express post and by email [REDACTED]

DATE: 21 March 2024

## Building Work Rectification Order

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

Alset Design & Development Pty Ltd (ACN 132 568 533) is being given this Building Work Rectification Order (Order) in relation to 5 Mulkarra Avenue, Gosford NSW 2250 (SP 98699).

Alset Design & Development Pty Ltd 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.

#### Requirements in relation to Serious Defects

1. I, Elizabeth Stewart, under section 33(1)(b) of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*, require you **Alset Design & Development Pty Ltd (ACN 132 568 533)** to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each serious defect **5 Mulkarra Avenue, Gosford NSW 2250 (SP 98699)** 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.	External common area, all levels, balcony, rooftop, podium planter/ garden	<p>1. Waterproofing membrane to the planter boxes were cracked and damaged.</p> <p>2. No evidence of a waterproofing membrane terminating a minimum 100 mm above the soil level within the rooftop planter boxes.</p> <p>3. No membrane applied to the outer face of the cement render lining to prevent water related damage to the finished surfaces.</p> <p>4. The membrane did not have a visible compliant termination detail.</p> <p>5. No protection boards were visible.</p>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>
2.	Unit 20, all levels, level 6, balcony	The horizontal floor surface does not have adequate slope to the drainage outlet/s causing accumulation of excess water throughout the area.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p>	<p>Stage 1 – 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
			<p>Submit a written report and designs to rectify the serious.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
3.	Unit 20, level 6, all levels, balcony, whole of site	Efflorescence in balcony tiles and external surfaces.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>
4.	Unit 20, level 6, level 1, balcony, courtyard	1. The balconies to Sole Occupancy Units had no visible overflow provisions.	<p>Within the time period specified in column 5, Stage 1.</p>	Stage 1 – 60 days

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
		2. Podium terrace had no visible overflow provisions.	<p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	Stage 2 – 120 days
5.	Internal common area (upper), level 6, roof	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>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>

<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>
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
6.	Unit 12, level 4, balcony,	No drainage provided in unit balcony to collect surface water or falls to the nearest drain outlet.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>
7.	Basement/ ground floor common area, basement 1, basement carpark	Inadequate falls and number of drainage outlets have been installed specifically to eastern corner of the carpark.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>
8.	Unit 20, level 6, ensuite, toilet/ bathroom	Floor tiles surfaces graded less than the minimum required gradient and ponding on tile surfaces occurs.	<p>Within the time period specified in column 5, Stage 1.</p>	Stage 1 – 60 days

<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>
			<p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	Stage 2 – 120 days
9.	Unit 3, unit 14, all levels, entry, living area	A smoke detector/s has not been installed to a habitable space.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
10.	Internal common area (upper), level 6, stairs (fire isolated)	Fire Hydrant gauge at the hydraulically most disadvantaged fire hydrant exceeds 1200kPa.	<p>Within the time period specified in column 5, Stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			<p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
11.	Internal common area (upper), all levels, stairs (fire isolated)	Unobstructed width between walls in the fire isolated corridor measured less than 1m in width.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
12.	Internal common area (upper), all levels, whole of site	The fire door frames were hollow when tapped indicating voids exist in the grout behind the frames that are not solid core filled.	<p>Within the time period specified in column 5, Stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

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			<p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
13.	Interna common area (upper), all levels, whole of site	Multiple service penetrations were inadequately fire rated or protected.	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>



<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>
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
14.	Basement/ ground floor common area, ground floor, basement (common area), basement carpark	<p>1. Fire stair not separated from rainwater pump room and fire pump room.</p> <p>2. Services running through fire stair.</p> <p>3. The fire isolation wall does not extend to the underside of the concrete slab above.</p>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
15.	Basement/ ground floor common area, ground floor, fire pump room	Within the Pump Room, the path of travel clearance between equipment, services and walls was less than 1m.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
16.	Basement/ ground floor common area, ground floor, fire pump room	1. The hydrant pumproom walls have not been provided with required fire rated construction.	Within the time period specified in column 5, Stage 1.	Stage 1 – 60 days

<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>
		<p>2. The window openings to the fire hydrant pumproom have not been adequately fire protected.</p> <p>3. The framed aluminium louvres installed to the fire hydrant pump room are not fitted with any form of fire protection.</p>	<p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 2 – 60 days</p>
17.	External common area, ground floor, front entry	Signage is not displayed in the pump room or adjacent to fire hydrant booster assembly pressure gauge to indicate the hydrant booster is connected in series with the fixed onsite pumps.	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
18.	External common area, ground floor, front entry	<p>1. Fire Hose reels connected to the potable metered water service.</p> <p>2. Water meter and isolation valves installed at the property boundary.</p> <p>3. Water Meter Isolation valves have not been locked in the open position.</p>	<p>Within the time period specified in column 5,</p> <p>Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

<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>
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
19.	External common area, ground floor, front entry	Fire hydrant block plan installed does not provide all the information outlined in AS2419.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
20.	Internal common area (upper), all levels, foyer/lobby	<ol style="list-style-type: none"> <li>1. Flexible duct connection to each floor for ventilation above gas cupboard provided with no fire dampers.</li> <li>2. The mechanical ductwork had been installed that penetrates fire isolating walls where no fire damper has been installed within the duct.</li> </ol>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

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			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
21.	Unit 12, level 4, eastern side	Uncontrolled cracking in the lintels above windows.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 90 days</p>
22.	External common area, level 6, rooftop	<p>1. Uncontrolled cracking of 2mm to 4mm in the rooftop slabs and soffits.</p> <p>2. Some cracks have migrated through the full depth of the slab.</p>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</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
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
23.	Internal common area (upper), all levels, stairs (fire isolated)	Mortar joints to the structural masonry walls were not solid filled or fully bedded.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 90 days</p>
24.	Basement/ ground floor common area, basement 3, basement 2, basement 1, basement carpark	<p>1. Uncontrolled cracking of 2mm to 4mm in the basement slabs.</p> <p>2. Some cracking has occurred adjacent to drainage pits.</p> <p>3. Cracking has led to a degradation in the concrete</p>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 90 days</p>

<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>
		substrate and developed whole in the slab.	Submit a written report and designs to rectify the serious defect.  Stage 2.  Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
25.	Basement/ ground floor common area, basement 2	Exposed and unprotected reinforcement was evident in the slab-on- ground in the basement.	Within the time period specified in column 5, Stage 1.  Submit a written report and designs to rectify the serious defect.  Stage 2.  Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days  Stage 2 – 90 days
26.	Unit 3, unit 14, unit 12, all levels, whole of site	1. Water ingress was evident through windows.  2. Staining on the window frames indicating possible non-compliant window system.  3. Moisture readings taken at the windowsill level indicated a	Within the time period specified in column 5, Stage 1.  Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.	Stage 1 – 60 days  Stage 2 – 120 days

<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>
		reading of over 50% moisture content.	Submit a written report and designs to rectify the serious defect.  Stage 2.  Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
27.	This defect has been removed.			
28.	Internal common area (upper), level 6, whole of site	No safe access system has been provided to the rooftop plant areas.	Within the time period specified in column 5, Stage 1.  Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.  Submit a written report and designs to rectify the serious defect.  Stage 2.  Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days  Stage 2 – 60 days

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29.	Internal common area (upper), all levels, whole of site	The stairs did not have slip resistant nosing strips installed.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
30.	This defect has been removed.			
31.	Unit 3, basement 3, balcony	Connection of downpipes to the surface water drainage system is open to the atmosphere and surcharges at the outlet.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 120 days</p>



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			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
32.	Unit 3, all levels, level 3, balcony	Condensate drain serving the outdoor unit not connected to a tundish or approved nearest drainage in balcony.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
33.	Unit 12, level 4, balcony	Hot water unit located within 300mm of the door opening.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

<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>
			Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
34.	Internal common area (upper), all levels, corridor, lift lobby, sole occupancy unit (common area)	Insufficient ventilation in the gas meter cupboards throughout the building.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
35.	Internal common area (upper), all levels, foyer/ lobby	Flexible duct connection to each floor for ventilation above gas cupboard provided with no fire dampers.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

<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>
			<p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
36.	Basement/ ground floor common area, basement 2, basement 3, basement carpark	Sewer drainage pipework connection has been installed within the 2.5m of the base of the stack.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
37.	Internal common area (upper), level 2, ground floor, foyer/ lobby, electrical (EDB sub) room/ cupboard	<p>1. Cables not correctly installed in cable tray.</p> <p>2. Fixings were spaced to far apart to adequately support cables.</p>	<p>Within the time period specified in column 5, Stage 1.</p> <p>Carry out inspections that will satisfy the department that all locations of this recurring defect have been identified.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

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			<p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	
38.	Internal common area (upper), ground floor, foyer/lobby	Inadequate clearance between main switchboard and other electrical switchboards and equipment in the main switchboard room.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p> <p>Stage 2.</p> <p>Rectify the serious defect in accordance with the written report and designs provided at stage 1.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>
39.	Basement/ ground floor common area, basement 2, basement carpark	The unobstructed height to the mechanical ductwork measured less than 2m from the floor to the underside of the duct at the lowest point.	<p>Within the time period specified in column 5, Stage 1.</p> <p>Submit a written report and designs to rectify the serious defect.</p>	<p>Stage 1 – 60 days</p> <p>Stage 2 – 60 days</p>

Serious Defect Reference Number	Location of Serious Defect	General description of Serious Defect	Requirement	Time for compliance with Requirement
			Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	
40.	External common area, basement 3, stairs (fire isolated)	Winder treads in lieu of a quarter landing, treads generally misaligned and inconsistent risers and goings.	Within the time period specified in column 5, Stage 1. Submit a written report and designs to rectify the serious defect.  Stage 2. Rectify the serious defect in accordance with the written report and designs provided at stage 1.	Stage 1 – 60 days  Stage 2 – 60 days

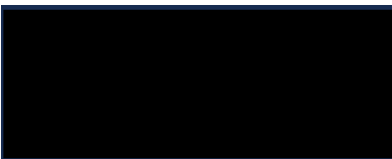
### Conditions of this Order

2. You must make good any consequential damage caused in carrying out the works specified in this Order.
3. A design that is prepared for a building element for building work or a design that is prepared for a performance solution for building work (including a building element) in this Order must comply with the *Design and Building Practitioners Act 2020 (DBP Act)*.
4. A suitably qualified person or specialist referred to in column 4 of Table 1 is a person who is a registered design practitioner under the DBP Act.

5. Where this Order requires you to submit a written report, then written report must:
- a. be prepared by a suitably qualified person or specialist; and
  - b. be prepared with consideration to this Order and the Reasons for this Order; and
  - c. detail the specific building work necessary to meet the codes and relevant standards specified in column 5 of Table 2; and
  - d. be prepared with consideration to other building work already constructed at the time of this Order and not the subject of a serious defect including designs for that building work, and other building work required by this Order including designs for that building work, and manufacturer's specifications and;
  - e. be submitted to Building Commission NSW via email to [ocaudits@customerservice.nsw.gov.au](mailto:ocaudits@customerservice.nsw.gov.au)

**Duration of this Order**

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



Elizabeth Stewart  
**Acting Executive Director Building Operations,**  
**Assistant Building Commissioner**  
Building Commission NSW  
Department of Customer Service

# Reasons for the Building Work Rectification Order

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*.
2. Under section 33 of the RAB Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation a residential apartment building or that a residential apartment building has a serious defect, they may order the developer of that building to carry out or not carry out specified building work or to take other specified action to eliminate, minimise or reduce the serious defect or potential serious defect.
3. Section 3 of the RAB Act defines a serious defect. Section 3 of the RAB Act also defines to term “building element” by reference to the *Design and Building Practitioners Act 2020 (DBP Act)*. Section 4 of the RAB Act defines the term “developer”. Section 6 of the RAB Act provides the building work to which the RAB Act applies. Relevant excerpts from sections 3, 4 and 6 of the RAB Act and section 6 of the DBP Act are set out in **Attachment A** to this Order.
4. Elizabeth Stewart, Acting Executive Director, Assistant Building Commissioner, Department of Customer Service, is an authorised delegate of the Secretary of the Department.
5. Alset Design & Development Pty Ltd (ACN 132 568 533) (**Developer**) is the developer of the residential apartment building known as 5 Mulkarra Avenue, Gosford NSW 2250 (SP 98699) (**the Development**) for the purposes of section 4(a) of the RAB 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 6 June 2023, with the consent of the owners corporation for the Development, a third party consultant engaged by the Department attended the Development (**Investigator**). The Investigator prepared a report on serious defects in the Development dated 17 June 2023 (**Inspection Report**).
8. I, Elizabeth Stewart, have formed a reasonable belief that the Development has serious defects based on the following:
9. I have reviewed the Inspection Report.
10. My reasonable belief is also based upon the following matters, set out in Table 2 below in respect of each serious defect identified in column 1 of Table 2 (where that reference corresponds to the reference set out in Table 1 above).

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

<b>Serious Defect Reference</b>	<b>Building element</b>	<b>Defect</b>	<b>Reason why defect is a serious defect</b>	<b>Applicable approved plan, Code or Australian Standard</b>
1.	Waterproofing Systems	<p>1. Waterproofing membrane to the planter boxes were cracked and damaged.</p> <p>2. No evidence of a waterproofing membrane terminating a minimum 100 mm above the soil level within the rooftop planter boxes.</p> <p>3. No membrane applied to the outer face of the cement render lining to prevent water related damage to the finished surfaces.</p> <p>4. The membrane did not have a visible compliant termination detail.</p> <p>5. No protection boards were visible.</p>	The inadequate membrane to the planter box is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>• Australian Standard AS4654.2: Waterproofing membranes for external above ground use: Section 2 – Design and Installation, 2.13 Planter Boxes.</li> <li>• Australian Standard AS4654.2 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.4.</li> <li>• Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4.</li> </ul>
2.	Waterproofing Systems	The horizontal floor surface does not have adequate slope to the drainage outlet/s causing	The inadequate falls on the floor is attributable to the failure to comply with the Building Code and	<ul style="list-style-type: none"> <li>• Australian Standard AS/NZS 3500.3 –2015 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface water</li> </ul>



Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
		accumulation of excess water throughout the area.	Australian Standards referenced in column 5.	<p>drainage system – Design, 5.3 Layout, 5. 3.1.2 Other than roof areas.</p> <ul style="list-style-type: none"> <li>• Australian Standard 4654.2 Waterproofing Membranes for External Above Ground Use, Section 2 Design and installation, 2.5 Substrate, 2.5.2 Falls.</li> <li>• Australian Standard AS4654.2 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Part F Damp and Weatherproofing, Performance Requirements FP1.3.</li> </ul>
3.	Waterproofing Systems	Efflorescence in balcony tiles and external surfaces.	The water seepage is attributable to the failure to comply with the Building Code and Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>• Australian Standard AS 4654.2 Waterproofing membrane systems for exterior use - Above ground level, Part 2: Design and installation</li> <li>• BCA Volume One, Section F Health and amenity, Part F1 Damp and weatherproofing, Performance Requirement FP1.4.</li> </ul>
4.	Waterproofing Systems	<p>1. The balconies to Sole Occupancy Units had no visible overflow provisions.</p> <p>2. Podium terrace had no visible overflow provisions.</p>	The lack of overflow provisions is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>• Australian Standard AS/NZS3500.3 Plumbing and Drainage. Part 3: Stormwater drainage, Section 3.8 Balcony and Terrace Areas.</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				<ul style="list-style-type: none"> <li>• Australian Standard AS/NZS3500.3 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface Drainage Systems –Design, Clause 5.3.1.1 Roof areas.</li> <li>• AS 3500.3 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing.</li> </ul>
5.	Waterproofing Systems	The substrate was not smooth and not adequate to accept the application of the liquid applied waterproof membrane.	The defective substrate to which the membrane has been applied is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>• Australian Standard AS4654.2 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 AS4654.2 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.4.</li> <li>• Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F1 Damp and</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>
				Weatherproofing, Performance Requirement FP1.4.
6.	Waterproofing Systems	No drainage provided in unit balcony to collect surface water or falls to the nearest drain outlet.	The defective installation is attributable to the failure to comply with the Building Code and Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS4654.2 and BCA Volume One, Part F Damp and Weatherproofing, Performance Requirements FP1.3.</li> </ul>
7.	Waterproofing Systems	Inadequate falls and number of drainage outlets have been installed specifically to eastern corner of the carpark.	The inadequate falls on the floor is attributable to the failure to comply with the Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS/NZS 3500.3 –2015 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface water drainage system.</li> </ul>
8.	Waterproofing Systems	Floor tiles surfaces graded less than the minimum required gradient and ponding on tile surfaces occurs.	The inadequate fall gradient is attributable to the failure to comply with the Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS 3740 Waterproofing of domestic wet areas, Section 3 Installation, Clause 3.3 Falls in floor finishes.</li> </ul>
9.	Fire Safety Systems	A smoke detector/s has not been installed to a habitable space.	The absence of a detector is attributable to the failure to comply with the Building Code and Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard 1670.1 Fire detection, warning, control and intercom systems - System Design, Installation and commissioning., Part 1 Fire, Clause 1.2 Application.</li> <li>Building Code of Australia (BCA) Volume One Section E Services and equipment, Part 2 Smoke hazard management – E2.2 General requirements.</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	Fire Hydrant gauge at the hydraulically most disadvantaged fire hydrant exceeds 1200kPa.	The inadequate fire hydrant gauge is attributable to the failure to comply with Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard 2419 Fire Hydrant Installation.</li> </ul>
11.	Fire Safety Systems	The unobstructed width between walls in the fire isolated corridor measured less than 1m in width.	The inadequate width is attributable to the failure to comply with the Building Code referenced in column 5.	<ul style="list-style-type: none"> <li>Building Code of Australia (BCA) Volume One, Section D Access and egress – Part D1.6 Dimensions of exist and paths of travel.</li> </ul>
12.	Fire Safety Systems	The fire door frames were hollow when tapped indicating voids exist in the grout behind the frames that are not solid core filled.	The voids in the grouted door frame is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS1905.1- Components for the protection of openings in fire-resistant wall Part 1: Fire resistant door sets, Section 5 Installation, 5.3 Metal doorframes in masonry walls, 5.3.2 Backfilling of metal door frames.</li> <li>Australian Standard AS1905.1 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors.</li> <li>Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors, is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section C Fire</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				resistance, Performance Requirement CP2.
13.	Fire Safety Systems	Multiple service penetrations were inadequately fire rated or protected.	The inadequate fire-resisting sealing to the penetration/s is attributable to the failure to comply with the Building Code referenced in column 5.	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Section C Fire Resistance, Performance Requirements <ul style="list-style-type: none"> <li>○ CP2 Spread of fire</li> <li>○ CP8 Fire protection of openings and penetrations</li> <li>○ Part C3 Protection of openings, Deemed-to-Satisfy provisions</li> <li>○ C3.12 Openings in floors and ceilings for services</li> <li>○ C3.15 Openings for service installations</li> </ul> </li> <li>• Deemed-to-satisfy provision C3.15 Openings for service installations is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Performance Requirement CP8.</li> </ul>
14.	Fire Safety Systems	1. Fire stair not separated from rainwater pump room and fire pump room.  2. Services running through fire stair.	The inadequate positioning of the fire stair and services and defective fire isolation wall is attributable to the failure to comply with the Building Code and Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Section C Fire resistance Specification C1.1 Fire-resisting construction.</li> <li>• Australian Standard 2419.1 – 2005 Fire hydrant installations</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>
		3. The fire isolation wall does not extend to the underside of the concrete slab above.		Section 6.4.2 Internal Pumprooms.
15.	Fire Safety Systems	Within the Pump Room, the path of travel clearance between equipment, services and walls was less than 1m.	The inadequate path of travel clearance is attributable to the failure to comply with the Building Code and Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Part D1: Provision for escape, D1.6.</li> <li>• Australian Standard 2941 – 2013 Fixed protection installation fire hydrant installations Section 11 - siting and installation.</li> </ul>
16.	Fire Safety Systems	<p>1. The hydrant pumproom walls have not been provided with required fire rated construction.</p> <p>2. The window openings to fire hydrant pumproom have not been adequately fire protected.</p> <p>3. The framed aluminium louvres installed to the fire hydrant pump room are not fitted with any form of fire protection.</p>	The inadequate fire protection to the hydrant pump room is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>• Australian Standard 2419.1 – 2005 Fire hydrant installations Section 6.4.2 Internal pumprooms.</li> <li>• Building Code of Australia (BCA) Volume One, Section C Fire resistance, Part C2 Compartmentation and separation, Deemed-to-Satisfy provision C2.12 Separation of equipment.</li> <li>• Australian Standard AS2419.1 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section E Services and equipment, Part E1.3 Fire hydrants.</li> <li>• Deemed-to-Satisfy provision E1.3 is a pathway that can satisfy the Building Code of Australia (BCA) Volume One,</li> </ul>

Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
				Section E Services and equipment, Part E1 Firefighting equipment, Performance Requirement EP1.3
17.	Fire Safety Systems	Signage is not displayed in the pump room or adjacent to fire hydrant booster assembly pressure gauge to indicate the hydrant booster is connected in series with the fixed onsite pumps.	The inadequate fire hydrant installation is attributable to the failure to comply with the Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard 2419.1 – 2005 Fire hydrant installations Section 7.6 Booster in Series with pumps.</li> </ul>
18.	Fire Safety Systems	1. Fire Hose reels to be connected to the potable metered water service.  2. Water meter and isolation valves installed at the property boundary.  3. Water Meter Isolation valves have not been locked in the open position.	The inadequate installation of padlocks to isolation valves that can prevent flow of water to the hose reels is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS2441 Installation of fire hose reels, Section 6 Water Supply, 6.2 Metered water supply.</li> <li>Australian Standard AS2441 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section E Services and equipment, Part E1.4 fire hose reels.</li> <li>Deemed-to-Satisfy provision E1.4 is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section E Services and equipment, Part E1 Firefighting equipment, Performance Requirement EP1.1.</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>
19.	Fire Safety Systems	Fire hydrant block plan installed does not provide all the information outlined in AS2419.	The inadequate fire hydrant installation is attributable to the failure to comply with the Australian Standard referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard 2419.1 – 2005 Fire hydrant installations Section 7.11 Block plan.</li> </ul>
20.	Fire Safety Systems	<p>1. Flexible duct connection to each floor for ventilation above gas cupboard provided with no fire dampers.</p> <p>2. Mechanical ductwork had been installed that penetrates fire isolating walls where no fire damper has been installed within the duct.</p>	The absence of a damper in a building element with a required FRL is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS4254.2 Ductwork for air handling systems in buildings Part 2: Rigid duct, Section 2 Duct construction and installation, 2.1 Ductwork, 2.1.1 General.</li> <li>Australian Standard AS1682.2 Fire, smoke and air dampers, Part 2; Installation, 5 Selection, 5.2 Fire dampers, 5.2.1 Integrity.</li> <li>Australian Standard AS4254 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Specification C1.10 Fire hazard properties, 5. Air-handling ductwork.</li> <li>Deemed-to-satisfy provision Specification C1.10 Fire hazard properties, 5. Air-handling ductwork is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Performance Requirement CP2.</li> </ul>
21.	Structural Systems	Uncontrolled cracking in the lintels above windows.	The cracking is attributable to the failure to comply with the Building	Building Code of Australia (BCA) Volume One, Section B Structure,



Serious Defect Reference	Building element	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
			Code and Australian Standards referenced in column 5.	Deemed-to-Satisfy provision B1.4 Determination of structural resistance of materials and forms of construction.
22.	Structural Systems	<p>1. Uncontrolled cracking of 2mm to 4mm in the rooftop slabs and soffits.</p> <p>2. Some cracks have migrated through the full depth of the slab.</p>	The cracking is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking.</li> <li>Australian Standard AS3600 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4 Determination of structural resistance of materials and forms of construction.</li> </ul>
23.	Structural Systems	Mortar joints to the structural masonry walls were not solid filled or fully bedded.	The defective mortar joints are attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard AS3700 Masonry structures, Section 12 Construction, 12.4.2 Mortar joints.
24.	Structural Systems	<p>1. Uncontrolled cracking of 2mm to 4mm in the basement slabs.</p> <p>2. Some cracking has occurred adjacent to drainage pits.</p> <p>3. Cracking has led to a degradation in the concrete</p>	The cracking is attributable to the failure to comply with the Building Code and Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking.</li> <li>Australian Standard AS3600 appears as a standard referenced in the Building Code of Australia (BCA) Volume One, Section B Structure, Deemed-to-</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>
		substrate and developed whole in the slab.		Satisfy provision B1.4 Determination of structural resistance of materials and forms of construction.
25.	Structural Systems	Exposed and unprotected reinforcement was evident in the slab-on- ground in the basement.	The unprotected reinforcement is a defect in a building element attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard AS3600 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, 4.10.3.7 Embedded items cover, 17.1.3 Handling, placing and compacting of concrete.
26.	Building Enclosure	1. Water ingress was evident through windows  2. Staining on the window frames indicating possible non-compliant window system.  3. Moisture readings taken at the windowsill level indicated a reading of over 50% moisture content.	The uncontrolled water ingress is attributable to the failure to comply with the Building Code referenced in column 5.	Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4.
27.	The defect has been removed.			

<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>
28.	Building Enclosure	No safe access system has been provided to the rooftop plant areas.	The absence of safe roof access is attributable to the failure to comply with the Building Code referenced in column 5.	Building Code of Australia (BCA) Volume One, Section D – D2.16 Barriers to prevent falls.
29.	Building Enclosure	The stairs did not have slip resistant nosing strips installed.	The missing nosing strips is attributable to the failure to comply with the Building Code referenced in column 5.	Building Code of Australia (BCA) Volume One, Section D – Access and egress – D2.13 Going and risers.
30.	This defect has been deleted.			
31.	Building Essential Services	Connection of downpipes to the surface water drainage system is open to the atmosphere and surcharges at the outlet.	The inadequate connection of downpipes to the surface water drainage system is attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard AS/NZS 3500.3 Plumbing and drainage Part 3 Stormwater drainage.
32.	Building Essential Services	Condensate drain serving the outdoor unit not connected to a tundish or approved nearest drainage in balcony.	The inadequate installation of the condensate drain is attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard 3500.2 Sanitary plumbing and drainage 13.15.
33.	Building Essential Services	Hot water unit located within 300mm of the door opening.	The inadequate clearance for the gas appliance in relation to any associated building opening is attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard AS/NZS 5601.1.

<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>
34.	Building Essential Services	Insufficient ventilation in the gas meter cupboards throughout the building.	The insufficient ventilation is attributable to the failure to comply with the Building Code referenced in column 5.	Building Code of Australia (BCA) Volume One, Section F Health and Amenity, Part F4 Light and Ventilation, Deemed-to-Satisfy Provision, Clause F4.5 Ventilation of Rooms.
35.	Building Essential Services	Flexible duct connection to each floor for ventilation above gas cupboard provided with no fire dampers.	The absence of fire dampers to the mechanical penetration/s is attributable to the failure to comply with the Building Code referenced in column 5.	<ul style="list-style-type: none"> <li>• Building Code of Australia (BCA) Volume One, Section C Fire Resistance, Performance Requirements <ul style="list-style-type: none"> <li>○ CP2 Spread of fire</li> <li>○ CP8 Fire protection of openings and penetrations</li> <li>○ Part C3 Protection of openings, Deemed-to-Satisfy provisions</li> <li>○ C3.12 Openings in floors and ceilings for services</li> <li>○ C3.15 Openings for service installations</li> </ul> </li> <li>• Deemed-to-satisfy provision C3.15 Openings for service installations is a pathway that can satisfy the Building Code of Australia (BCA) Volume One, Section C Fire resistance, Performance Requirement CP8.</li> </ul>
36.	Building Essential Services	Sewer drainage pipework connection has been installed	The inadequate pipe fall is attributable to the failure to comply	<ul style="list-style-type: none"> <li>• Australian Standard AS3500.2 – 3.4 Grades of drains 3.4.1 Minimum grade.</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>
		within the 2.5m of the base of the stack.	with the Australian Standards referenced in column 5.	<ul style="list-style-type: none"> <li>Australian Standard AS3500.2 - Sanitary plumbing and drainage clause 8.6.2.3 Restricted connection zones above the graded offset.</li> </ul>
37.	Building Essential Services	1. Cables not correctly installed in cable tray.  2. Fixings were spaced too far apart to adequately support cables.	The inadequately supported cable installation is attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard AS/NZS3000 Electrical Installations "Wiring Rules", Section 3 Selection and installation of wiring systems.
38.	Building Essential Services	Inadequate clearance between main switchboard and other electrical switchboards and equipment in the main switchboard room.	The inadequate clearance is attributable to the failure to comply with the Australian Standard referenced in column 5.	Australian Standard AS 3000 – 2007 Electrical Installations "Wiring Rules"– Clause 2.9.2.2.
39.	Building Essential Services	The unobstructed height to the mechanical ductwork measured less than 2m from the floor to the underside of the duct at the lowest point.	The inadequate height is attributable to the failure to comply with the Building Code referenced in column 5.	Building Code of Australia (BCA) Volume One, Section D Access and egress – Part D1.6 Dimensions of exist and paths of travel.
40.	Building Essential Services	Winder treads in lieu of a quarter landing, treads generally misaligned and inconsistent risers and goings.	The stair configuration and inconsistent risers and goings is attributable to the failure to comply with the Building Code referenced in column 5.	Building Code of Australia (BCA) Volume One, Section D Access and egress – Part D2.13 Goings and risers.

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

11. I am aware that the Development is occupied and this may delay the Developer doing the things ordered to be done by this Order. I have taken this into account when specifying the time periods in column 5 of Table 1. I am of the view the periods above for serious defects reference numbers 1 to 40 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by this Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.
12. The potential consequence of the serious defects set out in this Order are that they may negatively impact the amenity of the Development for owners and occupiers of the Development and may reduce the ability of the Development being used for its intended purposes by owners and occupiers of the Development such as a reduction in the habitability of apartments by their residents.
13. Considering the potential consequences, I give greater weight to the seriousness of each defect and failure to adhere to the Building Code of Australia, Australian Standards and the approved plans and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to make this Order requiring the Developer to carry out the building works or take the actions described above within the periods described above.
14. I have considered all of the circumstances. I accept that this Order requires considerable further building works and actions that are likely to be costly, and I give this consideration moderate weight. However, the cost to the Developer must be balanced against the benefit to the owners and occupiers of the Development in having the Development constructed according to approved plans, the Building Code of Australia and Australian Standards.
15. I am aware that obtaining reports from third parties required by this Order will pose time constraints and costs on the Developer. However, I balance these considerations against the serious defects outlined in this Order and the consequences these serious defects pose.

### **Consideration of written representations**

16. On 14 November 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, Certifier and Owners Corporation. The served parties were invited to provide written representations relating to the Order to the Department by 5 December 2023.
17. On the 5 December 2023, the solicitors for the Developer, provided representations to the Department on behalf of the Developer. The representation included the following information:
  - a) The Developer acknowledged the receipt of the correspondence from the Department dated 14 November 2023.
  - b) Submissions provided allowed the removal of defects that had been in the draft building work rectification order to be omitted from this order.

18. On the 1 December 2023, the strata manager for the Owners Corporation, provided written submissions by way of email on behalf of the Owners Corporation. The submission was taken into consideration by the department.

### **Conclusion**

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

### Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this Order within 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).