



Customer
Service

The Proper Officer
Australia YMCI Pty Ltd (ACN: 607 884 711)
Suite 36.01, Level 36
201 Elizabeth Street
SYDNEY NSW 2000

Service: to registered address and by email

12 February 2021

Building Work Rectification Order

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

Australia YMCI Pty Ltd (ACN: 607 884 711) is being issued with this Building Work Rectification Order in relation to the residential apartment building under construction at Ovation Quarter, 29 Carter Street, Lidcombe NSW 2151, (SP101328) (“the Building”).

This Order requires Australia YMCI Pty Ltd to carry out building work to eliminate, minimise, or remediate the serious defect or potential serious defect as set out in Schedule A to this Order.

Please read this Order carefully and comply with the Order and its conditions. You must comply with this Order within 28 days from the date of this Order and it will remain in force until such time as it is revoked by the Secretary.

Failure to comply with this Order or its conditions is a criminal offence.

A. Background

1. The Department of Customer Service (the Department) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the Act).
2. Australia YMCI Pty Ltd (ACN: 607 884 711) is the developer of the residential apartment building known as the Ovation Quarter, 29 Carter Street, Lidcombe NSW 2141 (SP101328) (“the Building”) for the purposes of s 4 of the Act.
3. David Chandler is an authorised delegate of the Secretary of the Department.
4. On 18 November 2020 and 18 January 2021, notices of a proposed building work rectification order were sent in accordance with sections 44 and 45 of the Act. The initial response from the developer indicated that they were intending to undertake remedial rectification to the matters raised in the notice that failed to comply with the minimum requirements of the Australian Standards and the National Construction Code.

The developer’s subsequent response provided a rectification proposal which does not address all of the serious defects identified in **Schedule A**, and requires certification. At the date of this Order, no representations have been received in response to the notices sent to City of Parramatta Council, the Principal Certifier or Registrar General.

B. Powers

5. Under s 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was or is being carried out in a manner that could result in a serious defect in relation to the Building, the Secretary, or their authorised delegate, may give a building work rectification order ordering the developer to carry out building work or refrain from carrying out building work to eliminate, minimise or remediate the serious defect or potential serious defect.
6. A “serious defect” is defined in s 3 of the Act as follows:
 - (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.

C. Grounds

7. On 15 September 2020 and 23 October 2020, Compliance Officers from the Department conducted an inspection of the Building.

8. During the inspections, the Compliance Officers observed building work that had been carried out that could result in serious defects in relation to the following building element:
 - 8.1. Waterproofing;
 - 8.2. Adhesion of wall tiles.
9. Further details of the building work and the nature of the serious defects and/or potential serious defects are provided in **Schedule A** to this Order.

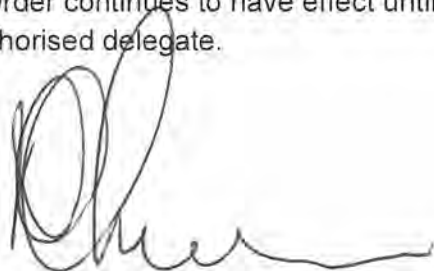
D. Order

10. I, David Chandler, an authorised delegate of the Secretary, reasonably believe that the building work was or is being carried out in a manner that could result in a serious defect and makes the following Orders:
 - 10.1. Australia YMCI Pty Ltd must rectify Defect Number 1 in Schedule A to ensure compliance with Australian Standard AS 4654.2 in respect of waterproofing in or on the Building by carrying out work in the nature of:
 - a) installing water stop angles in all internal balcony door subsills;
 - b) providing for sufficient height for termination of the waterproof membranes under all balcony doorsills;
 - c) installing suitable substrates to receive the application of the membrane system under all balcony doorsills.
 - 10.2. Australia YMCI Pty Ltd must rectify Defect Number 2 in Schedule A to ensure compliance with Australian Standard AS 4654.2 in respect of waterproofing in or on the Building by carrying out work in the nature of applying waterproofing membrane under the base wall with sufficient membrane upturn height.
 - 10.3. Australia YMCI Pty Ltd must rectify Defect Number 3 in Schedule A to ensure compliance with Australian Standard AS 4654.2 in respect of waterproofing in or on the Building rooftops by carrying out work in the nature of:
 - a) applying waterproofing membrane under:
 - (i) all machine fixing rails;
 - (ii) all post fixings;
 - b) applying waterproofing membrane to all upstand walls;
 - c) applying water proofing membrane to planter boxes.
 - 10.4. Australia YMCI Pty Ltd must rectify Defect Number 4 to ensure compliance with Australian Standard AS 3958.1 in respect of all wall tiles on the exterior of the Building by carrying out work in the nature of ensuring 90% coverage of tile adhesive.

11. Australia YMCI Pty Ltd must complete the rectification work required by Clause 9 within 28 days of this Order.
12. Australia YMCI must notify me, in writing, by email sent to ocaudits@customerservice.nsw.gov.au within 2 business days of the work required by Clause 9 being completed.

E. Duration of Order

This Order continues to have effect until it is complied with or until it is revoked by the Secretary, or an authorised delegate.

A handwritten signature in black ink, appearing to read 'David Chandler', with a large, stylized initial 'D'.

David Chandler
Building Commissioner
Department of Customer Service

Notes

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* (NSW) 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:
 - o the relevant local council,
 - o if the local council is not the certifier in relation to the building work—the principal certifier,
 - o if you are not the owner of the land concerned—the owner of the land concerned,
 - o the Registrar-General,
 - o if the order relates to a strata building—the relevant owners corporation,
 - o 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.

Schedule A

Building work and serious or potential serious defects

Defect number	Building element	Building work	Observations	Why is the building work a serious defect or potential serious defect?
1	Waterproofing	Construction of balcony doors onto external waterproofed areas	<p>On 15 September 2020 and 23 October 2020, Compliance Officers observed:</p> <ul style="list-style-type: none"> a. the balcony doors had no evidence of water stop angles at the internal balcony door subsill; b. insufficient height for termination of the waterproof membrane under the balcony doorsill, and c. the use of unsuitable substrates to receive the application of the membrane system. 	<p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> 1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard 4654.2 (waterproofing membranes for external above-ground use) 2.8.3 (doors and windows onto external waterproofed areas) and 2.5 (substrate) because of the following factors: <ul style="list-style-type: none"> a. there is no evidence of water-stop angles at the internal balcony door subsill; b. insufficient height for termination of the waterproof membrane under the balcony doorsill, and c. the use of unsuitable substrates to receive the application of the membrane system. 2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following: <ul style="list-style-type: none"> a. the inability to inhabit or use the building (or part of the building) for its intended purpose due to water egress, humidity and/or mould growth, or b. the destruction of the building or any part of the building due to water egress, humidity and/or mould growth.
2	Waterproofing	Construction of base walls	<p>On 15 September 2020 and 23 October 2020, Compliance Officers observed the following:</p> <ul style="list-style-type: none"> a. the waterproofing membrane was applied incorrectly over cladding 	<p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> 1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard 4654.2 (waterproofing membranes of external above-ground use), because of the following factors: <ul style="list-style-type: none"> a. waterproofing membrane applied incorrectly over cladding material instead of under the base wall, and

			<p>material instead of under the base wall, and</p> <p>b. there was insufficient membrane upturn height.</p>	<p>b. insufficient membrane upturn height.</p> <p>2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following:</p> <p>a. The inability to inhabit or use the building (or part of the building) for its intended purpose due to the accumulation of humidity, water egress and/or mould growth; or</p> <p>b. The destruction of the building or any part of the building due to humidity or water egress.</p>
3	Waterproofing	Construction of rooftops including planter boxes.	<p>On 15 September 2020 and 23 October 2020, Compliance Officers inspected the rooftops and observed the following:</p> <p>a. waterproofing membrane applied incorrectly under machine fixing rails and under post fixings instead of over machine fixing rails and post fixings;</p> <p>b. no visible evidence of waterproofing membrane upstand walls;</p> <p>c. waterproofing membrane over floor waste outlets, and</p> <p>d. no visible waterproofing membrane installed on planter boxes.</p>	<p>The building work constitutes a serious defect because of the following:</p> <p>1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS4654.2 (waterproofing membranes of external above-ground use)- 2.8.4.(penetrations), Clause 2.8.2.2 (parapet), 2.10 (drains) and 2.13 (planter boxes) because of the following factors:</p> <p>a. waterproofing membrane applied incorrectly under machine fixing rails and under posts fixings instead of over machine fixing rails and post fixings;</p> <p>b. no visible evidence of membrane or flashing over upstand walls on rooftops;</p> <p>c. waterproofing membrane incorrectly installed on waste drainage elements, and</p> <p>d. no visible membrane installed on planter boxes.</p> <p>2. It is a defect in a building element that is attributable to defective or faulty workmanship and is likely to cause the following:</p> <p>a. the inability to inhabit or use the building (or part of the building) for its intended purpose, or</p> <p>b. the destruction of the building or any part of the building due to water egress, humidity or mould growth, or</p>

				c. when floor waste is removed for cleaning or service, the membrane could tear off and cause water egress.
4	Construction of wall tiling	Adhesion of wall tiles	On 15 September 2020 and 23 October 2020, Compliance Officers inspected the wall tiles and observed inadequate adhesive, namely, that adhesive failed to cover 90% of each tile.	<p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> 1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS3958.1 (ceramic tiles), clause 5.6.4.2 (adhesive coverage), because of the following factors: <ol style="list-style-type: none"> a. inadequate use of adhesive to wall tiles, namely that adhesive failed to cover 90% of each tile. 2. It is a defect in a building element that is attributable to defective or faulty workmanship and is likely to cause the following: <ol style="list-style-type: none"> a. the accumulation of moisture and mould growth behind the tiles causing loosening of the tiles, and/or b. the tiles to eventually fall off the wall.