

Attn: Proper Officer
Bennett Hilly Development Pty Ltd (ACN 165 271 303)
Unit 2/2-4 Giffnock Avenue
Macquarie Park NSW 2113

CAS Ref: 11116531

Service: By registered post and by email

23 January 2024

Building Work Rectification Order

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

Bennett Hilly Development Pty Ltd (ACN 165 271 303) is being given this Building Work Rectification Order (Order) in relation to addresses 1 Northcote Street (SP 95581), MORTLAKE NSW 2137 and 14-22 Hilly Street (SP 95582), MORTLAKE NSW 2137 (the Development).

Bennett Hilly Development Pty Ltd (ACN 165 271 303) is required to cause building work to be carried out to remediate the serious and/or potential serious defects as set out below in this Order.

Failure to comply with the requirements in this Order is a criminal offence.

Background

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious 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 **Attachment A** to this order.
4. Stewart Scarlett, A/Director (Building Compliance: Building Commission NSW, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. **Bennett Hilly Development Pty Ltd (ACN 165 271 303)** is the developer of the residential apartment building known as ‘**Majors Bay Residential Development**’ 1 Northcote Street Mortlake NSW 2137 (SP 95581) and 14-22 Hilly Street Mortlake NSW 2137 (SP 95582) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development consists of a mixed-use building comprising four residential buildings containing 430 apartments, commercial retail space and underground car parks.
7. On 18 April 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Stewart Scarlett, under section 33 of the Act, require you **Bennett Hilly Development Pty Ltd (ACN 165 271 303)** 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

Serious Defect Ref No.	Location of Serious Defect	General description of Serious Defect	Requirement to carry out the following specified building work (s 33(2)(a))	Time for compliance with Requirement (commencing from the date this order is given) (s 39(1))
1.	Fire stair – basement level 3	The fire hydrant has been installed below the minimum required height. Installation is at 725mm.	<p>The Developer is to take the following steps to rectify the serious defect to comply with Australian Standard 2419.1 2005 Fire Hydrant Installations Part 1: System design, installation and commissioning:</p> <ol style="list-style-type: none"> 1. Rectify the hydrant valve installation to ensure the height of the centre line is not less than 750 mm and not more than 1200 mm above the ground. 2. Rectify any consequential damage. 3. Developer to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au of comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports provided by a fire safety consultant. 	2 weeks
2.	Roof level of the “Watson” building	There is inadequate clearance between the fire hydrant valve handwheel and the wall behind which may delay fire brigade activities.	<p>The Developer is to take the following steps to rectify the serious defect to comply with Australian Standard AS2419.1-2005:</p> <ol style="list-style-type: none"> 1. Rectify the hydrant valve installation to ensure there is adequate clearance around the outlet 	2 weeks

			<p>of not less than 300mm through an arc of 225 to facilitate hose coupling.</p> <ol style="list-style-type: none"> 2. Rectify any consequential damage. 3. Developer to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au of comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports provided by a fire safety consultant. 	
3.	Watson Building Roof Level Access to Terrace	There is inadequate clearance in front of the fire hydrant which may delay fire brigade activities.	<p>The Developer is to take the following steps to rectify the serious defect to comply with the Australian Standard AS2419.1-2005 Fire Hydrant Installations Part 1, Section 3: Location and Other Provisions, Clause 3.5 Fire Hydrant Accessibility and Clearance, 3.5.1 Accessibility:</p> <ol style="list-style-type: none"> 1. Rectify the hydrant valve installation to ensure there is adequate clearance directly in front of the fire hydrant outlet of at least 1000mm. 2. Rectify any consequential damage. 3. Developer to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au of comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports provided by a fire safety consultant. 	1 month
4.	Fire pump room	There is inadequate clearance between the baseplate of the fire pump	The Developer is to take the following steps to rectify the serious defect to comply with the	2 months

		and the concrete plinth and between the current-carrying parts of the motor and fire pump controls and the floor.	<p>Australian Standard AS2941-2013 Fixed Fire Protection Installations – Pump set Systems:</p> <ol style="list-style-type: none"> 1. Extend the concrete plinth to 150mm beyond the baseplate to achieve the required clearance. 2. Lift the current carrying parts of the motors and fire pump controllers to a height of 300mm to achieve the required clearance. 3. Rectify any consequential damage. 4. Developer to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au of comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports provided by a fire safety consultant. 	
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9. **In addition to the above**, the Developer is to take the following action under s 33(2)(b):

- a. Undertake an investigation of each fire hydrant in the development;
- b. Identify any fire hydrants that have not been installed in accordance with Australian Standard 2419.1 2005 Fire Hydrant Installations Part 1: System design, installation and commissioning, with particular consideration of the serious defects identified above, being:
 - i. the centre line is not less than 750 mm and not more than 1200 mm above the ground;
 - ii. there is adequate clearance around the outlet of not less than 300mm through an arc of 225 to facilitate hose coupling, and

iii. there is adequate clearance directly in front of the fire hydrant outlet of at least 1000mm.

- c. Where any fire hydrant is non-compliant, the developer is to take steps to rectify the serious defect consistent with those set out in Table 1, serious defect references 1-3.

10. I, Stewart Scarlett, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you **Bennett Hilly Development Pty Ltd (ACN 165 271 303)** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

Table 2: Requirement in relation to specified standard

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work	Requirement	Time for compliance with Requirement from the date of issue of this order
5.	Fire pump room	There is no ventilation system (either mechanical or natural) to the fire pump room. Ductwork for a HVAC system was present but incomplete with no fire damper or relief air outlet.	Ensure that the ductwork for the HVAC system is completed compliant with Building Code of Australia Volume One, Section F Health and Amenity, Part F4.5 Ventilation of rooms. The completion of the HVAC system is to include ancillary services where	Within the time period specified in column 6, Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the	Stage 1: 1 month Stage 2: 2 months

			<p>required for compliance with all the relevant Australian Standards applicable to the system to include but not limited to fire, hydraulics and electrical services.</p>	<p>subject areas of the building, being a fire safety consultant.</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <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>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety consultant reports.</p>	
6.	Rooftop of 'Lavender' building.	The waterproof membrane has not been turned into the rooftop overflows on the 'Lavender' building.	Ensure waterproofing membrane is installed to the inside of the rooftop overflows to prevent the penetration of water	<p>Within the time period specified in column 6,</p> <p>Stage 1</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

			<p>behind the overflows consistent with AS4654.2 2012 Waterproofing Membranes for external above-ground use Part 2 Design and Installation Section 2 Design and Installation Clause 2.10 Overflows – as per typical diagram(s) Figure 2.16 (in part).</p>	<p>Submit a written report to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, being a waterproofing consultant; 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>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress,</p>	
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				installer compliance certificates and any third-party waterproofing consultant reports.	
7.	Rooftop of the 'Lavender' and 'Watson' buildings.	Non-compliant waterproofing membrane installation to the rooftop parapet. The waterproof membrane has been installed to only a portion of the vertical face of the parapet without parapet capping protection. The membrane should be installed over the entire parapet and turned down the opposite side with protective capping.	Ensure waterproofing is provided over the parapet and parapet capping is installed. Provide waterproofing over the parapet along with parapet capping consistent with AS4654.2 2012 Waterproofing Membranes for external above-ground use Part 2 Section 2 Design and Installation Clause 2.8.2.2 Parapet shown typical termination – as per diagram(s) Figure 2.5.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, being a waterproofing consultant. 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: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party waterproofing consultant reports.	
8.	Concrete awning roof of the 'Lavender' building.	There are inadequate falls on the concrete awning roof on the 'Lavender' building with evidence of retained water stains on the waterproof membrane.	Ensure the concrete awning roof provides adequate falls and prevents the retention of water on the awning roof, with compliant waterproofing installation consistent with AS4654.2 2012 Waterproofing Membranes for external above-ground use Part 2 Design and Installation Section 2.5 Substrate Clause 2.5.2 Falls.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, being a waterproofing consultant. 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</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				<p>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>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party waterproofing consultant reports.</p>	
9.	Fire stair door threshold on the rooftop of the 'Lavender' and 'Watson' buildings.	The substrate has been inadequately prepared to the appropriate levels stated in the Australian Standard with regard to the provision of a smooth surface without defects or protrusions prior to application of the waterproofing membrane around the fire stair door threshold on the rooftop of the	Ensure the substrate is adequately prepared and the waterproofing is appropriately applied around the fire stair door threshold to prevent the potential for water to ingress inside the fire stair, along with the deterioration of the surrounding building elements consistent with AS4654.2 2012 Waterproofing Membranes for external above-	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, being a waterproofing consultant. ii) be prepared with consideration to this Order and the Reasons for this Order; and 	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

		'Lavender' and 'Watson' buildings.	ground use Part 2, Section 2 Design and Installation, Sub Section 2.5 Substrate, Clause 2.5.3 Types of Substrates 2.5.3.1. Fully Bonded or Liquid Applied.	<p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <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>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party waterproofing consultant reports.</p>	
10.	Podium slab to the basement level 1 of the carpark.	Water is penetrating through the podium movement joint, key joint and from a gap in the AFS wall from the ground level garden area. Drip trays have been installed and are overflowing, with water dripping on car spaces and	Ensure water does not penetrate into the basement through podium movement joint, key joint, and potentially from the gap in the AFS wall. Waterproof membrane should be installed consistent with AS4654.2 2012 Waterproofing	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <p>i) be prepared by a suitably qualified and experienced person or</p>	<p>Stage 1: 4 month</p> <p>Stage 2: 12 months</p>

		stalactites forming on the podium soffit.	Membranes for external above-ground use Part 2 Design and Installation Section 2 Clause 2.9 Movement and Control Joints	<p>specialist appropriate to the subject areas of the building, being a waterproofing consultant.</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <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>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party waterproofing consultant reports.</p>	
11.	Concrete parapet wall panel and the panel below on the 'Lavender' building, Eastern	The concrete parapet wall panel and panel below have cracked, compromising the waterproofing. This could cause water to	Ensure uncontrolled cracking of parapet wall panel and below panel does not progress.	<p>Within the time period specified in column 6,</p> <p>Stage 1</p>	Stage 1: 4 weeks

	facing walls - non-public accessible area - vicinity of artificial grass cover area(s)	pool inside the crack and track back inside, penetrating surrounding building elements.	Ensure the waterproofing is adequately installed into and around the parapet wall panel and panel below to ensure water does not pool inside crack and track back inside apartment with the deterioration to the surrounding building elements consistent with AS4654.2 2012 Waterproofing Membranes for external above-ground use Part 2 Section 2 Design and Installation Clause 2.8.2.2 Parapet shown typical termination – as per diagram(s) Figure 2.5.	<p>Submit written reports to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written reports required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a waterproofing consultant. 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</p> <p>Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and</p>	Stage 2: 12 weeks
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				any third-party waterproofing consultant reports.	
12.	Doorway to the fire-isolated stairs on the roof top level of the 'Lavender' building.	A step has been constructed on the doorway threshold between the common area and fire stair of approximately 120mm. This represents a trip hazard to occupants evacuating and fire brigade attending.	Ensure the transition of floor finishes from the common area into the fire stair is a consistent level, with no steps or ramps, and does not present a potential trip hazard for evacuating occupants or attending fire brigade personnel.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work to ensure the transition of the floor finishes from the common area into the fire stair is a consistent level that would satisfy the BCA to ensure the transition from the roof top area into the fire stair is consistent with no steps or ramps.</p> <p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress,</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				installer compliance certificates and any third-party fire consultant reports.	
13.	Mid-landing at the roof level of the Lavender building in the fire-isolated stairway.	The ceiling height above the bottom step in the fire-isolated stairway measures approximately 1.918m, below the required unobstructed height of 2m.	Ensure the ceiling height above the bottom step measures at least 2m and does not longer present a potential head heights hazard for evacuating occupants or attending fire brigade personnel	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work that would satisfy the BCA to ensure the ceiling height is at least 2m above the steps at all points.</p> <p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire consultant reports.</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

14.	Fire-isolated stairway adjacent to main switch room.	Reduced egress width within the fire exit as a result of the reinforced concrete element and bolts protruding from the wall which may impede occupant evacuation and fire brigade intervention.	Ensure fire exit egress width is at least 1 m so that it does not present as a potential impediment for evacuating occupants or attending fire brigade personnel.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work that would satisfy the BCA to ensure the fire exit width is at least 1m in width.</p> <p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire consultant reports.</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>
15.	Fire-isolated exits throughout the Watson building:	The fire stairs have been constructed in a way which will reduce the fire	Ensure the construction of the fire-isolated exits	<p>Within the time period specified in column 6,</p> <p>Stage 1</p>	Stage 1: 4 weeks

	<p>(i) fire stair in Basement 3 – concrete chipped away to fit the fire hydrant fixings.</p> <p>(ii) fire stair adjacent to main switch room – unsealed form-tie holes</p> <p>(iii) fire stair in building – unsealed construction joints in the Hebel.</p>	<p>resistance level of the fire isolated exits. There are sections of the wall with exposed steel and unsealed form tie holes and construction joints.</p>	<p>meets the required fire resistance levels.</p>	<p>Developer to provide particulars of work that would satisfy the BCA to ensure the FRL rating is achieved.</p> <p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire consultant reports.</p>	<p>Stage 2: 12 weeks</p>
16.	<p>Fire doors throughout the building, as evidenced by: Level 3 of Lavender building</p>	<p>Fire doors throughout the building are unable to self-close due to uneven floor and fire door hardware. The proper function of fire doorsets are required to resist the</p>	<p>Ensure the fire doors are able to self-close.</p>	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work that would satisfy the BCA to ensure all Fire Doors operate correctly.</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

	Roof level of Watson building.	spread of fire and smoke between fire compartments.		<p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party reports.</p>	
17.	Basement level fire doors	The door has been constructed with a gap of more than 10mm between the leaf and top surface of the floor.	Ensure there is no gap under the fire doors throughout the basement level.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work that would satisfy the BCA to ensure the fire door is installed at the correct height and suitable gaps at all points.</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				<p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party reports.</p>	
18.	Walls throughout the building separating different fire compartments	Penetrations throughout the building between different fire compartments are not properly sealed.	Ensure that penetrations throughout the building are adequately separated and sealed.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit written reports to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				<ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, passive fire consultant; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) identify the location of each of the non-compliant penetrations, and iv) 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 reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, and installer compliance certificates. The Developer is to obtain from the passive fire contractor and provide to the above email address fire system</p>	
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				inspection test plans once work has been completed.	
19.	Fire-isolated stairway adjacent to the fire-pump room/main switch room.	Unauthorised services have been installed in a fire-isolated exit which may compromise the integrity of the exit.	Ensure there are no unauthorised services in the fire-isolated exit.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit written reports to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, passive fire consultant; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) identify the location of each of the non-compliant penetrations, and iv) 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 reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, and installer compliance certificates. The Developer is to obtain from the passive fire contractor and provide to the above email address fire system inspection test plans once work has been completed.	
20.	Various locations throughout the basement levels.	Sprinkler obstructions causing inadequate sprinkler coverage to the compartment where sprinkler discharge is obstructed by beams, cable trays, and mechanical ductwork.	Ensure that the sprinkler discharge pattern is not obstructed.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work that would satisfy the BCA to ensure that all sprinkler points have nil obstructions.</p> <p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party reports.	
21.	Various locations throughout the basement levels.	The sprinkler piping system throughout the basement is not adequately supported and may result in failure of the automatic sprinkler system.	Ensure that supports are installed within 1m from any change in direction of the sprinkler system popping.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Developer to provide particulars of work that would satisfy the BCA to ensure that the sprinkler system has adequate pipe supports installed.</p> <p>The particulars of work are to be submitted to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party reports.	
22.	All basement levels	There is uncontrolled cracking of 2mm to 4mm in the basement slabs and soffits. Some of the cracks have migrated through the full depth of the post tension slab with water permeating through.	Ensure cracking in basement slabs and soffits is controlled and existing cracks are repaired suitably using practices shown in Standards Australia Document SA HB 84:2018 Guide to concrete repair and protection.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit written reports to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, being a structural engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; 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 reports submitted in</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				<p>compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third party structural engineer reports.</p>	
23.	Gas meter cupboards throughout the building	There is insufficient ventilation to the Gas meter cupboards.	Ensure there is a compliant ventilation system installed in all gas meter cupboards.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit written reports to the OC Audit team via email to ocaudits@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 person or specialist appropriate to the subject areas of the building, being a mechanical engineer; ii) be prepared with consideration to this Order and the Reasons for this Order, as well as the requirements of AS5601 Gas Installations, Part 1 General Installations, Section 5 Means of Compliance; 	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

				<p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third party mechanical engineer reports.</p>	
24.	Refrigeration pipes around Basement 1 entry	Refrigeration pipes and cables are attached to the cable tray via cable ties. The fixings are too far apart to adequately support cables and pipe work. The insulation is flammable and does not meet the	Install adequate support to the installation of the refrigeration piping where required.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit written reports to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <p>i) be prepared by a suitably qualified and experienced person or</p>	<p>Stage 1: 4 weeks</p> <p>Stage 2: 12 weeks</p>

		required group rating requirement.		<p>specialist appropriate to the subject areas of the building, being a mechanical engineer;</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order, and</p> <p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written reports submitted in compliance with Stage 1 and make good any resultant consequential damage.</p> <p>Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third party mechanical engineer reports.</p>	
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Duration of this Order

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

12. This Order is given on the date that is listed above in accordance with section 67 of the Act.

A handwritten signature in blue ink, appearing to read 'Stewart Scarlett', with a long horizontal flourish extending to the right.

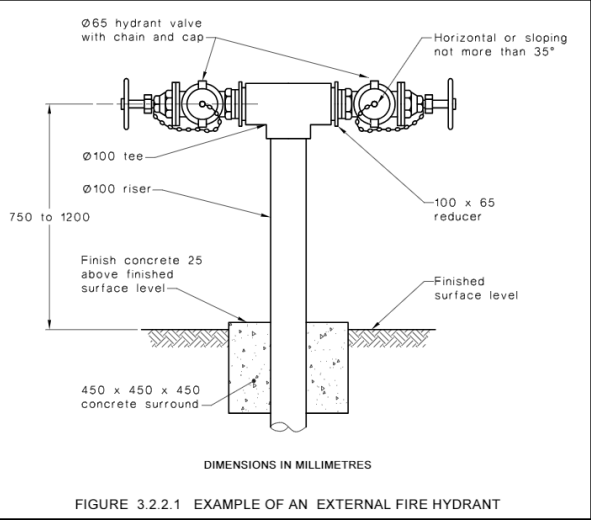
Stewart Scarlett
A/Director Building Compliance
Building Commission NSW, Department of Customer Service

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 23 January 2024 issued **Bennett Hilly Development Pty Ltd (ACN 165 271 303)** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Stewart Scarlett, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - a) An inspection report dated 4 July 2023 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act in the Building on 18 April 2023;
4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

Table 3 – Basis of reasonable belief as to serious defects

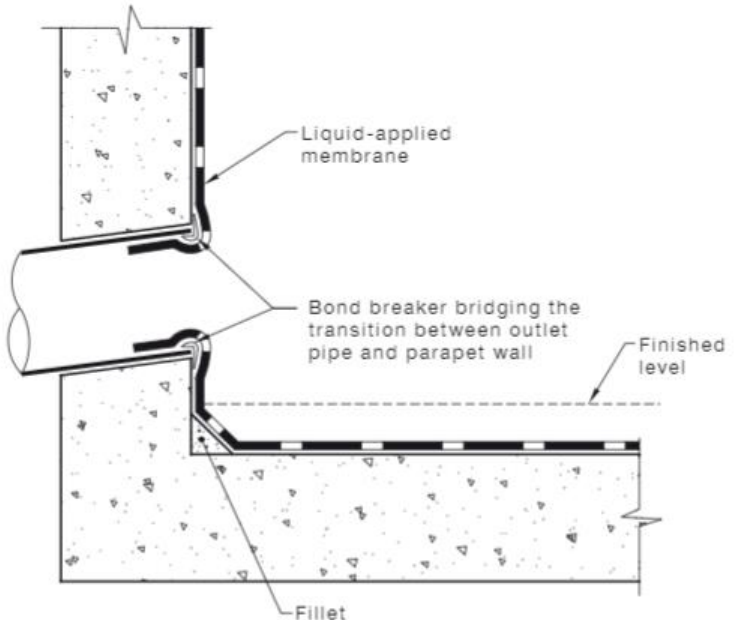
Serious Defect Ref No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1.	Fire safety system	Fire hydrant not installed at required height	Fire hydrants must be easily accessible to fires services during case of fire	The installation of the fire hydrant at the incorrect height demonstrates a failure to comply with Australian Standard 2419.1 2005 Fire Hydrant Installations Part 1: System design, installation and commissioning. Section 3 Locations and Other Provisions, Clause 3.2 Location of On-Site Fire Hydrants, Clause 3.2.2.1 which refers to Figure 3.2.2.1 states:	During a fire, the improper height may delay or impede fire brigade activities.

				<p><i>“The centre line of the fire hydrant valve or outlet not less than 750mm and not more than 1200mm above the ground, finished floor level or platform.”</i></p> 	
2.	Fire safety system	Fire hydrant installed with insufficient clearance for the handwheel.	Fire hydrants must be easily accessible to fire services during case of fire	<p>The insufficient clearance demonstrates a failure to comply with Australian Standard 2419.1 2005 Fire Hydrant Installations Part 1: System design, installation and commissioning. Section 3 Locations and Other Provisions, Clause 3.5 Fire Hydrant Accessibility and Clearance, Clause 3.5.2 states: <i>“For a fully open fire hydrant valve, there shall be not less than 100mm clearance around the valve handwheel. Fire hydrant valves shall be installed with a clearance around the outlet of not less than 300mm through an arc of 225° to facilitate hose coupling”</i>. 1</p> <p>Refer to Figure 3.5.1 (a) of the Australian Standard.</p>	During a fire, the insufficient clearance may delay or impede fire brigade activities.

3.	Fire safety system	Fire hydrant with insufficient clearance to the front for access to the coupling.	Fire hydrants must be easily accessible to fire services during case of fire	<p>The insufficient clearance demonstrates a failure to comply with Australian Standard 2419.1 2005 Fire Hydrant Installations Part 1: System design, installation and commissioning. Section 3 Locations and Other Provisions, Clause 3.5 Fire Hydrant Accessibility and Clearance, Clause 3.5.1 (c) which states:</p> <p><i>“A clearance of 1000mm shall be provided directly in front of the fire hydrant outlet...”</i></p>	During a fire, the insufficient clearance may delay or impede fire brigade activities.
4.	Fire safety system	The plinth for the fire hydrant pump is undersized	Supporting structures for a pump system must be adequate to ensure structural integrity under firefighting conditions	<p>The undersized plinth demonstrates a failure to comply with Australian Standard AS2941-2013 Fixed Fire Protection Installations – Pump set Systems. Section 11 Siting and Installation, Clause 11.7 Plinths which states:</p> <p><i>“For fixing purposes, the concrete plinth shall extend 150mm past the edge of the base plate on all four sides.”</i></p> <p>AND</p> <p>Section 8 Electric Drivers and Controllers, Clause 8.2.3 Controller Cabinets which states:</p> <p><i>“a minimum clearance of 300mm shall be maintained between the floor level and the current carrying part.”</i></p>	There is a possibility of a structural failure of the plinth that will affect the operation of the fire pump under a firefighting condition.
5.	Fire safety system	No ventilation is provided to the fire pump room	Adequate ventilation must be provided to all rooms to ensure health and amenity	The inadequate ventilation system demonstrates a failure to comply with BCA 2014 Volume One, Section F Health and Amenity, Part F4.5 Ventilation of rooms, which states in part -	In the event of a fire a fresh supply air must enter the pump room to provide

			is maintained. The removal of the ductwork and associated HVAC components prevents adequate fresh air entering the pump room in the event of a fire.	<p><i>“A habitable room, office, shop, factory, workroom, sanitary compartment, bathroom, shower room, laundry and any other room occupied by a person for any purpose must have —</i></p> <p><i>(a) natural ventilation complying with F4.6; or NSW F4.5(b)</i></p> <p><i>(b) a mechanical ventilation or air-conditioning system complying with AS 1668.2 and AS/NZS 3666.1.”</i></p>	pressure to force the effected smoke and or air out of the building. A fresh supply of air is also required to remove the heat generated from the internal combustion engine used for the fire pump and maintain suitable temperatures for operation.
6.	Waterproofing	Waterproofing membrane has not been turned into overflows	Waterproofing must be turned into the overflow to prevent water tracking behind the membrane	<p>The inadequate waterproofing demonstrates a failure to comply with the BCA 2014 Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.4 Weatherproofing, which states:</p> <p><i>“FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) Undue dampness or deterioration of building elements.”</i></p>	Water could penetrate behind the membrane, causing degradation of building elements

				<p>And</p> <p>The Australian Standard 4654.2 2012 Waterproofing Membranes for external above-ground use, Part 2: Design and installation – Section 2 Design and Installation, 2.11 Overflows which states:</p> <p><i>“2.11 Overflows</i></p> <p><i>The membrane shall be turned into the overflow, to prevent moisture from tracking behind the membrane.</i></p> <p><i>The finished floor level shall not reduce the design flow of an outlet.</i></p> <p>NOTES:</p> <p><i>1. Typical examples of membranes turned into the overflow are shown in Figure 2.16.</i></p> <p><i>2. Overflow facilities should direct water away from the building.”</i></p>	
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				 <p>(a) Overflow through parapet</p>	
7.	Waterproofing	Waterproof membrane has not been adequately installed to the rooftop parapet	Waterproof has only been installed to part of the vertical face and does not include parapet capping protection. The current installation will allow water to penetrate into the building.	<p>The inadequately applied waterproofing membrane demonstrates a failure to comply with the BCA 2014 Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.4 Weatherproofing, which states:</p> <p><i>“FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p>	Water could penetrate into habitable areas of the building, causing loss of unhealthy or dangerous conditions or loss of amenity for occupants.

				<p><i>(b) Undue dampness or deterioration of building elements."</i></p> <p>And</p> <p>The Australian Standard 4654.2 2012 Waterproofing Membranes for external above-ground use, Part 2: Design and installation – Section 2 Design and Installation, 2.8.2.2 Parapet which states:</p> <p><i>"2.8.2.2 Parapet</i></p> <p><i>The top edges of the membrane shall be protected by the downturn of the cavity flashing.</i></p> <p><i>NOTE: The typical methods of finishing over a parapet are shown in Figure 2.5. For a typical termination at a cavity parapet see Figure 2.6."</i></p>	
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				<p>15 AS 4654.2—2012</p> <p>FIGURE 2.5 TYPICAL EDGE PROTECTION OF SHEET MEMBRANE OVER A PARAPET</p>	
8.	Waterproofing	Inadequate falls on the roof of the building	Inadequate falls allow water to pool on the waterproofing membrane, degrading the material over time. This has already occurred with evidence of retained water stains.	<p>The inadequate falls demonstrates a failure to comply with the BCA 2014 Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.4 Weatherproofing.</p> <p><i>“FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <ul style="list-style-type: none"> <i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>(b) Undue dampness or deterioration of building elements.”</i> <p>And</p>	The waterproofing membrane will degrade over time and allow water to penetrate into habitable areas of the building.

				<p>The Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, section 2.5.2 Falls which states: <i>“Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be retained on the finished surface with the exception of residual water remaining due to surface tension. The fall shall be in the structural substrate, or formed by a screed over the structural substrate. NOTE: Falls for surface drainage should be no flatter than 1 in 100.”</i></p>	
9.	Waterproofing	The substrate has been inadequately prepared prior to waterproofing	The inadequate prepared substate has allowed voids and protrusions to appear in the waterproofing membrane. This can affect the viability of the membrane and cause deterioration over time.	<p>The inadequately prepared substrate demonstrates a failure to comply with the BCA 2014 Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.4 Weatherproofing.</p> <p><i>“FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i> <i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>(b) Undue dampness or deterioration of building elements.”</i></p>	The waterproofing membrane will degrade over time and allow water to penetrate into habitable areas of the building.
10.	Waterproofing	Water is penetrating through joints in the podium slab	Water should not penetrate through movement joints into the basement. Drip trays have been installed which are overflowing and	The inadequately prepared waterproofing around movement joints demonstrates a failure to comply with the BCA 2014 Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.4 Weatherproofing.	Water has penetrated through the soffit into the basement causing unhealthy or dangerous

			stalactites have formed on the podium soffit and building service pipes	<p><i>“FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) Undue dampness or deterioration of building elements.”</i></p>	conditions or loss of amenity for occupants.
11.	Waterproofing/ structural	The concrete has cracked, compromising the waterproofing.	Water could pool inside the crack and track back to penetrate into habitable areas of the building.	<p>The compromised waterproofing demonstrates a failure to comply with the BCA 2014 Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.4 Weatherproofing.</p> <p><i>“FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) Undue dampness or deterioration of building elements.”</i></p> <p>And</p> <p>BCA Volume One, Section B Structure, Part B1 Structural Provisions, Performance Requirement BP1.1 which states:</p> <p><i>“Structural reliability</i></p> <p><i>(a) A building or structure, during construction and use, with appropriate degrees of reliability, must-</i></p> <p><i>(i) Perform adequately under all reasonably expected design actions; and</i></p> <p><i>(ii) Withstand extreme or frequently repeated design actions; and</i></p>	Water could penetrate into habitable areas of the building, causing unhealthy or dangerous conditions or loss of amenity for occupants.

				(iii) <i>Be designed to sustain local damage, with the structural system as a whole remaining stable and not being damaged to an extent disproportionate to the original local damage; and</i> "	
12.	Fire safety system	A step has been constructed on the doorway threshold of approximately 120mm.	The threshold step is a trip hazard to occupants evacuating and fire brigade attending during fire.	<p>The threshold step demonstrates a failure to comply with the BCA D2.15 as none of the exemption criteria set out are met:</p> <p><i>"The threshold of a doorway must not incorporate a step or ramp at any point closer to the doorway than the leaf unless: -"</i></p> <p>AS1428.1 2021 Design for Access and Mobility Part 1 Section 3 Continuous Accessible Paths of Travel Clause and Section 4 Floor on ground surfaces on continuous accessible paths of travel and circulation spaces, Clause 4.2 which states:</p> <p><i>"Abutment of surfaces shall have a smooth transition. Design transition shall be 0mm. Construction tolerances shall be as follows:</i></p> <ul style="list-style-type: none"> <i>(a) 0+/- 3 mm vertical; and</i> <i>(b) 0_-/- 5mm, provided the higher edge is bevelled or rounded....."</i> 	The threshold step is a trip hazard and cause injury during fire.
13.	Fire safety system	Inadequate ceiling height in the fire isolated stairway	The inadequate ceiling height presents a potential hazard for evacuating occupants and	<p>The threshold step demonstrates a failure to comply with the BCA 2014 D1.6 Dimensions of exits and paths of travel exits which provides:</p> <p><i>"In a required exit or path of travel to an exit-</i></p> <ul style="list-style-type: none"> <i>(a) The unobstructed height throughout must not be less than 2m, except the unobstructed height of</i> 	The inadequate ceiling height is a hazard and could cause injury during a fire.

			attending fire brigade personnel.	<i>any doorway may be reduced to not less than 1900mm."</i>	
14.	Fire safety system	Reduced egress width within a fire exit	The reduced egress width presents a hazard to evacuating occupants and attending fire brigade personnel, and may slow evacuation during fire.	<p>The reduced egress width demonstrates a failure to comply with the BCA 2014 D1.6 Dimensions of exits and paths of travel exits which provides:</p> <p><i>"In a required exit or path of travel to an exit –</i></p> <p><i>(a).....; and</i></p> <p><i>(b) the unobstructed width of each exit or path of travel to an exit, except for doorways must not be less than –</i></p> <p><i>(i) 1m, or</i></p> <p><i>(ii)....."</i></p>	The reduced width may slow evacuation or entry during a fire, creating a great risk of injury.
15.	Fire safety system	Fire stairs are damaged and contain unsealed holes and penetrations	Fire stairs must be sealed to reach an adequate FRL to prevent the spread of fire.	<p>The inadequately sealed fire stairs demonstrates a failure to comply with the BCA 2014 C1.1 Type of Construction required which provides:</p> <p><i>"(a).....</i></p> <p><i>(i).....</i></p> <p><i>(ii).....</i></p> <p><i>(iii).....</i></p> <p><i>(b) Each building element must comply with Specification C1.1 as applicable."</i></p>	Fire could spread into fire isolated stairs during fire, causing injury or death.
16.	Fire safety system	Fire doors are unable to self-close.	Fire doors must be self-closing to ensure adequate prevention of fire and smoke spread between fire	The non-self-closing doors demonstrates a failure to comply with the BCA2014 C3.5 Doorways in fire walls which provides:	Fire and smoke could spread between fire compartments, creating a risk

			compartments. The uneven floor prevents this occurring.	<p>“(a)..... (i)..... (ii)..... (iii)..... (b)A fire door or fire shutter required by (a)(i), (ii) or (iii) must be self-closing or automatic closing in accordance with (c) and (d)”</p>	of injury or death.
17.	Fire safety system	The fire door contains a gap of more than 10mm between the leaf and top surface of the floor.	Gaps around fire doors should be minimised to prevent the entry of smoke and fire into the fire stair.	<p>The excess gap around the fire door demonstrates a failure to comply with Australian Standard 1905.1 2015 Components for the protection of openings in fire resistant walls Part 1 Fire Resistant Door sets, Section 5 Installation Part 5.5 Clearances around door leaves, Clause 5.5.1 Threshold and floor finish which states:</p> <p><i>“Clearances between bottom of all door leaves and the floor shall be as follows:</i></p> <p><i>(a) Between the leaf and the top surface of the floor including and floor covering – not be less than 3mm and not more than 10mm.</i></p> <p><i>(b)”</i></p>	Fire and smoke could spread between fire compartments, creating a risk of injury or death.
18.	Fire safety system	Penetrations between fire compartments are not properly sealed.	Penetrations must be sealed to prevent the spread of smoke and fire between fire compartments to maintain an adequate FRL.	<p>The unsealed penetrations demonstrate a failure to comply with the BCA 2014 C3.15 which provides:</p> <p><i>“C3.15 Openings for service installations</i></p> <p><i>Where an electrical, or other service penetrates a building element) other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient</i></p>	Fire and smoke could spread between fire compartments, creating a risk of injury or death.

				<p><i>spread of fire, that installation must comply with any one of the following:</i></p> <p><i>(a) Tested System</i></p> <p><i>(i) The service, building element and any protection method at the penetration-</i> <i>(A) are identical with a prototype assembly of the service, building element and protection method which has been tested in accordance with AS 4072.1 and AS1530.4 and has achieved the required FRL or resistance to the incipient spread of fire; or</i></p> <p><i>(B)</i></p> <p><i>differ.....</i></p> <p><i>(ii) It complies with (i) except for the insulation criteria relating to the service if-</i> <i>(A).....</i> <i>(B).....</i> <i>(C).....</i> <i>(D).....</i></p> <p><i>(iii) The determination of the required FRL must be confirmed in a report from an Accredited Testing Laboratory in accordance with Schedule 5.”</i></p>	
19.	Fire safety system	Unauthorised services have been installed in a fire isolated exit.	The installation of unauthorised services could compromise the integrity of the exit.	<p>The unauthorised services demonstrate a failure to comply with the BCA 2014 C3.9 which provides:</p> <p><i>“C3.9 Service penetrations in fire-isolated exits</i></p> <p><i>Fire-isolated exits must not be penetrated by any services other than-</i></p>	Fire and smoke could spread between fire compartments, creating a risk of injury or death.

				<p>(a) <i>Electrical wiring permitted by D2.7 € to be installed within the exit; or</i></p> <p>(b) <i>Ducting associated with a pressurisation system if it-</i></p> <p style="padding-left: 40px;">(i) <i>Is constructed.....</i></p> <p style="padding-left: 40px;">(ii) <i>Does not.....</i></p> <p>(c) <i>water supply pipes for fire services”</i></p>	
20.	Fire safety system	Sprinkler discharge is obstructed throughout the basement.	Obstructions to sprinkler heads reduce their effectiveness in case of fire.	<p>The sprinkler obstructions demonstrate a failure to comply with the Australian Standard 2118.1 1999 Automatic fire sprinkler systems – Part 1 General requirements Section 5 Part 5.4 Location of Sprinklers (Other than sidewall sprinklers) Clause 5.4.4 Beams and Joists which states:-</p> <p><i>“5.4.4 Beams and joists</i> <i>Light fittings, bulkheads and ducts in close proximity to the ceiling shall be treated as beam or joists.</i></p> <p><i>Where deflectors of sprinklers are above the level of the bottom of the beams or joists (because of the limitation imposed by Clause 5.4.3), the sprinklers shall be at such distances therefrom, that undue interference with the sprinkler discharge pattern is avoided.</i></p> <p><i>NOTE: Table 5.4.4.....</i></p> <p style="padding-left: 40px;">(a) <i>From the.....</i></p> <p style="padding-left: 40px;">(b) <i>Above the bottom.....</i></p> <p><i>Figures 5.4.4(B) and 5.4.4(C) give examples of these distances.”</i></p>	During a fire, sprinklers may not operate effectively to prevent the spread of fire.

21.	Fire safety system	The sprinkler piping system is inadequately supported.	The lack of support within 1m from a change of direction in piping could lead to failure of the sprinkler system.	<p>The inadequate support to the sprinkler piping system demonstrates a failure to comply with Australian Standard AS2118.9-1995 Automatic fire sprinkler systems Part 9: Piping and support and installation, Section 2, Part 2.7 Location of Supports, Clause 2.7.2 which states:</p> <p><i>“Change of direction. A support shall be located not further than 1 m from any change of direction in the piping, eg bend or elbow.”</i></p>	The sprinkler system could fail, preventing the adequate resistance of fire in the basement.
22.	Internal load bearing component	There is uncontrolled cracking in the basement slabs and soffits.	Uncontrolled cracks of 2mm to 4mm are present, with cracking not contained within the joint. Some cracks have migrated through the full depth of the suspended post tension slab with water permeating through.	<p>The cracking identified demonstrates a failure to comply with the Australian Standard 3600-2009 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, 2.3.3, Cracking which states:</p> <p><i>“2.3.3.1 General Cracking in concrete structures shall be controlled so that structural performance, durability and appearance of the structure are not compromised.”</i></p> <p>Australian Standard 3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Deemed-to-Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction which states:</p> <p><i>“The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate: ... (b) Concrete: (i) Concrete construction (including reinforced and prestressed concrete): AS 3600.”</i></p> <p>And</p> <p>The unprotected reinforcement is a defect in a building element that is attributable to a failure to</p>	Uncontrolled cracking could further deteriorate, causing damage to building elements.

				<p>comply with the Australian Standard 3600-2009, Concrete structures, Section 4, Design for durability 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection 10.4.3.1 General which states:</p> <p><i>“For corrosion protection, the cover shall be not less than the value given in accordance with Clauses 4.10.3.2 to 4.10.3.7.”</i></p> <p>In accordance with clauses 4.10.3.2 to 4.10.3.7 depending on exposure classification and concrete characteristic strength, required cover varies between 20mm to 70 mm.</p>	
23.	Mechanical and electrical services	Insufficient venting to the gas meter cupboards.	A room must have sufficient ventilation to ensure habitability. There is incomplete ductwork and installation of fire damper and relief air outlet in the fire pump room.	<p>The inadequate ventilation system demonstrates a failure to comply with BCA Volume One, Section F Health and Amenity, Part F4.5 Ventilation of rooms, which states in part -</p> <p><i>“A habitable room, office, shop, factory, workroom, sanitary compartment, bathroom, shower room, laundry and any other room occupied by a person for any purpose must have —</i></p> <p><i>(a) natural ventilation complying with F4.6; or NSW F4.5(b)</i></p> <p><i>(b) a mechanical ventilation or air-conditioning system complying with AS 1668.2 and AS/NZS 3666.1.”</i></p> <p>As the room does not have either natural ventilation or mechanical ventilation it fails to comply with the BCA Volume One Section F Health and Amenity.</p> <p>AS 1668 The Use of Ventilation and Air conditioning in Buildings, Part 2 Mechanical Ventilation in Buildings,</p>	Adequate ventilation is required for all meter regulator installations to avoid the accumulation of gas that can lead to a flammable and explosive environment.

				<p>Section 1 Scope and General, Clause 1.1 Scope, Note 8, states in part -</p> <p><i>“Requirements for ventilation in relation to the safe operation of gas appliances are covered in AS 5601.1”</i></p> <p>AS 5601 Gas Installations, Part 1 General Installations, Section 5 Means of Compliance – Installing Consumer Piping, Part 5.13 Ventilation of Gas Equipment, Clause 5.13.14 Mechanical Ventilation, states that in part -</p> <p><i>“Where the ventilation for the enclosure is to be provided by mechanical means, this shall be directly to outside and the system shall comply with Table 5.8. Fan motors shall be remote from the exhaust duct (indirect drive) or be rated to operate in a Zone 1 hazardous area (see AS 60079.10.1)</i></p> <p><i>Where a combination of natural and mechanical ventilation is to be used to ventilate an enclosure –</i></p> <ul style="list-style-type: none"> <i>1 exhaust air shall be provided by mechanical means; and</i> <i>2 no open flued gas appliance shall be installed in the closure”</i> 	
24.	Mechanical services	Inadequate support of refrigeration piping.	Refrigeration pipes are attached to the cable tray via cable ties. The fixings are spaced too far apart and the	The inadequate support of refrigeration piping demonstrates a failure to comply with AS 4041 Pressure Piping (Reconfirmed) 2016 Section 3 Design Part 3.28 Pipe Supports, Clause 3.28.3.2 Support without springs other than anchors or guides which states:	Piping is inadequately supported and could fail due to overstress of the material, causing

			insulation is flammable.	<p><i>"Hangers...They shall be proportioned for all required loads."</i></p> <p>And</p> <p>AS 5149.2 2016 Refrigeration systems and heat pumps – Safety and environmental requirements. Part 2 Design, construction, testing, marking and documentation. Section 5 Requirements for assemblies, Clause 5.2.3.8 Spacing for pipe supports, which states: <i>"Piping shall be suitably supported to its size and service weight."</i></p>	damage to services and surrounding areas.
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Consideration of written representations

5. On 15 September 2023, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Holdmark Property Group Pty Ltd (identified as the Developer), Local Council, Office of the Registrar General, and Owners Corporation.
6. The served parties were invited to provide written representations relating to the Order to the Department by 13 October 2023. The following was received:
 - a. From Holdmark Property Group Pty Ltd, on 28 September 2023, a report prepared by ALJ Consulting Engineers Pty Ltd in response to the notice;
 - b. From representatives for the Owners Corporation, Mayweathers, on 12 October 2023 a letter enclosing a schedule identifying the proposed scope of work to rectify the defects;
 - c. From the Holdmark Property Group Pty Ltd, on 13 October 2023, submissions in response to the notice.
7. The report prepared by ALJ Consulting Engineers Pty Ltd for the Holdmark Property Group Pty Ltd included the following:
 - a. Agreement to comply with the timeframe specified for stage II, and proposed new timeframes for compliance with stage III and stage IV of the draft order;
 - b. their observation that, at the time of their inspection, defect 1 and defect 2 had been rectified and no further action was required.

8. The representations made by Mayweathers on behalf of the Owners Corporation included the following:
 - a. They concurred that all defects listed in the draft copy of the Order were defects;
 - b. They agreed the defects ought to be rectified;
 - c. They enclosed a schedule identifying the proposed scope of work to rectify the defects.
9. The representations made by the Developer, (through Holdmark Property Group Pty Ltd) included the following:
 - a. they engaged an external consultant (ALJ Consulting Engineers Pty Ltd) to manage the remedial work;
 - b. engaged multi-discipline consultants to inspect and provide remedial work specifications, regulated designs, and certifications;
 - c. they provided a Phase II report which included a response to the defects outlining the consultants' agreement or disagreement and the remedial course of action. The respective consultants disagreed with defects 18,19 and 23, and agreed with the remaining defects;
 - d. they proposed to comply with stage III of the draft order by 15 December 2023; and
 - e. they proposed to commence remedial work once the NSW Building Commissioner approved the proposed remedial specifications and designs, with the remedial work being completed within a 120 business day period.
10. Correspondence from Holdmark on 28 September 2023 indicated that they were not in fact the Developer under the RAB Act. Further correspondence and inquiries indicated that the Developer was Bennett Hilly Development Pty Ltd (ACN 165 271 303). On 10 November 2023, a substantially identical version of the Order was served on the relevant parties, including Bennett Hilly Development Pty Ltd, in order to satisfy the procedural fairness requirements of the RAB Act.
11. The only representation received was from the Owners Corporation, identifying Majors Bay Developments Pty Ltd as a potential Developer as defined under the RAB Act. The potential for that entity to be identified as a Developer is acknowledged. At this stage, the Order has been issued on Bennett Hilly Development Pty Ltd.
12. I have reviewed and considered the submissions of the Developer and Owners Corporation pursuant to section 47 of the Act. There is a need to balance the interests of the Owners Corporation to have the work completed quickly against the volume of work required and the capacity of the Developer to arrange that work to be undertaken.
13. Whilst the Developer's representations, including in consultant reports, include some disagreement with the defects, I am satisfied that the defects identified in the Order are serious defects as defined in the RAB Act and thus make no amendments to the draft Order.
14. Having considered the submissions, reports and schedules provided, I am satisfied that it is appropriate to give the Order.

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

15. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the BCA and approved plans and the benefits arising from

remediating the Serious Defects and I find that it is appropriate, in the exercise of my discretion, to make the Order to carry out the specified actions in the Order within the time specified in the Order.

16. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.
17. I am of the view that the periods above for Defect 1 through 24 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.

Attachment A

Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

3 Definitions

(1) In this Act —

approved plans, in relation to building work, means the following —

- (a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,
- (b) regulated designs under the *Design and Building Practitioners Act 2020*,
- (c) any other plans prescribed by the regulations for the purposes of this definition.

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

Building Commissioner means the Building Commissioner referred to in section 61.

building element has the same meaning as in the *Design and Building Practitioners Act 2020*, and includes any element of a building that is prescribed by the regulations for the purposes of this definition.

building product means any product, material or other thing that is, or could be, used in a building.

building work — see section 5.

building work rectification order — see section 33.

class of building means a building of that class as recognised by the *Building Code of Australia*.

completion, in relation to building work, means the date that the occupation certificate for the building or part of a building to which the building work relates was issued.

Department means the Department of Customer Service.

developer — see section 4.

expected completion amendment notice — see section 8.

expected completion notice — see section 7.

expected date — see section 7(2).

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

occupation certificate means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*.

owners corporation for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

prohibition order — see section 9.

rectification bond — see section 28.

residential apartment building means a class 2 building within the meaning of the *Building Code of Australia*, and includes any building containing a part that is classified as a class 2 component, but does not include any building or part of a building excluded from this definition by the regulations.

Secretary means the Secretary of the Department.

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.

stop work order — see section 29.

strata building means a building containing a lot or part of a lot that is the subject of a strata scheme.

strata plan has the same meaning as in the *Strata Schemes Development Act 2015*.

strata scheme has the same meaning as in the *Strata Schemes Development Act 2015*.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

4 Meaning of “developer”

For the purposes of this Act, 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.

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*).

Design and Building Practitioners Act 2020.

6 Building elements

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