

Attn. the Proper Officer
Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust (ACN 155 939 423)
C/- KENNEDY MCLAUGHLIN & ASSOCIATES PORTMAN PLACE
Suite 11, 220 Boundary Street,
SPRING HILL QLD 4000

Service: By registered post and by email

13 July 2023

Building Work Rectification Order

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

Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust (ACN 155 939 423) is being given this Building Work Rectification Order (“Order”) in relation to ‘Oakmont’, 1- 2 Lucinda Ave, Norwest, NSW 2153 (SP 93227) (“the Building”).

Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust is required to cause building work to be carried out to remediate the potential serious defects as set out in below in this Order.

Failure to comply with this Order is a criminal offence.

Background

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department or their authorised delegate has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential defect.
3. Mr David Chandler OAM, the NSW Building Commissioner, is an authorised delegate of the Secretary of the Department.
4. Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust (ACN **155 939 423**) (**Arden**) is the developer of the residential apartment building known as ‘Oakmont’, 1- 2 Lucinda Ave, Norwest, NSW 2153 (Lot 31, DP 247442 and SP93227) (**the Building**) for the purposes of section 4(a) of the Act.
5. The building located at 1 Lucinda Avenue Norwest contains four towers known as Building 4, Building 5, Building 5a and Building 6 with a common 2 level basement carpark. It is a five-storey residential apartment building.

6. The building located at 2 Lucinda Avenue Norwest contains one tower known as Building 7 with one level basement carpark. It is a five-storey residential apartment building.
7. Under section 3 of the Act a serious Defect in relation to a building, means –
 - a. a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
 - b. a defect in a building product or building element that -
 - i. is attributable to defective design, defective or faulty workmanship or defective materials, and
 - ii. causes or is likely to cause—
 - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
 - c. a defect of a kind that is prescribed by the regulations as a serious defect, or
 - d. the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.
8. Under s6 of the *Design and Building Practitioners Act 2020* a Building element is
 - (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.
9. On 6 June 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier. The parties were invited to provide written representations relating to the Order to the Department by 27 June December 2023.
 - (a) On 19 June 2023 written submissions were received from the Local Council including a report from Wallace Zhong from ACOR Consultants which has been provided to Arden for consideration.
 - (b) No other submissions were received.

Decision to issue a building work rectification order

10. I, David Chandler, am the decision maker for this Building Work Rectification Order (**the Order**). I have decided to issue the Order to Arden because I have formed a reasonable belief under s 33(1) of the Act that building work was carried out in a manner that could result in serious defects in the Building as set out in this Order.

Description of serious defects

11. Defect 1 – Fire resistant doorsets

On 27 October 2022 and on 17 March 2023 authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. It was observed at the locations below to have a gap between the base of the fire resistant doorsets and top of the floor ranging from 11-15mm. This is a defect as an excessive gap under the fire resistant doorsets could result in the entry of fire under the doorway. The fire resistant doorsets are a component of the fire safety system of the Building.

- a. Building 4 – ground floor lobby fire doors leading to fire stair (2 doors), Level 3 lobby fire doors leading to fire stair (2 doors), Level 4 lobby doors leading to fire stair (2 doors)
- b. Building 5a – ground floor lobby fire doors leading to fire stair (2 doors), fire stair door (1 door) leading to boundaries egress way
- c. Building 5b – ground floor lobby fire doors leading to fire stair (2 doors), fire stair door (1 door) leading to boundaries egress way
- d. Building 6 – ground floor lobby leading to fire stair (2 doors), basement 1 carpark fire door leading to fire stair

This is a serious defect because it is a defect in a building element that is attributable to a failure to comply with the following:

BCA 2014 Volume One, Section C Fire resistance, Clause C3.4 Acceptable methods of protection which states:

“

(a)

(b) *Fire doors, fire windows and fire shutters must comply with Specification C3.4*”

Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors, which states in part:

“A required fire door must—

(a) *comply with AS 1905.1; and*

(b) ...”

Australian Standard 1905.1-2005 Components for the protection of openings in fire-resistant wall

Part 1: Fire resistant doorsets, Section 5 Installation,

5.5 Clearances around door leaves,

5.5.1 Threshold and floor finish, which states:

“Clearances between the bottom of all door leaves and the floor shall be as follows:

NOTE: See figures 1.4(A) and 5.5.1.

- (a) *Between the leaf and the top surface of the floor including any floor covering—not more than 3 mm and not more than 10 mm*
- (b) *...*

And

BCA 2014 Volume One, Section C Fire resistance, Clause 3.8 Openings in fire-isolated exits which states:

“

(a)

- (i) *Doorways that open to fire-isolated stairways, fire-isolated passageways or fire-isolated ramps, and are not doorways opening to a road or open space, must be protected by –/60/30 fire doors that are self-closing, or automatic-closing in accordance with (ii) and (iii).*
- (ii) *...*

BCA Volume One Deemed-to-Satisfy Provisions C3.4 and C3.8 and Specification C3.4 Fire doors, smoke doors, fire windows and shutters, Clause 2. Fire doors, is a pathway that can satisfy the BCA Volume One, Section C Fire resistance,

Performance Requirement CP2, which states in part:

“(a) A building must have elements which will, to the degree necessary, avoid the spread of fire—
(i) to exits; and
(ii) to sole-occupancy units and public corridors; and
(iii) between buildings; and
(iv) in a building”.

And

Performance Requirement CP4

CP4 Safe conditions for evacuation

To maintain tenable conditions during occupant evacuation, a material and an assembly must, to the degree necessary, resist the spread of fire and limit the generation of smoke and heat, and any toxic gases likely to be produced, appropriate to—

- (a) the *evacuation time*; and
- (b) the number, mobility and other characteristics of occupants; and
- (c) the function or use of the building; and
- (d) any active *fire safety systems* installed in the building.

Application:

CP4 applies to linings, materials and assemblies in a Class 2 to 9 building.

Because the installation of the fire resistant doorsets does not comply with the referenced Australian Standard 1905.1, the BCA Volume One Performance Requirements cannot be shown to have been satisfied.

Defect 2 – The installation of an external wall with the absence of spandrels

On 27 October 2022, authorised officers of the Department conducted an inspection pursuant to s20 of the Act in the Building at the following locations:

- a. Building 4 external walls (Southern elevation)
- b. Building 6 external walls (Southern elevation)
- c. Building 7 external walls (Northern elevation)
- d. Building 7 external walls (Southern elevation)

It was observed at these locations that there were full height window openings which had not been detached by the vertical separation between floors. The spandrel area had been constructed in a way that would not achieve an FRL of no less than 60/60/60. This is a defect as a spandrel with an FRL of less than 60/60/60 could result in the spread of fire. The vertical separation of an opening in an external wall provided by a spandrel provision, is a building element being the fire safety system.

This is a serious defect because it is attributable to a failure to comply with the following: **BCA Volume One, Section C Fire resistance, Part C2 Compartmentation and separation, C2.6 Vertical separation of openings in external walls which states:**

“(a) If in a building of Type A construction, any part of a window or other opening in an external wall is above another opening in the storey next below and its vertical projection falls no further than 450 mm outside the lower opening (measured horizontally), the openings must be separated by—

(i) a spandrel which—

- (A) is not less than 900 mm in height; and*
- (B) extends not less than 600 mm above the upper surface of the intervening floor; and*
- (C) is of non-combustible material having an FRL of not less than 60/60/60; or*

(ii) part of a curtain wall or panel wall that complies with (i); or

(iii) construction that complies with (i) behind a curtain wall or panel wall and has any gaps packed with a non-combustible material that will withstand thermal expansion and structural movement of the walling without the loss of seal against fire and smoke; or

(iv) a slab or other horizontal construction that—

- (A) projects outwards from the external face of the wall not less than 1100 mm; and*
- (B) extends along the wall not less than 450 mm beyond the openings concerned; and*
- (C) is non-combustible and has an FRL of not less than 60/60/60 .”*

Defect 3 – Absence of a fire safety zone block plan

On 27 October 2022 and 17 March 2023, authorised officers of the Department conducted an inspection pursuant to s20 of the Act in the Building at the following locations:

- a. Building 4 ground floor lobby
- b. Building 5 ground floor lobby
- c. Building 5a ground floor lobby
- d. Building 6 ground floor lobby
- e. Building 7 ground floor lobby

It was observed at these locations there were no fire safety zone block plans installed in the Building which is a part of the automatic fire detection and alarm system. This is a defect as the absence of the plans will not permit firefighters to locate the source of fire. The automatic fire detection and alarm system is a component of the fire safety system of the Building.

This is a serious defect because it is attributable to a failure to comply with AS 1670.1 clause 3.10 - Zone block plan which states “A block plan of installation, with the position of the FIP clearly indicated, shall be securely mounted adjacent to the FIP, mimic panel, repeater panel and fire brigade panel. “

Defect 4 – Sprinkler head clearance

On 27 October 2022 and 17 March 2023, authorised officers of the Department conducted an inspection pursuant to s20 of the Act in the Building at the following locations:

- a. The basement car park near car spot 120
- b. The basement car park near car spot 78
- c. The basement car park near car spot 31
- d. The communications room in basement car park

It was observed at these locations the fire sprinkler heads were obstructed. This is a defect as the fire sprinkler when obstructed cannot effectively spread water to fight a fire. The fire sprinkler system is a component of the fire safety system of the Building.

This is serious defect because it is a defect in a building element that is attributable to a failure to comply with the relevant BCA Volume One, Section E Services and equipment, Specification E1.5 Fire sprinkler systems, Deemed-to-Satisfy Provisions: Section 2, Application of Automatic Fire Sprinkler which states:

“Subject to this Specification, an automatic fire sprinkler system must comply with— (a) for all building classifications: AS 2118.1; or. (b) for a Class 2 or 3 building with an effective height of not more than 25 m and a rise in storeys of 4 or more: Specification E1.5a and the relevant provisions of this Specification as applicable; or.

Australian Standard AS/NZS 2118.1-2017 Automatic Fire Sprinkler Systems, Section 5 Spacing and Location of Sprinklers, Clause 5.6 Spacing and Location of Sidewall Sprinklers: Clause 5.6.1 (a) which states:

“The sprinklers shall be mounted with their deflectors not more than 150 mm and not less than 100 mm from the ceiling.”

Clause 5.7 Obstructions to Sprinkler Discharge: Clause 5.7.7 Clear space below sprinklers which states:

“Except as provided in Clause 5.7.9 and Sections 11, 12 and 13, a clear space shall be maintained below the level of the sprinkler deflectors throughout the compartment of not less than- (a) for High Hazard storage, 900 mm. ... (b) in all other cases, 500 mm, except in rooms not higher than 3 m where- ...” And Clause 5.7.9.3 Ducts, bulkheads, and beams which states: “Sprinklers shall be required under ducts, bulkheads and beams as follows: (a) Rectangular-greater than or equal to 800 mm wide, or 1.0 m wide if there is more than 150 mm clearance from adjacent walls: or

At all these locations there was not sufficient clearance.

Defect 5 – Installation of combustible lining

On 27 October 2022 and 17 March 2023, authorised officers of the Department conducted an inspection pursuant to s20 of the Act in the Building at the Basement level 1 and basement level 2 of building 4,5,5a and 6. It was observed at these locations that expanded polystyrene (EPS) white core panels had been installed onto the ceiling as a form of thermal and/or sound insulation. This is a defect as EPS panels are highly flammable material and do not meet the fire hazard properties for internal ceiling lining. The linings to the ceiling of a Building is a component of the fire safety system of the building.

This is a serious defect because it is attributable to a failure to comply with BCA 2014 Volume 1 DTS C1.10 fire hazard properties and specification C1.10

C1.10 Fire hazard properties

- (a) The *fire hazard properties* of the following linings, materials and assemblies in a Class 2 to 9 building must comply with **Specification C1.10**:
- (i) Floor linings and floor coverings.
 - (ii) Wall linings and ceiling linings.
 - (iii) Air-handling ductwork.
 - (iv) Lift cars.

SPECIFICATION C1.10 FIRE HAZARD PROPERTIES

Deemed-to-Satisfy Provisions

1. Scope

This Specification sets out requirements in relation to the *fire hazard properties* of linings, materials and assemblies in Class 2 to 9 buildings as set out in **Table 1**.

2. Application

Linings, materials and assemblies in Class 2 to 9 buildings must comply with the appropriate provisions described in **Table 1**.

Table 1 FIRE HAZARD PROPERTY REQUIREMENTS

Lining, material or assembly	Requirement
Floor linings and floor coverings.	Clause 3
Wall linings and ceiling linings.	Clause 4

DTS Clause C1.10 and Specification C1.10 fire hazard properties, is a pathway that can satisfy the BCA Volume One, Section C Fire resistance,

Performance Requirement CP2, which states in part:

*“(a) A building must have elements which will, to the degree necessary, avoid the spread of fire—
(i) to exits; and
(ii) to sole-occupancy units and public corridors; and
(iii) between buildings; and
(iv) in a building”.*

And performance requirement CP4

*“To maintain tenable conditions during occupant evacuation, a material and an assembly must, to the degree necessary, resist the spread of fire and limit the generation of smoke and heat, and any toxic gases likely to be produced, appropriate to—
(a) the evacuation time; and
(b) the number, mobility and other characteristics of occupants; and
(c) the function or use of the building; and
(d) any active fire safety systems installed in the building.*

Application:

CP4 applies to linings, materials and assemblies in a class 2 to 9 building. “

Because the EPS installed does not comply with the fire hazard properties, the BCA Volume One Performance Requirements cannot be shown to have been satisfied.

Defect 6 – Hydrant booster assembly

On 27 October 2022 and 17 March 2023, authorised officers of the Department conducted an inspection pursuant to s20 of the Act at the front of Building 7 on Horatio Avenue. It was observed at this location that the hydrant booster assembly outlets and inlets were installed at a height of 640mm from the finished floor level. This is a defect as the installation of a hydrant booster assembly this low will not permit firefighters to attach their hoses effectively. The hydrant booster assembly is a component of the building element being the fire safety system of the Building.

This is a serious defect because it is attributable to a failure to comply with BCA Volume One, Section E Services and equipment, Part E1 Firefighting equipment, Deemed-to-Satisfy provision,

E1.3 Fire hydrants which states:

“

(a) A fire hydrant system must be provided to serve a building—

...

(b) The fire hydrant system—

(i) must be installed in accordance with AS 2419.1,

...”

And

To the referenced Australian Standard AS 2419.1-2005 Fire hydrant installations, Part 1: System design, installation and commissioning, Section 7 Fire brigade booster assembly:

7.4 Fire brigade booster assembly arrangement which states:

“Feed fire hydrants shall be installed on-site adjacent to booster inlet connections within the following limitations:

(a) ...

(b) ...

The height of the feed fire hydrant outlets and the fire brigade booster inlet connections shall be not less than 750 mm or more than 1200 mm above the floor or standing surface in front of the fire brigade booster assembly

Performance requirement EP1.3

EP1.3 Fire hydrants

A fire hydrant system must be provided to the degree necessary to facilitate the needs of the *fire brigade* appropriate to—

(a) fire-fighting operations; and

(b) the *floor area* of the building; and

(c) the *fire hazard*.

Application:

EP1.3 only applies to a building where a *fire brigade* is available to attend.

Because the installation does not comply with the referenced Australian Standard 2419.1, the BCA Volume One Performance Requirements cannot be shown to have been satisfied.

Defect 7 – Unprotected opening in an external wall

On 27 October 2022 and 17 March 2023, authorised officers of the Department conducted an inspection pursuant to s20 of the Act at Building 7 ground floor southern fire isolated exit. It was observed that there were unprotected openings adjacent (within 3m) of the fire door exit. This is a defect, as an unprotected opening adjacent to a fire door, could in the event of a fire result in the fire entering the fire door exit. The installation of a protected opening adjacent to a fire door is a component of the fire safety system of the Building.

This is a serious defect because it is attributable to a failure to comply with BCA Volume One, clause D1.7 Travel via fire-isolated exits Deemed-to-Satisfy provision which states:

(c) Where a path of travel from the point of discharge of a fire-isolated exit necessitates passing within 6m of any part of an external wall of the same building, measured horizontally at right angles to the path of travel, that part of the wall must have –

- (i) an FRL of not less than 60/60/60; and*
- (ii) any openings protected internally in accordance with C3.4,*

For a distance of 3m above or below, as appropriate, the level of the path of travel, or for the height of the wall, whichever is the lesser. "

Building Work to be Carried Out

12. Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust must carry out building work, or cause building work to be carried out, including making good all consequential damage to:

a. Remediate **Defect 1** for all fire safety doors

- i. Remove fire doors which have a gap between the top of the door and top surface of the floor greater than 10mm
- ii. Replace with fire doors which have a gap between the top of the door and top surface of the floor between 3-10mm,

in accordance with the BCA Volume One and Australian Standard 1905.1 Components for the protection of openings in fire-resistant walls, Part 1: Fire-resistant door sets.

b. Remediate **Defect 2** at the following locations:

- i. Building 4 external walls (Southern elevation)
- ii. Building 6 external walls (Southern elevation)
- iii. Building 7 external walls (Northern elevation)
- iv. External walls facing Horatio St (Southern elevation)

Installing a spandrel of non-combustible material having a FRL of no less than 60/60/60 to all full height windows.

Rectification in accordance with BCA Volume One, Section C Fire resistance, Part C2 Compartmentation and separation, C2.6 Vertical separation of openings in external walls

c. Remediate **Defect 3** on all FIP and mimic panels in the Building.

i. Prepare a compliant block plan

ii. Install the block plan in the vicinity of each FIP and mimic panel,

in accordance with AS 1670.1 clause 3.10

d. Remediate **Defect 4** in all basement carpark

i. Survey all sprinkler heads which are obstructed

ii. Relocate sprinkler heads to ensure they are not obstructed

in accordance with BCA Volume One, Section E Services and equipment, Specification E1.5 Fire sprinkler systems, Deemed-to-Satisfy Provisions: Section 2, Application of Automatic Fire Sprinkler and Australian Standard AS/NZS 2118.1-2017 Automatic Fire Sprinkler Systems, Section 5 Spacing and Location of Sprinklers, Clause 5.6 Spacing and Location of Sidewall Sprinklers: Clause 5.6.1

e. Remediate **Defect 5** in the basement level 1 and 2 of the Building as follows:

i. Remove all non-compliant EPS panels

ii. Replace with compliant ceiling linings which comply with DTS Clause C1.10 and Specification C1.10 fire hazard properties,

in accordance with the BCA Volume One, Section C Fire resistance.

f. Remediate **Defect 6** for a fire brigade booster assembly at building 7 by

i. Adjusting the height of the fire brigade booster so the booster inlet connection is not less than 750mm or more than 1200mm above the floor or standing surface in front of the fire brigade booster assembly.

in accordance with the BCA Volume One, Section E Services and equipment, Part E1 Firefighting equipment, Deemed-to-Satisfy provision, E1.3 Fire hydrants

g. Remediate Defect 7 at Building 7 ground floor by

i. Provide suitable protection to the window openings above the fire door

ii. Provide suitable protection to the glass door which is within 3m horizontal distance from the fire door egressing from the fire isolated stairs,

in accordance with the BCA Volume One BCA Volume 1 D1.7 Travel via fire isolated stairs

Period for Compliance with Order

13. The work specified in paragraph 10 of this Order must be completed within the following periods from date of this Order.

a. **Defect 1 – 2 months**

b. **Defect 2 – 6 months**

c. **Defect 3 – 2 months**

d. **Defect 4 – 2 months**

e. **Defect 5 – 6 months**

f. Defect 6 – 3 months

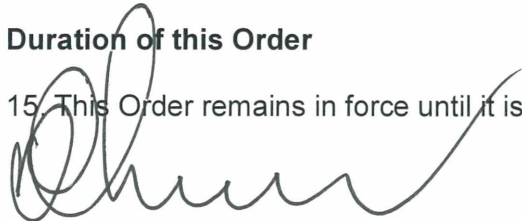
g. Defect 7 – 6 months

Conditions of this Order

14. Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust must notify the Building Commissioner, in writing, by email sent to buildingcommissioner@customerservice.nsw.gov.au and ocaudits@customerservice.nsw.gov.au within 2 business days of the work required by this Order being completed.

Duration of this Order

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



David Chandler, OAM
NSW Building Commissioner
Department of Customer Service

REASONS FOR THE ORDER

Reasonable belief and serious defects

1. I, David Chandler, an authorised delegate of the Secretary of the Department, have formed a reasonable belief for the purposes of s 33(1) of the Act in relation to Defects 1 to 7 in the Order, that building work was carried out in a manner that could result in serious defects. I have formed this belief after reviewing a copy of the Audit Report dated 22 November 2022 and conducting an inspection myself on 17 March 2023. I formed this view in relation to Defects 1-7.
2. Defect 1-The fire door doorsets as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance with **BCA 2014 Volume One, Section C Fire resistance, Clause C3.4 and Clause C3.8 followed by Specification C3.4.**
3. Defect 2- The installation of an external wall with absence of spandrels as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance with **BCA 2014 Volume One, Section C Fire resistance, Part C2 Compartmentation and separation, C2.6 Vertical separation of openings in external walls.** I am satisfied that the construction method used in the spandrel area could not achieve an FRL of 60/60/60.
4. Defect 3- The absence of a fire safety zone block plan as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance with **AS 1670.1 clause 3.10 - Zone block plan.** During my inspection I observed that there are no fire safety zone block plans installed throughout the Building.
5. Defect 4-The failure provide adequate fire sprinkler head clearance as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance with **BCA 2014 Volume One, Section E Services and equipment, Specification E1.5 Fire sprinkler systems, Deemed-to-Satisfy Provisions: Section 2, Application of Automatic Fire Sprinkler and Australian Standard AS/NZS 2118.1-2017 Automatic Fire Sprinkler Systems, Section 5 Spacing and Location of Sprinklers, Clause 5.6 Spacing and Location of Sidewall Sprinklers: Clause 5.6.1.**

During my inspection I observed numerous sprinkler heads which were obstructed by PVC pipes and storages cages throughout the basement of the Building.

6. Defect 5-The installation of combustible linings as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance **with BCA 2014 Volume One DTS C1.10 and specification C1.10**. During my inspection I observed combustible EPS panels installed on the ceiling of carpark basements level 1 and 2 of building 4, 5, 5a and 6 in the Building.
7. Defect 6-The fire hydrant booster assembly as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance **with BCA Volume One, Section E Services and equipment, Part E1 Firefighting equipment, Deemed-to-Satisfy provision, E1.3 Fire hydrants**. During my inspection I observed a fire hydrant booster assembly installed only 640mm above the floor.
8. Defect 7-The unprotected openings as described above in the Order, is a serious defect in a building element (fire safety system) that are required to achieve compliance **with BCA 2014 Volume One D1.7 Travel via fire isolated stairs**. During my inspection I observed a window and doorway opening within 3m of the ground floor final fire door which was not protected by a method described by BCA C3.4.

My view on the period for compliance

9. I am of the view that the following periods are reasonable periods for compliance in all the circumstances for the rectification work required by the Order to be carried out.
 - a. Defect 1 – 2 months
 - b. Defect 2 – 6 months
 - c. Defect 3 – 2 months
 - d. Defect 4 – 2 months
 - e. Defect 5 – 6 months
 - f. Defect 6 – 3 months
 - g. Defect 7 – 6 months
10. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to give effect to the rectification work. I am aware that there are residents occupying this location as the Building is completed which will delay rectification work. I am of the view that periods of compliance above are sufficient to conduct the following works

Consideration of written representations

- A. I am aware that on 6 June 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier. The parties were invited to provide written representations relating to the Order to the Department by 27 June December 2023.
- B. On 19 June 2023 written submissions were received from the Local Council.
- C. The Local Council provided me with submissions dated 19 June 2023 and which included the following information (**Local Council Representations**).
 - a. The following matters were not raised in the Order and the Order should be expanded to include:

- (iii) "Offence relating to fire exits" signage not installed.
- (iv) Non-compliant service penetrations through fire rated slabs on every storey inspected.
- (v) Extended smoke detector spacings in parts of the building.
- (vi) Sprinkler valves not enclosed in a secure room or enclosure.
- (vii) Widths of Paths of Travel to exits to roads are less than 1m wide in parts.
- (viii) Hydrant pipework not supported with fire rated supports in the un-sprinklered carpark.
- (ix) Hydrant booster assembly unstable and may not be capable of performing adequately.
- (x) Fire safety non-compliances / defects identified in the fire defects report issued to the Owners Corporation of Strata Plan 93227 by ACOR Consultants.

- b. An amendment needs to be made to the Order regarding the defect of excessive gaps to fire doors opening into fire isolated stairs. It is submitted that C3.8 of the BCA Volume One is more appropriate.

D. I have reviewed the Local Council Representations. In relation to the matters raised in the Local Council Representations, I make the following observations:

- a. I have considered the report prepared by Wallace Zhong of ACOR Consultants dated 3 June 2021. The report does not address any of the defects raised in the Order but identifies serious defects that are in addition to those that authorised officers identified in their inspection.
- b. I agree with the Council's view that the BCA Volume One Clause C3.8 should be added in the order for Defect 1, that is, in addition to Clause C3.4 of the BCA Volume One.
- c. I agree that the following items are defects that require remediation and will consider whether a further order should be issued in relation to them. in the meantime, these should be reviewed by Arden:
 1. *"Offence relating to fire exits" signage installed inside of all exits, not outside the exit (contrary to the Environmental Planning and Assessment (Development Certification & Fire safety) Regulation 2021)*
 2. *Non-compliant service penetrations through fire rated slabs on every storey inspected (Contrary to C3.12 & C3.15 of the BCA)*
 3. *Extended smoke detection spacings in parts of the building (Contrary to AS 1670.1)*
 4. *The sprinklers valves are not enclosed in a secure room or enclosure and maybe be subject to potential tampering (Contrary to Specification E1.5 of the BCA)*
 5. *Widths of Paths of Travel to exits and to the road are less than 1m in parts (Contrary to D1.6 of the BCA)*
 6. *Hydrant pipework not supported with fire rated supports in the un-sprinklered carpark (Contrary to AS 2419.1 of the BCA)*
 7. *The Hydrant booster assembly is unstable and may not be capable of performing adequately when subjected to operational forces (Contrary to AS 2419.1 of the BCA)*

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

- A. I have considered all of the circumstances. I accept that the order requires considerable further work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers of the unit in having the building constructed to the Australian Standards and BCA so as, in relation to Defects 1-7 inclusive: To prevent the loss of life or damage to property.
- B. Considering these potential consequences as outlined in this order, I give greater weight to the seriousness of the defect and failure to adhere to the Australian Standards and BCA, and the benefits arising from remediating them and I find that it is appropriate, in the exercise of my discretion, to require **Arden CH (NSW) Pty Ltd as Trustee for the ACH Unit Trust** to carry out the building work described, within the period specified in the above Order.