



Attn: Proper Officer
JKN Australia Pty Ltd (ACN 151 283 635)
121 Majors Bay Road
CONCORD, NSW, 2137

CAS Ref: 10972145

Service: By registered post and by email

18 August 2023

Building Work Rectification Order

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

JKN Australia Pty Ltd (ACN 151 283 635) is being given this Building Work Rectification Order (Order) in relation to address 1A & 1B Madden Close, 3 Madden Close, 16 & 18 Pemberton Street, 2 Mahroot Street, & 2 & 4 Saxby Close, in Botany, NSW, 2019 (Lot 1, DP 1251823, Lot 2, DP 1207144, Lot 1, DP 656307, Lot B, DP 402187, Lot 5, DP 1192005) (the Development).

JKN Australia Pty Ltd (ACN 151 283 635) is required to cause building work to be carried out to remediate the serious defects and/or potential serious defects as set out in 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. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. **JKN Australia Pty Ltd (ACN 151 283 635)** is the developer of the residential apartment building known as ‘*Pemberton on the Park*’, located at 1A & 1B Madden Close, 3 Madden Close, 16 & 18 Pemberton Street, 2 Mahroot Street, & 2 & 4 Saxby Close, in Botany, NSW, 2019 (**Lot 1, DP 1251823, Lot 2, DP 1207144, Lot 1, DP 656307, Lot B, DP 402187, Lot 5, DP 1192005**) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development consists of a mixed used residential building, comprising 2 residential buildings containing 269 residential apartments and 2 retail tenancies situated above 2 levels of basement car park.
7. On 17 August 2022, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matthew Whitton, under section 33 of the Act, require you **JKN Australia Pty Ltd (ACN 151 283 635)** 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 Reference No.	Location of Serious Defect	General description of Serious Defect	Requirement under section 33(2)(a) to carry out the following specified building work	Time for compliance with Requirement (commencing from the date this order is given)
1.	224 locations throughout the building as detailed in the draft report titled “Building Code of Australia Fire Safety Defects Report” (FSD Report) prepared by AE&D Pty Ltd dated 29 August 2022	The building has been constructed without achieving compliance with the Building Code of Australia and referenced Australian Standards in relation to fire safety systems	<p>The developer is to take the following steps to rectify the serious defects:</p> <ol style="list-style-type: none"> 1. Developer is to address and rectify each defect outlined in the FSD Report. 2. Rectify any consequential damage. 3. 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 reports. 	6 months
2.	Throughout the buildings	There are no or insufficient smoke and heat alarms present as outlined in the Annual Fire Safety Statement	<p>Stage 1 The developer is to take the following steps to rectify the serious defects:</p> <ol style="list-style-type: none"> 1. Install adequate heat and smoke alarms to comply with the requirements of the Annual Fire Safety Statement. 2. Rectify any consequential damage. 	<p>Stage1: 4 months</p> <p>Stage 2: 5 months</p>

			<p>3. 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 reports.</p> <p>Stage 2 Upon completion of the works, the Developer is to obtain, from the Owners Corporation and/or Strata Managing Agent, a copy of the compliant Annual Fire Safety Statement and provide NSW Fair Trading with a copy of that statement by email to ocaudits@customerservice.nsw.gov.au.</p>	
3.	In the corridor between the foyer and the building manager's office on the ground floor at 3 Madden Close	A cupboard sign posted as containing a fire hydrant did not contain a fire hydrant	<p>The developer is to take the following steps to rectify the serious defect:</p> <ol style="list-style-type: none"> 1. Install a fire hydrant in this location, or in the fire passageway close by. 2. Provide photographic evidence of the fire hydrant consisting of a number of photographs sufficient to determine the location of the fire hydrant to ocaudits@customerservice.nsw.gov.au 3. Rectify any consequential damage. 	3 months
4.	The fire door signposted "Exit Basement 2"	There is hole in the grout between the opening in the wall and the fire door frame	<p>The developer is to take the following steps to rectify the serious defect:</p>	2 months

			<ol style="list-style-type: none"> 1. Grout the hole sufficiently to comply with the Building Code of Australia and AS 1905.1. 2. Rectify any consequential damage. 3. 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 reports. 	
5.	Basement slab in front of car space 105/4	There are exposed and unprotected reinforcements in the slab	<p>The developer is to take the following steps to rectify the serious defect:</p> <ol style="list-style-type: none"> 1. Trim exposed material. 2. Treat and seal exposed material. 3. Apply appropriate protection to the exposed material in accordance with the Building Code of Australia and AS 3600 – Concrete Structures. 4. Rectify any consequential damage. 5. 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 reports. 	2 months

6.	Various locations throughout Basement Level 1 and Basement Level 2	There is no physical protection for pipes running vertically along basement columns	<p>The developer is to take the following steps to rectify the serious defect:</p> <ol style="list-style-type: none"> 1. Provide physical protection for downpipes to comply with AS 3500.3 Plumbing and Drainage: Stormwater Drainage, 4.5.6 Downpipes. 2. Rectify any consequential damage. 3. 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. 	2 months
7.	Laundry cabinet in units 404, 52, 501	Tundish fixture waste pipe and laundry tub fixture waste pipe are not separately connected to the floor waste. Condensate drains installed without required air gap between a condensate drain and tundish.	<p>The developer is to take the following steps to rectify the serious defect:</p> <ol style="list-style-type: none"> 1. Install a compliant S trap and tundish waste pipe with required air gap. 2. Rectify any consequential damage. 3. 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 plumbing reports. 	2 months

9. I, Matthew Whitton, 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 **JKN Australia Pty Ltd (ACN 151 283 635)** 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
8.	Basement carpark level 2	Water is penetrating into the basement carpark	Prevent the entry of water into the basement carpark	<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 expert and/or Civil Engineer; 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 	<p>Stage 1: 2 months</p> <p>Stage 2: 8 months</p>

				<p>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>	
9.	All locations where external walls abut tiled balconies, courtyard roof or awning slabs	Water is penetrating into habitable areas of the building	Prevent the entry of water into habitable areas of the building	<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 expert and/or façade engineer; 	<p>Stage 1 2 months:</p> <p>Stage 2: 6 months</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 and/or façade engineer reports.</p>	
10.	Unit 5/2 Saxby Close	Water is penetrating into habitable areas of the building	Rectify planter box construction, waterproofing and flashing to prevent entry of water into habitable areas of the building	<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>Stage 1: 2 months</p> <p>Stage 2: 3 months</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 expert and/or façade engineer; 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>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 and/or façade engineer reports.</p>	
11.	Basement slab soffit above car space A1-	There is uncontrolled cracking of 1.5-1.7mm in the	Conduct remedial rectification work to ensure uncontrolled cracking of basement	<p>Within the time period specified in column 6,</p> <p>Stage 1</p>	Stage 1: 2 months

	G04/18, basement slab in front of car space A1- 305/18	basement soffit and slab. Some cracks have migrated through the full depth of the suspended post tension slab with water permeating through.	slab does not progress	<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 structural design engineer; 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 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 reports.</p>	Stage 2: 4 months
--	--	--	---------------------------	---	----------------------

12.	Main Switch Room 2, Basement Level 1	No make up air path has been provided in the switch room where an exhaust fan is present	Install a make-up air path or provide a mechanical supply	<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 mechanical contractor; 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 to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 3 months</p>
-----	--------------------------------------	--	---	--	---

				including but not limited to photographs of work in progress, installer compliance certificates and any third-party mechanical engineer reports.	
13.	Behind parking spot A1-G01/18	A stormwater pipe is running within the carpark ventilation duct between two airflow dampers, impeding their operation	Maintain separation of at least 25mm between the above ground stormwater drain and any other service	<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 jointly by suitably qualified and experienced persons or specialists appropriate to the subject areas of the building, being hydraulics and mechanical contractors; 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</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 3 months</p>

				<p>Stage 1 and make good any resultant consequential damage.</p> <p>Developer 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 hydraulics or mechanical engineer reports.</p>	
14.	Basement level stormwater drainage line blockage	Stormwater sump is holding water and in periods of heavy rain the entire area floods and water ponds on the concrete slab	Ensure stormwater lines are not blocked so that the sump will not flood and overflow	<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 hydraulics engineer and/or civil engineer; 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 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				<p>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 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 hydraulics and/or civil engineer reports.</p>	
--	--	--	--	---	--

Duration of this Order

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



Matthew Whitton
NSW Assistant Building Commissioner
Building and Construction Compliance
NSW Fair Trading Department of Customer Service

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 18 August 2023 issued to **JKN Australia Pty Ltd (ACN 151 283 635)** 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, Matthew Whitton, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - a) An inspection report dated 18 October 2022 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 17 August 2022;
 - b) The Draft “*Building Code of Australia Fire Safety Defects Report*” report prepared by AE&D Pty Ltd dated 29 August 2022;
 - c) The Acumen Building and Engineering Consultants Pty Ltd report dated 12 December 2021;
 - d) Architectural drawing number A1030 Issue G dated 23 August 2018, and
 - e) Construction Certificate J170632B dated 23 January 2019.
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 Reference No.	Building element in which serious defect has	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect

	been identified				
1.	Fire safety systems	The fire safety systems in the building do not achieve compliance with the Building Code of Australia and referenced Australian Standards	Fire safety systems are an essential building element and there a numerous occasions where the construction of the building would fail to prevent the spread of fire	<p>The fire safety systems identified with the FSD report fail to comply with the BCA 2016 Amdt 1 Volume One, Section C Fire resistance in that Performance Requirement CP2 was not complied with.</p> <p>Performance requirement CP2 provides:</p> <p><i>“(a) A building must have elements which will, to the degree necessary, avoid the spread of fire-</i></p> <ul style="list-style-type: none"> <i>(i) To exits; and</i> <i>(ii) To sole occupancy units and public corridors;</i> <i>(iii) Between buildings, and</i> <i>(iv) In a building”</i> 	The failure to comply with the Building Code of Australia requirements for fire safety systems could result in the spread of fire, causing damage, injury or death.
2.	Fire safety systems	There are no or insufficient smoke and heat alarms installed throughout the building	Smoke and heat alarms allow residents to evacuate and fire services to be contacted to fight the spread of fire	The fire safety systems identified with the FSD report fail to comply with the BCA 2016 Amdt 1 Volume One, Section E Services and Equipment, Part E2 Smoke Hazard Management,	Insufficient smoke and heat alarms will not inform residents of a fire, risking the spread of fire causing damage, injury or death

				<p>Performance Requirement EP2.1 which provides:</p> <p><i>“In a building providing sleeping accommodation, occupants must be provided with automatic warning on the detection of smoke so they may evacuate in the event of fire to a safe place”.</i></p> <p>And Clause E2.2, Specification E2.2a which provides:</p> <p><i>“In the event of a fire in the building the conditions in any evacuation rout must be maintained for the period of time occupants take to evacuate the part of the building so that</i></p> <ul style="list-style-type: none"> <i>(i) The temperature will not endanger human life;</i> <i>(ii) The level of visibility will enable the evacuation rout to be determined;</i> <i>and</i> <i>(iii) The level of toxicity will not endanger human life”</i> 	
3.	Fire safety system	No fire hydrant installed	There was no fire hydrant installed in a cupboard sign posted as containing a fire hydrant. The architectural drawings indicate that a fire	The “Fire Hydrant Block Plan” installed within the same location nearby details that a Fire Hydrant is required to be installed	The lack of a properly installed fire hydrant reduces the capacity of fire services to effectively fight the

			hydrant was to be installed in the fire passageway close by.	<p>somewhere within this location.</p> <p>Architectural drawing number A1030 Issue G dated 23 August 2018, which was issued with Construction Certificate J170632B dated 23 January 2019, indicates the Fire Hydrant was to be installed in the fire passageway close-by as identified on the plan as FS1-C2.</p>	spread of fire, increasing the risk of damage, injury or death.
4.	Fire safety system	There is a hole in the grout between the opening in the wall and the fire door frame	The fire door frame is not effectively sealed and does not achieve the appropriate fire resistance level to prevent the incipient spread of fire.	<p>The inadequate sealing demonstrates a failure to comply with BCA 2016 Volume One, Section C Fire Resistance Performance Requirement CP8 which states:</p> <p><i>“Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained-</i></p> <p><i>(a) Where openings, construction joints and the like occur, and</i></p>	The inadequate sealing presents a risk of incipient spread of fire, increasing the risk of damage, injury or death.

				<p><i>(b) Where penetrations occur for building services.”</i></p> <p>Further, if the work in accordance with Deemed-to – Satisfy provision Part C3 Protection of Openings, C3.11, the Performance Requirement is satisfied</p> <p>And</p> <p>Australian Standard AS1905.1 clause 5.3.2 which provides that the head and jamb cavities shall be backfilled, thoroughly and progressively grouted with cement mortar, concrete, a non-shrink grout or with material with a temperature of fusion not less than 1000°C.</p>	
5.	Structure	There are exposed and unprotected reinforcements in the slab	Reinforcements must be sufficiently covered to ensure corrosion protection	The unprotected reinforcement is a defect in a building element that is attributable to a failure to comply with the Australian Standard 3600-2009, Concrete structures, Section 4, Design for durability 4.10 Requirements for cover to	The exposed reinforcements could be damaged, causing degradation of the structure.

				<p>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>	
6.	Essential services	There is no physical protection for pipes running vertically along basement columns	Stormwater pipes should be protected to ensure they are not exposed to mechanical damage leading to pipe destruction and water egress	<p>The unprotected pipes are a defect in essential services attributable to a failure to comply with AS 3500.3 Plumbing and Drainage: Stormwater Drainage, 4.5.6 Downpipes which states:</p> <p><i>“The following applies to the installation of downpipes:</i> <i>(a) Locations, Downpipes shall be located –</i> <i>(iv) so that they are protected from mechanical damage”</i></p>	The stormwater pipe could be damaged causing water egress and localised flooding

7.	Essential services	Tundish fixture waste pipe and laundry tub fixture waste pipe are not separately connected to the floor waste. Condensate drains installed without required air gap between a condensate drain and tundish.	Pipes must be properly connected and installed to ensure adequate drainage of all services	<p>The incorrectly installed drain pipes are a serious defect because they demonstrates a failure to comply with Australian Standard 3500.2:2015 Sanitary plumbing and drainage, Section 4 Drainage System, Clause 4.6.7.3 Connection of fixtures which states:</p> <p><i>“Each fixture, or fixture pair that is connected to a floor waste gully shall be connected by a separate waste pipe.”</i></p>	The incorrectly installed pipes could cause localised flooding leading to damage
8.	Waterproofing	Water is penetrating into the basement car park	Waterproofing is inadequate to prevent the penetration of water	<p>The inadequate waterproofing system and the evidence of water penetration demonstrates a failure to comply with the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and weatherproofing, Performance Requirement FP1.4 Weatherproofing which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must</i></p>	The water penetration creates a hazard for residents, and is causing undue dampness and loss of amenity

				<p><i>prevent the penetration of water that could cause-</i></p> <p>(a) <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p>(b) <i>Undue dampness or deterioration of building elements"</i></p>	
9.	Waterproofing	Water is penetrating into habitable areas of the building	Waterproofing is inadequate to prevent the penetration of water	<p>The failure to effectively execute the waterproofing detail at the interface between the balcony membrane and the cross-cavity flashing of the walls demonstrates a failure to comply with the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and weatherproofing, Performance Requirement FP1.4 Weatherproofing which states:</p> <p><i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i></p> <p>(a) <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p>	The water penetration is causing undue dampness, unhealthy and dangerous conditions and loss of amenity for residents

				(b) <i>Undue dampness or deterioration of building elements</i>	
10.	Waterproofing	Water is penetrating into habitable areas of the building	The planter box construction, waterproofing and flashing is insufficient to prevent the entry of water into habitable areas of the building	<p>The inadequate waterproofing system and the evidence of water penetration and damage internally demonstrates a failure to comply with the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and weatherproofing, Performance Requirement FP1.4 Weatherproofing which states:</p> <p><i>“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>	The water penetration is causing undue dampness, unhealthy and dangerous conditions and loss of amenity for residents
11.	Structure	Uncontrolled cracking of the	Cracks should be controlled to prevent damage to structural elements. There is uncontrolled cracking of	The cracking identified demonstrates a failure to comply with the Australian Standard 3600-2009	If cracking remains uncontrolled the

		basement soffit and slab	1.5-1.7mm in the basement soffit and slab. Some cracks have migrated through the full depth of the suspended post tension slab with water permeating through.	<p>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>	structure could further deteriorate
--	--	--------------------------	---	---	-------------------------------------

12.	Essential services	No make-up air path has been provided in the switch room where an exhaust fan is present	The lack of a make-up air path makes it difficult to open doors to the switch room when the exhaust fan is operational as the room is negatively pressurised.	<p>This demonstrates a failure to comply with AS 1668.2 The use of ventilation and air conditioning in buildings Part 2: Mechanical Ventilation in Buildings, Section 1.5 Combinations Ventilation Systems which states:</p> <p><i>“Ventilation systems may be combined to meet the requirements of this standard. Possible combinations include</i></p> <ul style="list-style-type: none"> <i>(a) Mechanical supply with mechanical exhaust</i> <i>(b) Mechanical supply with natural relief</i> <i>(c) Natural make-up with mechanical exhaust”</i> 	The main switch room should be easily accessible at all times
13.	Essential services	A stormwater pipe is running within the carpark ventilation duct between two airflow dampers, impeding their operation	The pipework impedes the operation of the airflow dampers and prevents them from being fully close if required.	<p>This demonstrates a failure to comply with AS3500.3 Plumbing and Drainage Part 3: Stormwater Drainage, Section 6 Surface and subsoil drainage systems – Installation, 6.2 General requirements, 6.2.6 proximity to other services which states:</p> <p><i>“(a) Separation of at least 25mm shall be maintained</i></p>	The airflow dampers cannot operate effectively in normal use and cannot fully close allowing smoke to enter the building

				<p><i>between any above-ground storm water drains and any of the following services:</i></p> <p>... <i>(vii) any other services."</i></p>	
14.	Essential services	Stormwater sump is holding water and in periods of heavy rain the entire area floods and water ponds on the concrete slab	This blockage prevents any stormwater entering the basement area from dispersing via the stormwater system	<p>This demonstrates a failure to comply with the National Construction Code Volume 3, Plumbing Code of Australia, Section D Stormwater Drainage Systems, Part D1 Roof Drainage Systems, Performance Requirements DP1.1 Roof drainage systems which states:</p> <p><i>"Roof drainage systems must dispose of stormwater flows from rainfall events having an average recurrence interval appropriate to the importance of the building and the severity of potential damage to property, loss of amenity, illness or injury that would result from the failure of such a system."</i></p> <p>And National Construction Code Volume 3, Plumbing Code of Australia, Section D Stormwater Drainage Systems, Part D1 Roof</p>	The flooding and water ponding is causing undue dampness, unhealthy and dangerous conditions and loss of amenity for residents

				<p>Drainage Systems, Performance Requirements DP1.4 Roof drainage systems which states:</p> <p><i>“Roof drainage installations must be designed, constructed and installed in such a manner as to —</i> <i>(a) convey stormwater to a point of connection; and</i> <i>(b) avoid the likelihood of loss of amenity due to blockages and leakage; and</i> <i>(c) avoid the likelihood of foul air and gases accumulating in the roof drainage system; and</i> <i>(d) avoid the likelihood of loss to buildings and property; and</i> <i>(e) avoid the likelihood of uncontrolled discharges; and</i> <i>(f) provide access, as required for maintenance and clearing of blockages.”</i></p> <p>Further the roof drainage system shall comply with AS/NZS 3500.3:2015 Plumbing and drainage, Part 3: Stormwater drainage, Section 4 Roof Drainage Systems – Installation, Clause 4.5 Installation and Testing, Clause 4.5.1</p>	
--	--	--	--	--	--

				<p>Installation and Clause 4.5.2 Testing which states:</p> <p><i>“Installation of each new or altered section of the roof drainage system shall comply with the following:</i></p> <p><i>(a) There shall be no restrictions to the free flow of stormwater to</i></p> <p><i>(i) Protrusions or other obstructions; or</i></p> <p><i>(ii) Debris (e.g. cement, mortar, clippings and similar)”</i></p>	
--	--	--	--	---	--

Consideration of written representations

5. On 18 July 2023 a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Certifier and Owners Corporation.
6. The served parties were invited to provide written representations relating to the Order to the Department by 8 August 2023. No submissions have been received from any of the parties as of the date of this Order.
7. I am satisfied that the Developer has been given an opportunity to provide representations concerning the Order. In circumstances no submissions have been made in response to the draft, I am satisfied that it is appropriate to give the Order.

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

8. 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.

9. 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.
10. I am of the view that the periods above for Defect 1 through 14 (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).