

## Building Commission NSW

Attn: Proper Officer  
Fraser's Broadway Pty Ltd (ACN 122 575 286) & Fraser's Central Park Land No.  
1 Pty Ltd (ACN 151 467 355)  
Level 2, Building C  
1 Homebush Bay Drive,  
RHODES NSW 2138

Service: By Express post and email to [REDACTED]

DATE: 16 February 2024

### Modified Building Work Rectification Order

#### **Section 38 of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020**

Fraser's Broadway Pty Ltd (ACN 122 575 286) & Fraser's Central Park Land No. 1 Pty Ltd (ACN 151 467 355) is being given this Modified Building Work Rectification Order (Modified Order) in relation to "One Central Park" located at 28 Broadway, 2 Chippendale Way, 1 Carlton Street and 3 Carlton Street, Chippendale NSW 2008 (the Development).

This Modified Order modifies the Building Work Rectification Order (Order) issued on 16 January 2024 in accordance with section 38 of the *Residential Apartment Building (Compliance and Enforcement Powers) Act 2020*.

This Modified Order modifies the period specified for compliance with the Order.

Fraser's Broadway Pty Ltd (ACN 122 575 286) & Fraser's Central Park Land No. 1 Pty Ltd (ACN 151 467 355) is required to cause building work to be carried out or take other specified action to remediate the serious and/or potential serious defects as set out below in this Modified Order.

Failure to comply with the requirements in this Modified 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 the residential apartment building has a 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. Frasers Broadway Pty Ltd (ACN 122 575 286) & Frasers Central Park Land No. 1 Pty Ltd (ACN 151 467 355) is the developer of the residential apartment building known as “One Central Park” located at 28 Broadway, 2 Chippendale Way, 1 Carlton Street and 3 Carlton Street, Chippendale NSW 2008 (the Development) for the purposes of section 4 of the Act.
5. The Development consists of the Construction of a new mixed-use retail, commercial and residential building with ancillary retail uses consisting of two towers located above a podium.
6. On the 06 December 2023, authorised officer Michael Hall conducted a lawful inspection of the Development.
7. On the 11 December 2023 the Building Commission NSW issued an Emergency Order which was similar to this Building Work Rectification Order.
8. On the 14 December 2023 the Building Commission NSW received correspondence from Frasers Property Australia Pty Limited which detailed why the timeframes in the Emergency Building Work Rectification Order dated 13 December 2023 were unachievable. On this date the Building Commission NSW also received correspondence from the Owners which included a letter from the Department of Planning and Environment stating that the temporary rope support system which supports the planter boxes was now satisfactory.
9. On the 20 December 2023 Frasers Property Australia Pty Limited made representations confirming that they are committed to working with the Building Commission NSW, and all other relevant parties, to resolve the issues raised in the initial Building Commission NSW Emergency Order dated 11 December 2023 and that Frasers is willing to enter into an Undertaking Process Deed Poll to address defects in the building/s.
10. On the 21 December 2023 the Building Commission NSW revoked the Emergency Order and instead issued to the developer a Notice of Intention to issue a Building Work Rectification Order along with a copy of the Draft Building Work Rectification Order

11. On the 11 January 2024 Frasers Property Australia Pty Limited made written representations in response to the Notice of Intention to issue a Building Work Rectification Order pursuant to section 46 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.
12. The Building Commission NSW determined to issue the Building Work Rectification Order, which may be revoked when the Secretary has accepted a written undertaking from the developer.
13. On the 14 February 2024 the Building Commission NSW considered a request from the Developer to modify the period specified for compliance with the Order. The request included information on the activities required to comply with each stage of the Order and the likely time required. The Building Commission NSW considers that this supplementary information provided reasonable and appropriate reasons for amending the compliance dates..
14. I, Matt Press, Director Building and Construction, Building Commission NSW am an authorised delegate of the Secretary of the Department.

#### **Requirements in relation to Serious Defects**

I, Matt Press 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 1 below and under section 34(1A) of the Act require that you Frasers Broadway Pty Ltd (ACN 122 575 286) do the things specified in column 5 of Table 1 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 1:

**Table 1: Requirement in relation to specified standard**

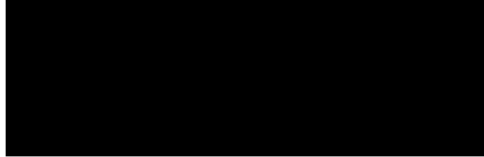
Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work (s 34(1)(a))	Requirement (s 34(1A))	Time for compliance with Requirement from the date of issue of this order (s 39(1))
1.	Planter boxes in the vertical gardens.	<p>A batch of the Type 2 Stainless Steel T-Bolts randomly distributed across the building to secure planter boxes in the vertical gardens are defective with some fracturing and failing.</p> <p>The ability of the planter boxes to drain both</p>	The planter boxes are to be re-designed by a registered structural and hydraulic engineer with consideration of the defects.	<p>Within the time period specified in column 6;</p> <p><b>Stage 1</b></p> <p><b>A. Hoarding</b></p> <p>(a) Erect a Type B hoarding on or over the public way in accordance with the document titled “Hoarding Brief – One Central Park” issued by the Department of Planning and Environment with Project No. Q9084 Revision 2 dated 15 August 2023 (a copy is enclosed).</p> <p>(b) Prior to the erection of the hoarding, a hoarding permit must be obtained by lodging a hoarding application with the City of Sydney Building Certification team (email: <a href="mailto:buildingapprovalsadmin@cityofsydney.nsw.gov.au">buildingapprovalsadmin@cityofsydney.nsw.gov.au</a>).</p> <p>(c) The hoarding is to be the full pavement width (less mandatory minimum clearances from roadways) on the north (Broadway), east (Carlton Street) and west (Chippendale Way) elevations of the building located on the Premises.</p>	<p><b>Stage 1 Hoarding</b> 31 October 2024</p> <p><b>Stage 1 Written Report</b> 31 August 2024</p> <p><b>Stage 2</b> 31 March 2026</p>

		stormwater rainfall catchment and sub-surface water flows effectively to the stormwater drainage system is defective.		<p>(d) Pedestrian management, lighting and adequate and appropriate signage is to be provided to ensure the safe movement of pedestrians using the public footpath and roadway areas of Chippendale Way, Carlton Street, and Broadway.</p> <p>(e) The hoarding must be able to provide overhead protection capable of resisting potential impact loading caused by falling Planter Boxes or any falling debris to ensure the safe passage of persons using the public footpath and roadway areas of Chippendale Way, Carlton Street and Broadway.</p> <p>(f) At the completion of the hoarding installation, provide the Building Commission NSW with a certificate from a suitably qualified practising structural engineer, verifying the structural adequacy of the hoarding and compliance with the approved plans, details and conditions of approval issued by the City of Sydney Building Certification team.</p> <p>(g) The Building Commission NSW may accept other options to that listed above subject to the approval of the City of Sydney Council.</p> <p><b>B. Written Report</b>  Submit a written structural engineering report via email to <a href="mailto:buildingcommissioner@customerservice.nsw.gov.au">buildingcommissioner@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must;</p>	
--	--	---	--	---	--

				<p>(a) be prepared by a person who is registered as a structural engineer on the Engineers Australia National Engineering Register (NER), and</p> <p>(b) be prepared by a person who is registered to work on class 2 buildings under the <i>Design and Building Practitioners Act 2020</i>, and</p> <p>(c) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>(d) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p><b>Stage 2</b> The developer is required to 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>	
--	--	--	--	---	--

**Duration of this Order**

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



**Matt Press**  
**Director Building and Construction**  
**Building Commission NSW**  
**Department of Customer Service**

# Reasons for Building Work Rectification Order

1. The Reasons for the Building Work Rectification Order under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020)* are detailed in Table 2 below.
2. I, Matt Press, formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
  - (a) The outcome of the inspection carried out by authorised officer Michael Hall of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act on the 06 December 2023.
  - (b) The report titled “One Central Park Planter Boxes” issued by the University of New South Wales with Reference Number UN184358 dated 28 September 2022.
  - (c) The report titled “Supplementary Technical Report” issued by Watermark Services Group dated 19 December 2023 which addresses the defective design of the planter boxes.
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.
5. The reason for the Modified Order is to modify the period specified for compliance with the Order.



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

<b>Serious Defect Reference No.</b>	<b>Building element in which serious defect has been identified</b>	<b>Defect</b>	<b>Reason why defect is a serious defect</b>	<b>Applicable approved plan, Code or Australian Standard</b>	<b>Consequences of serious defect</b>
1.	Building Enclosure	<p>A batch of the Type 2 Stainless Steel T-Bolts randomly distributed across the building to secure planter boxes in the vertical gardens are defective with some fracturing and failing.</p> <p>The drainage system at the base of the planter box cannot be maintained which causes the planter box</p>	<p>A building or structure, during construction and use, must be provided with the appropriate degrees of reliability.</p> <p>There is a safety risk posed by the use of the defective building product, being the batch of Type 2 Stainless Steel T-Bolts in the building, because occupants of the building and pedestrians are or will likely be at risk of death or serious injury.</p> <p>A roof and <i>external wall</i> (including openings around <i>windows</i> and doors) must prevent the penetration of water that could cause—</p> <p>(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</p>	<p>BP1.1, BP1.2, FP1.3 and FP1.4 of the National Construction Code Building Code of Australia Volume One.</p> <p>Building Products (Safety) Act 2020</p>	The large rectangular Planter boxes may and have fallen from the building which poses a risk of death to pedestrians below.

		to fill with water and to overflow. This dramatically increases the weight of the planter boxes and the treated planter box water consequentially damages glass windows and awnings.	(b) undue dampness or deterioration of building elements.		
--	--	--	---	--	--

### **Consideration of written representations**

6. I have considered the written representations received from Frasers Property Australia Pty Limited dated 11 January 2024 pursuant to section 47 of the Act.

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

7. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defect identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defect 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.
8. 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 Defect.
9. I am of the view that the periods above for Defect 1 is a reasonable period 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 defect poses 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).

## Attachment B

[illegible]