

Attn. the Proper Officer
JKN Hills Pty Ltd
ACN 159 864 089
121 Majors Bay Road
Concord NSW 2137

Service: to registered address and by email

25 June 2021

Building Work Rectification Order

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

JKN Hills Pty Ltd is being given this Building Work Rectification Order (Order) in relation to Atmosphere at 299-309 Old Northern Road, Castle Hill NSW 2154 (SP97992) ("the Building").

JKN Hills Pty Ltd is required to carry out building work to eliminate, minimise, or remediate the serious defect or potential serious defect as set out in Schedule A to this Order.

Please read this Order carefully. You must comply with the Order as provided **for below**. This Order remains in force until it is revoked by the Secretary.

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. JKN Hills Pty Ltd (ACN 159 864 089) is the developer of the residential apartment building known as Atmosphere at, 299-309 Old Northern Road, Castle Hill NSW 2154 (SP97992) (the Building) for the purposes of the Act.
3. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.

Power to order rectification

4. Under s 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.

5. 'Serious defect' is defined in s 3 of the Act as follows.

- (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the Building Code of Australia, the relevant Australian Standards or the relevant approved plans, or
- (b) a defect in a building product or building element that—
 - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
 - (ii) causes or is likely to cause—
 - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
- (a) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (b) the use of a building product (within the meaning of the Building Products (Safety) Act 2017) in contravention of that Act.

Grounds for issuing this Order

- 6. On 12 October 2020 and 23 February 2021 Compliance Officers from the Department conducted an inspection of the Building.
- 7. During the inspection the Compliance Officers observed that building work was carried out in a manner that could result in serious defects in relation to the following building element:
 - 8.1 A component of a building that is part of the building enclosure.
- 8. Further details of the building work and the nature of the serious defects and/or potential serious defects are provided in **Schedule A** to this Order.

Order

- 9. I, Matthew Whitton, an authorised delegate of the Secretary, reasonably believe that the building work was or is being carried out in a manner that could result in a serious defect and make the following orders:
 - 9.1 The developer must engage a suitably qualified expert within **7 days** of receiving this Order to prepare a plan to carry out building work to remediate the serious defects and/or potential serious defects in **Schedule A**. The plan must specify how the potential serious defects in **Schedule A** will be remediated, and how long the remediation is expected to take.
 - 9.2 The plan must be provided to the Secretary so that it is received within **28 days** of the date of this Order, and can be served via email to ocaudits@customerservice.nsw.gov.au.
- 10. The Developer must notify Sean O'Hara in writing, by email sent to ocaudits@customerservice.nsw.gov.au within 2 business days of the work required by this Order being completed.

Duration of this Order

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

A handwritten signature in dark ink, appearing to read 'M. Whitton', with a long, horizontal, wavy line extending to the right.

Matthew Whitton
Director, Consumer, Building & Property
Department of Customer Service

Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this Order within 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.
- You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.
- The Secretary has given the following persons notice of the making of this building work rectification order:
 - o the relevant local council,
 - o if the local council is not the certifier in relation to the building work—the principal certifier,
 - o if you are not the owner of the land concerned—the owner of the land concerned,
 - o the Registrar-General,
 - o if the order relates to a strata building—the relevant owners corporation,
 - o any other person prescribed by the regulations.
- This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.

Schedule A

Building work and serious or potential serious defects

Defect number	Building element	Building work	Observations	What is the defect that could result?	Why is it a serious/potential serious defect?
1.	A component of a building that is part of the building enclosure	Construction of the external cladding of the Building including the installation of Vitracore G2 panels.	On 23 February 2021, authorised officers inspected the external cladding of the Building and observed the absence of a sarking / waterproofing membrane to the inside face of the cladding panel which was non-compliant with the installation requirements of the Vitracore G2 façade cladding system technical information.	<p>The exclusion of the sarking / water proofing membrane in the facade could:</p> <ul style="list-style-type: none"> a. Cause the façade system to be ineffective, for example lead to water pooling behind the façade cladding which can then enter into the occupied habitable spaces thereby causing unhealthy or dangerous conditions, or loss of amenity for occupants. b. Cause undue dampness or deterioration of the external cladding. 	<p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> 1. It is a defect in a building element attributable to a failure to comply with the following performance requirements of the Building Code of Australia: NCC2019 BCA Volume 1 Part FP1.4. Compliance with the above performance requirement is achieved through compliance with the installation requirements of the Vitracore G2 façade cladding system technical information. Authorised officers observed that the installation requirements of the Vitracore G2 façade cladding system were not complied with there was no other performance solution in place to satisfy NCC2019 BCA Volume 1 Part FP1.4. AND 2. It is a defect in a building element that is attributable to a failure to build in accordance with the relevant approved plans, namely the Architectural issued for construction drawings: <ul style="list-style-type: none"> a. Drawing Number A5002/Rev6 Façade Details Drawing 3, Detail 04

					<p>Typical cladding detail and Detail 05 Typical cladding detail.</p> <p>b. Drawing Number A6001/Rev5 Wall Types Schedules 2 Drawing 2, Wall Type 29.</p> <p>c. Drawing Number A6003/Rev7 Wall Types Schedules 4 Drawing 4, Wall Type 64.</p>
2.	A component of a building that is part of the building enclosure	Construction of the external cladding of the Building including the installation of Vitracore G2 panels.	On 23 February 2021, authorised officers inspected the external cladding and observed that the cladding panels was terminated below the balcony floor tiling line and therefore not installed in accordance with the Vitracore G2 façade cladding system technical information.	<p>The incorrect base termination of the Vitracore G2 panels at the tiled floor level could cause:</p> <p>a. The inability for moisture to egress the cavity as a result of the trapping of the water in the toe of the cavity, thereby causing undue dampness or deterioration of the external cladding.</p> <p>b. The façade system to be ineffective, for example lead to water pooling behind the façade cladding which can then enter into the occupied habitable spaces thereby causing unhealthy</p>	<p>The building work constitutes a serious defect because of the following:</p> <p>1. It is a defect in a building element attributable to a failure to comply with the following performance requirements of the Building Code of Australia: NCC2019 BCA Volume 1 Part FP1.4.</p> <p>Compliance with the above performance requirement is achieved through compliance with the installation requirements of the Vitracore G2 façade cladding system technical information.</p> <p>Authorised officers observed that the installation requirements of the Vitracore G2 façade cladding system were not complied with there was no other performance solution in place to satisfy NCC2019 BCA Volume 1 Part FP1.4.</p> <p>AND</p> <p>2. It is a defect in a building element that is attributable to faulty workmanship and is likely to cause the inability to inhabit or use the building (or part of the building) for its intended purpose, in that it could cause water to build up in the cavity and</p>

				or dangerous conditions, or loss of amenity for occupants.	migrate to the internal occupied habitable space.
3.	A component of a building that is part of the building enclosure	Construction of the external cladding of the Building including the installation of Vitracore G2 panels.	<p>On 23 February 2021, authorised officers inspected the external cladding. After the inspection a number of documents relevant to the construction of the Building were reviewed which revealed that there was:</p> <ul style="list-style-type: none"> a. No certified structural engineers design in accordance with AS1170.2 2001. b. No confirmation that the design capacity of Vitracore G2 and its supports and fixings had been designed in accordance with the design life using verification method BV1 Structural Reliability NCC 2019 Part B1 Structural provisions. c. Non-compliance with the Vitracore G2 façade cladding 	<p>The failure to complete the structural reliability analysis as required by the NCC 2019 may lead to the failure of the facade cladding, including the detachment of the Vitracore G2 panels, thereby affecting the structural integrity of the building.</p>	<p>The building work constitutes a serious defect because it is a defect in a building element that is attributable to a failure to comply with the following performance requirements of the Building Code of Australia: NCC2019 BCA Volume 1 Part BP1.1 and BP1.2.</p> <p>Compliance with the above performance requirement can only be achieved through compliance with the verification method set out in NCC2019 BCA Volume 1 Part BV1.</p> <p>Authorised officers observed that Vitracore G2 and its supports and fixings had not been designed in accordance with the above verification method.</p>

			system installation manual.		
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