

Attn: Proper Officer
Loftus St Apartments Pty Ltd (ACN 610 750 788)
Suite 203, 1 Showground Road
Olympic Park NSW 2127

Service: By email

17 May 2023

Building Work Rectification Order

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

Loftus Street Apartments Pty Limited (ACN 610 750 788) is being given this Building Work Rectification Order (Order) in relation to address 17-19 Loftus St Wollongong 2500 (Lot 1 DP 913400; Lot 730 DP 114182; Lot 301 DP 1084476; SP 99864) (the Development).

Loftus Street Apartments Pty Limited (ACN 610 750 788) 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 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. Loftus Street Apartments Pty Limited (ACN 610 750 788) is the developer of the residential apartment building known as 17-19 Loftus St Wollongong 2500 (Lot 1 DP 913400, Lot 730 DP 114182, Lot 301 DP 1084476, SP 99864) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development comprises of a mixed-use Building containing 48 apartments, commercial retail space and underground car parks. The Act applies to building work at the Development.
7. On 7 July 2022, authorised officers conducted a lawful inspection of the Development.
8. On 23 March 2023, a Notice of Intention to issue the Order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Owners Corporation and Certifier.

9. The Developer, Local Council, Office of the Registrar General, and Certifier were invited to provide written representations relating to the Order to the Department by 29 March 2023. The Owners Corporation were invited to provide written representations relating to the Order to the Department by 13 April 2023.
10. The Developer provided submissions on 29 March 2023. No other submissions were received

Requirements in relation to Serious Defects

11. 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 1 below and under section 34(1A) of the Act require that you **Loftus Street Apartments Pty Ltd (ACN 610 750 788)** 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: Requirements in respect of Serious Defects

Serious Defect Reference Number	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
1	Rooftop	No overflow provisions on the rooftop	Prevent the overflow of water on the rooftop due to blockage in the roof drainage system.	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation 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 hydraulic specialist, being a registered design practitioner appropriate to the subject areas of the building; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to weatherproofing design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 -2 months</p> <p>Stage 2 – 3 months</p>
2	<p>Rooftop level lift doors</p> <p>Fire isolated stairway fire escape door from roof garden area</p>	Water entry to the lift shaft and fire escape stairway.	Prevent the penetration of wind-driven water through the openings around the lift door and fire escape door	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation 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"> ii. be prepared by a suitably qualified and experienced person or hydraulic specialist, being a registered design practitioner appropriate to the subject areas of the building; iii. be prepared with consideration to this Order and the Reasons for this Order; 	<p>Stage 1 -2 months</p> <p>Stage 2 – 3 months</p>

				iv. be prepared with consideration to weatherproofing design and installation specifications; and v. detail the specific building work necessary to meet the specified standard. Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
3	Unit 703, Unit 402, Unit 401, Unit 106, Unit 101, balcony of Unit 203, western fire stair at basement level, basement carpark at car space 36.	Water entry into the Building	Prevent the entry of water in habitable areas of the Building	Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced person or hydraulic specialist, being a registered design practitioner appropriate to the subject areas of the building; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to weatherproofing design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	Stage 1 -2 months Stage 2 – 3 months

Duration of this Order

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

13. This order is given on the date that it is given in accordance with section 67 of the Act.



Matthew Whitton
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 17 May 2023 issued to **Loftus Street Apartments Pty Ltd (ACN 610 750 788)** 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 21 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;, and the submissions by the Developer.
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 & 2 of the Order, located as described in Column 2 of Table 1 & 2 of the Order.

Table 2– basis of reasonable belief as to serious defects

Serious Defect Reference	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1	Waterproofing	No overflow drainage installed	Stormwater from roof areas require overflow devices for periods of high rainfall or if there is blockage in the roof drainage system. In the Building there was no overflow drains installed at the roof area.	<p><i>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed to Satisfy Provision F1.0, which states:</i></p> <p><i>“Stormwater drainage must comply with AS/NZS 3500.3.”</i></p> <p>Australian Standard AS/NZS 3500.3 –2015 Plumbing and Drainage–Stormwater Drainage, Section 5 Surface Drainage Systems –Design, Clause 5.3.1.1 Roof areas, which states:</p> <p><i>“Stormwater from roof areas shall be collected and conveyed in gutters and downpipes (...) and, during periods of high rainfall intensity or blockage of the roof drainage system, be discharged through overflow devices to –(a) site stormwater drains or channels;...”</i></p>	In event of high rainfall, the roof will not be able to drain and may result in water entry into the building causing degradation to the Building structure.
2	Waterproofing	Water entering the Building	Water entry which could cause unhealthy or dangerous conditions, lost of amenity for occupants and undue dampness or deterioration of building elements must be prevented from entering the Building. In the Building water is entering causing dangerous conditions, loss of amenity and undue dampness	<p>Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4, 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>	Entry of water into the lift shaft and fire isolated stairway may cause unhealthy and dangerous conditions in addition water entry into the lift shaft may prevent the lift from functioning
3	Waterproofing	Water entering the Building	Water entry which could cause unhealthy or dangerous conditions, lost of amenity for occupants	Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4, which states:	Entry of water into the Building will cause dangerous and unhealthy conditions

			and undue dampness or deterioration of building elements must be prevented from entering the Building. In the Building water is entering causing dangerous conditions, loss of amenity and undue dampness	<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>	
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Consideration of written representations

5. The Developer provided submissions on 29 March 2023, stating, among other things:

- a. That serious Defects 1 & 2 are *“directly related by their floor location and as such both provisions must be adequately and concurrently assessed by an appropriately qualified stormwater engineer being a current registered design practitioner”*;
- b. That *“for works in listed apartments a minimum notice period must be provided to the occupants prior to gaining entry to assess and carry out any internal works relating to the defects. This as such must be acknowledged and taken into account by Fair Trading”*

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

6. I am of the view that the periods above for Defect 1 through 3 (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.
7. Considering the potential consequences as outlined in my reasons, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the 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.
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 Defects.