# **Building Commission NSW**



Attn: Proper Officer Eunomia Developments Pty Ltd (ACN 605 617 150) ATF Eunomia Developments Unit Trust [ABN 94 911 587 402] Level 5, 219 Castlereagh Street, Sydney NSW 2000

Service: By registered post and by email

22 December 2023

# **Building Work Rectification Order**

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

Eunomia Developments Pty Ltd (ACN 605 617 150) ATF Eunomia Developments Unit Trust [ABN 94 911 587 402] is being given this Building Work Rectification Order (Order) in relation to address 2-24 Mitchell Road, Alexandria NSW 2015 (Lot 1 DP 669038, Lot 100 DP 1031123; SP 101237), known as *Teracota* (the Development).

Eunomia Developments Pty Ltd (ACN 605 617 150) ATF Eunomia Developments Unit Trust [ABN 94 911 587 402] 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. Matt Press, (Director Building Compliance: Building Commission NSW, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
- 5. Eunomia Developments Pty Ltd (ACN 605 617 150) ATF Eunomia Developments Unit Trust [ABN 94 911 587 402]) (**Eunomia Developments**) is the developer of the residential apartment building known as '*Teracota*' 2-24 Mitchell Road, Alexandria NSW 2015 (Lot 1 DP 669038, Lot 100 DP 1031123; SP 101237) (the **Development**) for the purposes of section 4(a) of the Act.
- 6. The Development is a Class 2/6/7a development that contains a commercial space on the ground floor northern corner and residential apartments from Ground to level 3. Furthermore, the development has two (2) basement levels of Class 7a car parking.
- 7. On 5 July 2023, authorised officers conducted a lawful inspection of the Development.
- 8. On 1 November 2023, a notice of intention to issue the Order and draft copy of the Order was issued to Eunomia Developments in relation to the Development.
  - a. Eunomia Developments were invited to provide written representations relating to the Order to the Department by 22 November 2023.
  - b. Submissions were received on 22 November 2023 from Eunomia Developments.

- 9. On 1 November 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Local Council, Owners Corporation and Certifier.
  - a. The Local Council, Owners Corporation and Certifier were invited to provide written representations relating to the Order to the Department by 22 November 2023.
  - b. No submissions were received as at the date of this Order from the Local Council, Owners Corporation and Certifier

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

10. I, Matt Press, under section 33 of the Act, require you **Eunomia Developments** 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:

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	Basement levels B1 & B2	Absence of fire-stopping penetrations in the fire- resisting wall elements that have not been installed using known tested fire-stopping methodology (Passive fire protection)	<b>Step 1:</b> Carry out rectification work to properly install fire- stopping penetrations in the fire-resisting wall elements using known tested fire-stopping methodology (Passive fire protection) to comply with Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions, AS 4072.1-2005: Components for the protection of openings in fire-resistant separating elements Service penetrations and control joints and AS1530.4 Methods for fire tests on building materials, components and structures Fire- resistance tests for elements of construction	3 months

#### Table 1: Requirements in respect of Serious Defects

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				Step 2: Make good any resultant consequential damage. Step 3: Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party	
	0			reports.	o
	2	Basement B1 - Lobby A, near fire stair 02 as shown in the approved plan being construction certificate drawing title General Arrangement Plan – Basement Level 1 drawing no. CC101 revision 6 dated 21 Febuaray 2020 by Bennett Murada Architects Pty Ltd	No installation of self- closing FRL-/120/30 fire- rated doors with medium temperature smoke seals	<b>Step 1:</b> Carry out rectification work so that all fire rated doors are self-closing FRL-/120/30 fire-rated doors with medium temperature smoke seals installed so as to comply in with <i>Building Code of Australia: Vol</i> 1 - Section C Fire resistance, Part C3.4 Fire doors, smoke doors, fire windows and shutters, Deemed-to-Satisfy provisions and AS 1905.1-2015 Components for the protection of openings in fire-resistant walls, <b>Step 2:</b> Make good any resultant consequential damage. <b>Step 3:</b> Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports	2 months
	3	Level 3 – Fire stair 01, fire hydrant	Absence of pressure gauges installed on the internal fire hydrants.	Step 1:Carry out rectification work to install all pressuregauges on the internal fire hydrants so as tocomply in with Building Code of Australia: Section EServices and equipment, Part E1 Firefightingequipment, Deemed-to-Satisfy provision E1.3 Firehydrants and AS2419.1 Fire hydrant installations,Part 1: System design,Step 2:Make good any resultant consequential damage.Step 3:	2 months

Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party	
reports	

9. 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 **Eunomia Developments** 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 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
4	Basement carpark B1: Outside Lift No. 2 lobby area (in the side of the cars pathway)	Failure of the waterproofing as metal pipe penetration shows calcium stalactite formed around, and to the underside, due to significant water ponding and water ingress dripping consistently.	Water must be prevented from penetrating and entering into the building behind and into concealed spaces.	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in the subject areas forensic building consultant specialising in water penetration</li> </ul> </li> </ul>	Stage 1: <del>3</del> months Stage 2: 5 months

				<ul> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> <li>Stage 2</li> <li>1. Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>2. Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> <li>3. Make good any resultant consequential damage, and</li> <li>4. Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports</li> </ul>	
5	Podium courtyard planter box, opposite Unit 107	Absence of the waterproofing membrane terminating at minimum 100 mm above the soil level within the podium courtyard planter box	Water must be prevented from penetrating and entering into the building behind and into concealed spaces.	Within the time period specified in column 6, <b>Stage 1</b> Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must:	Stage 1:3 months Stage 2: 5months

i) be prepared by a suitably qualified and
experienced person in the subject
areas forensic building consultant
specialising in water penetration.
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.
Stage 2
1. Prepare a regulated design, with a
design compliance declaration, based
on the written report submitted in
compliance with Stage 1,
2. Carry out the work to rectify the
serious defect in accordance with the
written report in compliance with
Stage 1 and the regulated design.
3. Make good any resultant
consequential damage, and
4. Demonstrate compliance of
remediation works by submitting
evidence to the OC Audit team via
email to
ocaudits@customerservice.nsw.gov.a
u including photographs of work in
progress, installer compliance
certificates and third party reports.

6	Unit 116 - Ensuite	Window has been	Water must be	Within the time period specified in column	Stage 1.2
0	showor	installed at one end of	provented from	6	Months
	3110 100	the shower area with a	prevented from	0,	WOITINS
		lack of sealant in the	entering into the	Stage 1	Stage 2.3
		vertical junction	building behind	Submit a written report to the OC Audit	Monthe
		between the window and	fittings and linings	team via email to	Wontins
		the wall tiles causing	and into concealed		
		water popotration to	spaces of sanitary	ocaddits@cdstomerservice.iisw.gov.ad	
		plastorboard coiling on	compartments	The written report required to be	
		the ground floor directly	bathroome	submitted must	
		below the shower reason	bathrooms,	i) be prepared by a quitably qualified and	
		of the oncuite		i) De prepared by a suitably qualified and	
		of the ensure.	like	experienced person in the subject	
				areas forensic building consultant	
				ii) be propared 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	
				Standard.	
				1 Prepare a regulated design with a	
				design compliance declaration based	
				on the written report submitted in	
				compliance with Stage 1	
				2 Carry out the work to rectify the	
				serious defect in accordance with the	
				written report in compliance with Stage 1	
				and the regulated design	
				3 Make good any resultant	
				consequential damage and	
				4 Demonstrate compliance of	
				remediation works by submitting	
				evidence to the OC Audit team via email	
				to ocaudits@customerservice.nsw gov au	
				including photographs of work in	

				progress, installer compliance	
				certificates and third party reports	
7	<ul> <li>Rooftop floors</li> <li>Unit 118 - Skylight</li> </ul>	Absence of waterproofing membrane to the rooftop over the southern lift overrun and incorrectly installed membrane application at turn-ups and corners leading to water penetration into unit 118 skylight.	Waterproofing membranes for external above ground must prevent water from penetrating and entering into the building and falls in finishes must ensure water drains to the drainage outlet and not be retained on the finished surface (with the exception of residual water remaining due to surface tension).	<ul> <li>progress, installer compliance certificates and third party reports</li> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in the subject areas forensic building consultant specialising in water penetration;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> <li>Stage 2 <ol> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design,</li> </ol> </li> </ul>	Stage 1: 2 months Stage 2: 3 months
				3. Make good any resultant consequential damage and	
				damage, and	
				<ol><li>Demonstrate compliance of</li></ol>	
l				remediation works by submitting	
				evidence to the OC Audit team via	

				email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports	
8	Basement B1 – Fire pump room stair as shown in the approved plan, being construction certificate drawing title General Arrangement Plan – Basement Level 2 drawing no. CC100 revision 5 dated 21 Febuaray 2020 by Bennett Murada Architects Pty Ltd.	Fire door installed in the wrong direction, opening directly into a fire- isolated stairway, leading to an exit adjacent to the fire hydrant pump room	A fire door must not open directly into a stairway, passageway or ramp that is required to be fire- isolated	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in the subject area of fire safety engineering</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> <li>Stage 2 <ol> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1,</li> <li>Make good any resultant consequential damage, and</li> </ol> </li> </ul>	Stage 1: 2 months Stage 2: 3 months

				<ol> <li>Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.a</u> <u>u</u>including photographs of work in progress, installer compliance certificates and third party reports</li> </ol>	
9	Basement B1, B2, Ground Floor and Level 1 as per the approved plans being structural design drawings titled Level 1 Slab Plan No S0600 revision F dated 6 November 2018 by ACE Engineers	Exposed reinforcements, honeycombing, and segregation throughout area	Ensure there is no honeycombing or segregation throughout the concrete slab thickness and that the minimum concrete cover for the slab reinforcement has been achieved so that structural performance, durability and appearance of the structure are not compromised.	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u></li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in structural engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> <li>Stage 2 <ul> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> </ul> </li> </ul>	Stage 1: 3 months Stage 2: 5 months

				<ol> <li>Make good any resultant consequential damage, and</li> <li>Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports</li> </ol>	
10	Level 1 slab downturn - Car park ramp entry, between Grids W to X and 7 to 8 at 1 concrete slab downturn over car park entry as per the approved plans being structural design drawings titled <i>Level 1 Slab Plan</i> <i>No SO600 revision</i> <i>F</i> dated 6 November 2018 by ACE Engineers	Uncontrolled cracking to the soffit and inside the thickness of the concrete beam	Ensure there are no cracks throughout the concrete slab thickness and that the minimum concrete slab strength has been achieved so that structural performance, durability and appearance of the structure are not compromised.	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u></li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in structural engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> <li>Stage 2 <ol> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>Carry out the work to rectify the serious defect in accordance with the</li> </ol> </li> </ul>	Stage 1: 3 months Stage 2: 5 months

				<ul> <li>written report in compliance with Stage 1 and the regulated design.</li> <li>3. Make good any resultant consequential damage, and</li> <li>4. Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports.</li> </ul>	
11	Roof floor – Fire stair 01.	Exposed reinforcements, honeycombing, and segregation roof floor fire stair slab due to poorly compacted and placed concrete to the fire stair slab	Ensure there is no honeycombing or segregation throughout the concrete slab thickness and that the minimum concrete cover for the slab reinforcement has been achieved so that structural performance, durability and appearance of the structure are not compromised.	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in structural engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> <li>Stage 2 <ol> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> </ol> </li> </ul>	Stage 1: 3 months Stage 2: 5 months

				<ol> <li>Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> <li>Make good any resultant consequential damage, and</li> <li>Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au including photographs of work in progress, installer compliance certificates and third party reports</li> </ol>	
12	Ground Floor - Lobby 2, window number 79 as marked on the Ground Floor Plan, Drawing CC102, Rev. 17, from Bennett Murada Architects.	The window, opposite the lift facing the courtyard, showed signs of water ingress under the window frame, leading to signs of calcification caused by the water ingress on the fire hydrant riser inside the lobby, located adjacent to window.	Installed window assemblies shall prevent water penetration and excessive air infiltration.	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in façade engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> <li>Stage 2 <ul> <li>Prepare a regulated design, with a design compliance declaration, based</li> </ul> </li> </ul>	Stage 1: 3 months Stage 2: 5 months

				<ul> <li>on the written report submitted in compliance with Stage 1,</li> <li>2. Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> <li>3. Make good any resultant consequential damage, and</li> <li>4. Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.a</u> <u>u</u> including photographs of work in progress, installer compliance certificates and third party reports</li> </ul>	
13	Ground Floor - Lobby 1 walkway	Weepholes observed on concrete paved walkway without the required height above finished level throughout ground floor, lobby 1 level	Ensure the damp proof course and weepholes are installed to allow moisture to escape	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u></li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in façade engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> </li> </ul>	Stage 1: 3 months Stage 2: 5 months

				<ol> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> <li>Make good any resultant consequential damage, and</li> <li>Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports</li> </ol>	
14	Rooftop Plant Area, Fire Stair 3 wall	No Damp Proof Course was visible to external face of brickwork and at Fire Stair 3 wall facing South to the roof top plant area	Ensure the damp proof course and weepholes are installed to allow moisture to escape	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u></li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in façade engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious</li> </ul> </li> </ul>	Stage 1: 3 months Stage 2: 5 months

				<ul> <li>defect and meet the specified standard.</li> <li>Stage 2</li> <li>Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> <li>Make good any resultant consequential damage, and</li> <li>Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to occaudits@customerservice.nsw.gov.au including photographs of work in progress, installer compliance certificates and third party reports</li> </ul>	
15	Western side brick wall of Level 3: Unit 26., adjacent to the communal open space as per approved plans being architectural design drawings titled General Arrangement Plan - Level 3 No CC 105 revision 5 dated 21 February	Control joint with incomplete sealant to the lower section of the control joints at Unit 26 façade wall (communal open space).	Ensure complete sealant to the control joint Ensure complete sealant to the expansion joints (closing control joints) and articulation joints	<ul> <li>Within the time period specified in column 6,</li> <li>Stage 1</li> <li>Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u></li> <li>The written report required to be submitted must: <ul> <li>i) be prepared by a suitably qualified and experienced person in structural engineering;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> </ul> </li> </ul>	Stage 1: 3 months Stage 2: 2 months

2020 by Benn Murada	ett	i 9 1 2 2	<ul> <li>ii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> <li>Stage 2</li> <li>I. Prepare a regulated design, with a design compliance declaration, based on the written report submitted in compliance with Stage 1,</li> <li>2. Carry out the work to rectify the serious defect in accordance with the written report in compliance with Stage 1 and the regulated design.</li> <li>3. Make good any resultant consequential damage, and</li> <li>4. Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> including photographs of work in progress installer compliance</li> </ul>
			ocaudits@customerservice.nsw.gov.au including photographs of work in progress, installer compliance certificates and third party reports

per approved brick to concrete weepholes are	ionuns
per approved plans being architectural design drawings titled General <i>Arrangement Plan</i> - <i>Level 3</i> No CC 105 revision 5 dated 21 February 2020 by Bennett Muradabrick to concrete connection, with no Damp Proof Course visible.Stage 1 scapeStage 1 submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.auStage 1 submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.auStage 1 submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.auStage 1 submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.auMuradaStage 2 and<	tage 2: 5 ionths

		progress, installer compliance certificates and third party reports	

# **Duration of this Order**

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

Matt Press Acting Executive Director, Building Operations & Acting Assistant Building Commissioner Building Commission NSW Department of Customer Service

# **Reasons for Building Work Rectification Order**

- 1. These Reasons for Order are with respect to the Order dated 22 December 2023 issued to Eunomia Developments Pty Ltd (ACN 605 617 150) ATF Eunomia Developments Unit Trust [ABN 94 911 587 402]) (Eunomia Developments) 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, Matt Press, have formed a reasonable belief that the Development has serious defects.
- 3. I have formed this belief after reviewing:
  - a) An inspection report dated 8 August 2023 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 16 February 2023 (the **Inspection Report**)
  - b) An updated Inspection Report 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 18 May 2023
  - c) An updated Inspection Report 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 8 September 2023
  - d) Submissions received from Eunomia Developments on 22 November 2023
- 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 and 2.

Serious	Building	Defect	Reason why defect is	Applicable approved plan, Code or	Consequences of
Defect	element in which		a serious defect	Australian Standard	serious defect
Reference	serious detect				
INO.	nas peen				
1	The fire safety	Absonce of fire	A failure to comply	Building Code of Australia: Vol 1 Section C	Could load to the
1.	The fire safety systems for a building within the meaning of the Building Code of Australia	Absence of fire- stopping penetrations in the fire-resisting wall elements that have not been installed using known tested fire-stopping methodology (Passive fire protection)	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as fire- stopping penetrations in the fire-resisting wall elements must be installed to maintain the integrity or insulation or a resistance to the incipient spread of fire	<ul> <li>Building Code of Australia: Vol 1 Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.12 Openings in floors and ceilings for services states:</li> <li>(a) Where a service passes through — <ul> <li>(i) a floor that is required to have an FRL with respect to integrity and insulation; or</li> <li>(ii) a ceiling required to have a resistance to the incipient spread of fire, the service must be installed in accordance with (b).</li> <li>(b) A service must be protected.</li> <li>1</li> <li>(iii) in accordance with C3.15"</li> </ul> </li> <li>And</li> <li>C3.15 Openings for service installations states:</li> <li>"Where an electrical, electronic, plumbing, mechanical ventilation, air-conditioning, or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the</li> </ul>	Could lead to the uncontrolled spread of fire and smoke through the building and smoke along the emergency evacuation path in the event of a fire
				incipient spread of fire, that installation must comply with any one of the following:	

## Table 3 – Basis of reasonable belief as to serious defects

2.	The fire safety	No installation of self-	A failure to comply	Building Code of Australia: Vol 1 - Section	Could lead to the
	systems for a	closing FRL-/120/30	with the performance	C Fire resistance, Part C3 Protection of	uncontrolled
	building within	fire-rated doors with	requirements of	openings, Specification C3.4 Fire doors,	spread of fire and
	the meaning of	medium temperature	the Building Code of	smoke doors, fire windows and shutters,	smoke through
	the Building Code	smoke seals	Australia and the	Deemed-to-Satisfy provisions:	the building and
	of Australia		relevant Australian		smoke along the
			Standards as there is	"A required fire door must –	emergency
			a requirement to	(a) comply with AS 1905.1; and	evacuation path
			Install self-closing	(D)	In the event of a
			FRL-/120/30 Tire-	Deemed to Satisfy provision Specification	TIFE
			modium tomporaturo	C3 A is a pathway that can satisfy the BCA	
			smoke seals	Volume One Section C Fire resistance	
			Smoke Seats	Performance requirement CP8 which	
				states:	
				"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 —	
				(a) where openings,	
				construction joints and the	
				like occur; and	
				(b) where penetrations occur	
				for building services."	
				AS 1905 1 2015 Components for the	
				notection of openings in fire-resistant	
				walls Part 1. Fire-resistant doorsets	
				Section 5 Installation	
				5.2 Metal doorframes in non-masonry	
				walls which states:	
				"Fixing and backfilling of metal	
				doorframes in non-masonry walls shall be	
				as per the tested specimen".	

				Fire Doors	
				D2.01 (FS-02: B.04, B.15, Fire Stair Entry Doors         FRL1/20/90         -         45mm         Fire Rated Door           2.06; FS-01: B.06: B.07,         and B2 (B.04,         B.06: B.07,         B.16, B.34)         FRL400/90 to         600 core         2.08         600 core         2.08         600 core         2015_1_03Schedules_March2018_CURRENT_xtsx         2015_1_03Schedules_March2018_CURRENT_xtsx         2015_1_03Schedules_March2018_CURRENT_xtsx         600 core         600 core	
3.	The fire safety systems for a building within the meaning of the Building Code of Australia	Absence of pressure gauges installed on either of the internal fire hydrants.	A failure to comply with the performance requirements of the Building Code of Australia and the relevant Australian Standards as there is a requirement to install pressure gauges on internal fire hydrants.	<ul> <li>Building Code of Australia: Vol 1 – Part E1 Firefighting equipment, Deemed-to- Satisfy provision E1.3 Fire hydrants:</li> <li>(a) A fire hydrant system must be provided to serve a building –</li></ul>	Could lead to the uncontrolled spread of fire and smoke through the building and smoke along the emergency evacuation path in the event of a fire

				(b) For buildings with an effective height of not more than 25 m, at the hydraulically most disadvantaged fire hydrant in any installation with more than six fire hydrants.	
4.	Waterproofing	Failure of the waterproofing as metal pipe penetration shows calcium stalactite formed around, and to the underside, due to significant water ponding and water ingress dripping consistently	A failure to comply with the performance requirements of the Building Code of Australia and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure of the building.	<ul> <li>Building Code of Australia: Vol 1 - Part F1 Damp and Weatherproofing,</li> <li>FP1.2, which state:</li> <li>"Surface water, resulting from a storm having an average recurrence interval of 100 years must not enter the building".</li> <li>And</li> <li>FP1.7, which state:</li> <li>"To protect the structure of the building and to maintain the amenity of the occupants, water must be prevented from penetrating- (a) behind fittings and linings; and (b) into concealed spaces, Of sanitary compartments, bathrooms, laundries and the like."</li> <li>AS 4654.2 Waterproofing membranes for above ground use, Section 2 - Design and Installation,</li> <li>2.10 Drains, which states:</li> <li>"2.10 DRAINS The membrane shall be connected. to the stormwater drainage system through a turn down of the membrane into the inlet of the system as shown in Figure 2.15.</li> </ul>	Could cause unhealthy or dangerous conditions, or loss of amenity for occupants, and undue dampness or deterioration of building elements, which may lead to the inability to inhabit or use the building (or part of the building) for its intended purpose due to water penetration.

				An alternative connection may have a flange to which the membrane is clamped or attached (see Note 1). To minimize blockage from debris. the drain shall have a sump, inlet pit, grate or cage."	
5.	Waterproofing	Absence of the waterproofing membrane terminating a minimum 100 mm above the soil level within the podium courtyard planter box	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure of the building.	<ul> <li>Building Code o Australia: Vol 1 - Part F1 Damp and Weatherproofing, FP1.2, which states:</li> <li>"Surface water, resulting from a storm having an average recurrence interval of 100 years must not enter the building".</li> <li>And</li> <li>FP1.7, which state:</li> <li>"To protect the structure of the building and to maintain the amenity of the occupants, water must be prevented from penetrating- (a) behind fittings and linings; and (b) into concealed spaces, Of sanitary compartments, bathrooms, laundries and the like."</li> <li>AS4654.2: Waterproofing membranes for external above ground use: Section 2 – Design and Installation, Part 2.13 Planter Boxes which states in part:</li> <li>"The membrane shall be sealed to the drainage outlet. It shall extend vertically to a height of 100 mm above the soil or fill level.</li> <li>Falls in the base of the planter shall be in accordance with Clause 2.5.2. NOTES:</li> </ul>	Could cause unhealthy or dangerous conditions, or loss of amenity for occupants, and undue dampness or deterioration of building elements, which may lead to the inability to inhabit or use the building (or part of the building) for its intended purpose due to water penetration

				<text><text><image/></text></text>	
6.	Waterproofing	Window has been installed at one end of the shower area with a lack of sealant in the vertical junction between the window and the wall tiles, causing water penetration to plasterboard ceiling on the ground floor directly below the	A failure to comply with the performance requirements of the <i>Building Code</i> of <i>Australia</i> and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to	Building Code of Australia: Vol 1 - Part F1 Damp and Weatherproofing, F1.7 Waterproofing of wet areas in buildings, which states: "In a Class 2 and 3 building and a Class 4 part of a building, building elements in wet areas must — (i) be water resistant or waterproof in accordance with Table F1.7; and (ii) comply with AS 3740."	Could cause unhealthy or dangerous conditions, or loss of amenity for occupants, and undue dampness or deterioration of building elements, which may lead to the inability to inhabit

		shower recess of the ensuite.	protect the structure of the building.	<ul> <li>Table F1.7 requires wall to wall junctions in shower areas to be waterproof and walls in shower areas to have water-resistant substrate and water-resistant substrate and water-resistant surface finish to a height of 1.8m.</li> <li>FP1.7 which states: <ul> <li><i>"To protect the structure of the building and to maintain the amenity of the occupants, water must be prevented from penetrating-</i></li> <li>(a) behind fittings and linings; and</li> <li>(b) into concealed spaces, Of sanitary compartments, bathrooms, laundries and the like."</li> </ul> </li> <li>AS3740:2021. Waterproofing of domestic wet areas <ul> <li>Clause 2.4 of AS3740 provides a list of materials deemed to be waterproof, water-resistant substrates and water-resistant substrates and water-resistant substrates and water-resistant sufficient."</li> </ul> </li> </ul>	or use the building (or part of the building) for its intended purpose due to water penetration
7.	Waterproofing	Failure of the waterproofing as there is an absence of waterproofing membrane to the rooftop over the southern lift overrun and incorrectly installed membrane application at turn-ups and corners leading to water penetration and	A failure to comply with the performance requirements of the Building Code of Australia and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure	Building Code of Australia: Vol 1 – Part F1 Damp and Weatherproofing Deemed-to- Satisfy provision F1.4: "Waterproofing membranes for external above ground use must comply with AS 4654.1 and AS 4654.2 Clause 2.5.2 of AS 4654.2 Waterproofing membranes for above ground use: "Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be	Could cause unhealthy or dangerous conditions, or loss of amenity for occupants, and undue dampness or deterioration of building elements, which may lead to the inability to inhabit or use the

		water leakage into unit 118 skylight.	of the building, and also prevented from being retained on the falls in finished surfaces.	retained on the finished surface with the exception of residual water remaining due to surface tension. The fall shall be In the structural substrate, or formed by a screed over the structural substrate." As water is ponding on the roof surface, it is apparent that the provisions of clause 2.5.2 have not been met. Clause 1.5 of AS 4654.1 Waterproofing membranes for above ground use, part 2 Materials: "EXPOSED AND PROTECTED SYSTEMS The membrane and system types listed in Clause 1.6 shall be either exposed or protected systems, as folJows: (a) Exposed systems Systems designed to be ,exposed to the weather and/or mechanical and/or chemical damage. (b) Protected systems Systems designed to be protected from the weather, and mechanical and chemical damage."	building (or part of the building) for its intended purpose due to water penetration
8.	The fire safety systems for a building within the meaning of the Building Code of Australia	Fire door installed in the wrong direction, opening directly into a fire-isolated stairway, leading to an exit adjacent to the fire hydrant pump room	A failure to comply with the performance requirements of the <i>Building Code of</i> Australia and the relevant Australian Standards as fire doors must not open directly into a stairway, passageway	Building Code of Australia: Vol 1 Section D Access and Egress, Part D2 Construction of Exits, Deemed-to-Satisfy provisions, D1.7 Travel via fire-isolated exit, which state: "(a) A doorway from a room must not open directly into a stairway, passageway or ramp that is required to be fire-isolated unless it is from-	Could lead to the uncontrolled spread of fire and smoke through the building and smoke along the emergency evacuation path in the event of a fire

			or ramp that is required to be fire- isolated	<ul> <li>(i) a public corridor, public lobby or the like; or</li> <li>(ii) a sole-occupancy unit occupying all of a storey; or</li> <li>(iii) a sanitary compartment, airlock or the like."</li> </ul>	
9.	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)	Exposed reinforcements, honeycombing, and segregation throughout area	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as exposed reinforcements, honeycombing, and segregation can lead to moisture penetration which can cause serious structural conditions such as the rusting of steel reinforcement from within the concrete which will compromise structural integrity.	Building Code of Australia: Vol 1 Section B - Structural Provisions, Part B1 Structural Provisions, B1.4 Determination of structural resistance of materials and forms of construction, "The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate: (a) Concrete: (i) Concrete construction (including reinforced and prestressed concrete): AS 3600". AS 3600 Concrete Structures, Part 17.1 Material and construction requirements for concrete and grout, Part 17.1.3 Handling, placing and compacting of concrete "Concrete shall be handled, placed and compacted so as to –  (a) limit segregation or loss of materials; (b) limit premature stiffening; (c) produce a monolithic mass between planned joints or the extremities of members, or both; (d) completely fill the formwork to the intended level, expel entrapped air,	Compromise the structural integrity of the building element

	and closely surround all reinforcement, tendons, ducts, anchorages, embedment's and fixings"
	And
	Section 4, Design for durability 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection
	"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."
	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.
	And
	Clause 5.5 Fire resistance periods (FRPs) for slabs
	"(d) For two-way ribbed slabs, see Table 5.5.2(C) or Table 5.5.2(D) as appropriate for the support conditions. The slabs shall be proportioned so the width and the average axis distance to the longitudinal bottom reinforcement in the ribs, and the axis distance to the bottom reinforcement in the slab between the ribs, and the axis distance of the corner har to the side

				•	
				face of the rib, is not less than that value plus 10 mm."	
				And	
				<ul> <li>B1.4 Determination of structural resistance of materials and forms of construction, which states:</li> <li>"The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate:</li> <li>(a) Concrete:</li> <li>(i) Concrete construction (including reinforced and prestressed concrete): AS 3600."</li> </ul>	
10.	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)	Uncontrolled cracking to the soffit and inside the thickness of the concrete beam	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards cracking to the soffit leads to the soffit being susceptible to moisture damage which can cause serious structural damage.	AS 3600 Concrete Structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability, "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." Building Code of Australia: Vol 1 Section B - Structural Provisions, Part B1 Structural Provisions, B1.4 Determination of structural resistance of materials and forms of construction, "The structural resistance of materials and forms of construction must be determined in accordance with the following, as	Compromise the structural integrity of the building element
				in accordance with the following, as appropriate:	

				(a) Concrete: (i) Concrete construction (including reinforced and prestressed concrete): AS 3600".	
11.	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)	Exposed reinforcements, honeycombing, and segregation roof floor fire stair slab due to poorly compacted and placed concrete to the fire stair slab	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as exposed reinforcements, honeycombing, and segregation can lead to moisture penetration which can cause serious structural conditions such as the rusting of steel reinforcement from within the concrete which will compromise structural integrity	<ul> <li>Building Code of Australia: Vol 1 Section B <ul> <li>Structural Provisions, Part B1 Structural</li> <li>Provisions, B1.4 Determination of</li> <li>structural resistance of materials and</li> <li>forms of construction,</li> </ul> </li> <li>"The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate: <ul> <li>(a) Concrete:</li> <li>(i) Concrete construction (including reinforced and prestressed concrete): AS 3600".</li> </ul> </li> <li>AS 3600 Concrete Structures, Section 17 Material and construction requirements, 17.1 Material and construction requirements, 17.1 Material and construction requirements for concrete and grout</li> <li>"Concrete shall be handled, placed and compacted so as to <ul> <li>(a) limit segregation or loss of materials;</li> <li>(b) limit premature stiffening;</li> <li>(c) produce a monolithic mass between planned joints or the extremities of members, or both;</li> <li>(d) completely fill the formwork to the intended level, expel entrapped air, and closely surround all reinforcement,</li> </ul></li></ul>	Compromise the structural integrity of the building element

				tendons, ducts, anchorages, embedments and fixings."	
12.	A component of a building that is part of the building enclosure, being 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)	The window, opposite the lift facing the courtyard, showed signs of water ingress under the window frame, leading to signs of calcification caused by the water ingress on the fire hydrant riser inside the lobby, located adjacent to window.	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure of the building	<ul> <li>Building Code of Australia: Vol 1 – Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement</li> <li>A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause — <ul> <li>(a)unhealthy or dangerous conditions, or loss of amenity for occupants; and</li> <li>(b)undue dampness or deterioration of building elements."</li> </ul> </li> <li>And Performance Requirement F1.13  <ul> <li>Subject to (b) and (c), the following glazed assemblies in an external wall, must comply with AS 2047 requirements for the resistance to water penetration: <ul> <li>(i) Windows</li> <li>(ii) Sliding and swinging glazed doors with a frame, including French and bi-fold doors with a frame.</li> <li>(iii) Adjustable louvres.</li> <li>(iv) Shopfronts. Window walls with one piece framing."</li> </ul> </li> <li>Australian Standard 2047-2014 Windows and External Glazed Doors in Buildings -</li> </ul></li></ul>	That could cause unhealthy or dangerous conditions, or loss of amenity for occupants and undue dampness or deterioration of building elements.

				Section 7 Installation, 7.2 Installation, 7.2.1 General,: " Installed window assemblies shall prevent water penetration and excessive air infiltration. Note: Window manufactures installation procedures may need to be followed for particular installations".	
13.	A component of a building that is part of the building enclosure, being 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)	Weepholes observed on concrete paved walkway without the required height above finished level throughout ground floor, lobby 1 level	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure of the building and flashings must be built-in with projections that are of sufficient size and orientation to direct the moisture from the masonry	<ul> <li>Building Code of Australia: Vol 1 – Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4</li> <li>A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause — <ul> <li>(a)unhealthy or dangerous conditions, or loss of amenity for occupants; and</li> <li>(b)undue dampness or deterioration of building elements."</li> </ul> </li> <li>AS Australian Standard 3700 Masonry Structures <ul> <li>12.4.16 Damp-proof course and flashing (DPC), which states:</li> <li><i>"…</i></li> <li>Flashings, including overflashings, shall be built-in with projections that are of sufficient size and orientation to direct the moisture from the masonry in the required manner."</li> </ul> </li> </ul>	That could cause unhealthy or dangerous conditions, or loss of amenity for occupants and undue dampness or deterioration of building elements

				<ul> <li>4.7.3. Damp-proof courses (DPCs) and flashings which states: "DPCs or flashings shall be incorporated into masonry construction to-</li> <li>(a) Provide a barrier to the upward or downward passage of moisture through masonry.</li> <li>(b) Prevent moisture from entering into the interior of a building from the exterior.</li> <li>(c) Prevent moisture passing across a cavity to the inner leaf and Shed moisture through masonry to the outer face".</li> </ul>	
14.	A component of a building that is part of the building enclosure, being 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)	No Damp Proof Course was visible to external face of brickwork and at Fire Stair 3 wall facing South to the roof top plant area	A failure to comply with the performance requirements of the <i>Building Code of</i> Australia and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure of the building and flashings must be built-in with projections that are of sufficient size and orientation to direct the moisture from the masonry	<ul> <li>Building Code of Australia: Vol 1 – Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4</li> <li>A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause — <ul> <li>(a)unhealthy or dangerous conditions, or loss of amenity for occupants; and</li> <li>(b)undue dampness or deterioration of building elements."</li> </ul> </li> <li>AS Australian Standard 3700 Masonry Structures</li> <li>12.4.16 Damp-proof course and flashing (DPC), which states: <ul> <li></li> <li>Flashings, including over flashings, shall be built-in with projections that</li> </ul> </li> </ul>	That could cause unhealthy or dangerous conditions, or loss of amenity for occupants and undue dampness or deterioration of building elements

				-	
				are of sufficient size and orientation	
				to direct the moisture from the	
				masonry in the required manner."	
				And	
				4.7.3. Damp-proof courses (DPCs)	
				and flashings which states:	
				"DPCs or flashings shall be	
				incorporated into masonry	
				construction to-	
				(d) Provide a barrier to the upward or	
				downward passage of moisture	
				through masonry	
				(e) Prevent moisture from entering into	
				the interior of a building from the	
				exterior	
				(f) Prevent moisture passing across a	
				(i) Trevent moisture passing across a	
				Shad maisture through meaning to	
				the outer face"	
15	A component of	Control joint with	A failure to comply	Building Code of Australia: Vol 1 Section	That could cause
15.	a building that is	incomplete coalant to	with the performance	E Hoalth and Amonity Part El Damp and	unboolthy or
	a building that is	the lower costion of	roquiromonts of	Weatherproofing Derformance	dangaraus
	building	the control jointo at	the Duilding Code of	Dequirement CD14	
		Line control joints at	Australia and the	A reaf and avtarnal wall (including	conditions, or loss
	the part of the			A 1001 and external wait (including	
	the part of the				
	building that	space).	Standards as water	doors) must prevent the penetration	undue dampness
	physically		must be prevented	of water that could cause –	or deterioration
	separates the		from penetrating	(a)unnealtny or dangerous	of building
	interior		behind fittings and	conditions, or loss of amenity for	elements
	environment of		into concealed	occupants; and	
	the building from		spaces so as to	(b)undue dampness or deterioration	
	the exterior		protect the structure	ot building elements."	
	environment,		of the building and		
	including roof		expansion joints	AS Australian Standard 3700 Masonry	
	systems, above			Structures, , Section 12 Construction, 12.4	
	grade and below			Workmanship section 12.4.3 Movement	
	grade walls			control joints	

	(including windows and doors)			"Expansion joints (closing control joints) and articulation joints shall be clean and free from any hard or incompressible material for the full width and depth of the joint before joint filling material (if any) is inserted."	
16.	A component of a building that is part of the building enclosure, being 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)	Weepholes on the mortar at the base of brick to concrete connection are obstructed by the mortar at the base of brick to concrete connection, with no Damp Proof Course visible.	A failure to comply with the performance requirements of the <i>Building Code of</i> <i>Australia</i> and the relevant Australian Standards as water must be prevented from penetrating behind fittings and into concealed spaces so as to protect the structure of the building and weepholes that are obstructed do not allow for proper ventilation and proper draining out of moisture of the structure	Building Code of Australia: Vol 1 – Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.9 Damp-proofing F1.9 Damp-proofing (a) Except for a building covered by (c), moisture from the ground must be prevented from reaching — (i)the lowest floor timbers and the walls above the lowest floor joists; and (ii)the walls above the damp-proof course; and (iii) the underside of a suspended floor constructed of a material other than timber, and the supporting beams or girders. SA F1.9(b) (b) Where a damp-proof course is provided, it must consist of — (i)a material that complies with AS/NZS 2904; or (ii)impervious sheet material in accordance with AS 3660.1.	That could cause unhealthy or dangerous conditions, or loss of amenity for occupants and undue dampness or deterioration of building elements

		(a) The following buildings	
		(c) The following buildings	
		(i) A Olass Z su O huilding	
		(I)A Class 7 or 8 building	
		where in the particular	
		case there is no necessity	
		for compliance.	
		(ii)A garage, tool shed,	
		sanitary compartment, or	
		the like, forming part of a	
		building used for other	
		purposes.	
		(iii)An open spectator	
		stand or open-deck	
		carpark."	
		AS Australian Standard 3700 Masonry	
		Structures states	
		12.4.14 Weepholes, which states:	
		"Weepholes shall be free from any	
		mortar or other material that will	
		prevent their proper functioning.	
		Weepholes shall be formed either by	
		the inclusion or duct at the given	
		location or by the omission of mortar	
		(partially or fully) in the perpend	
		ioint "	
		jonna .	
		And	
		Section 4.473 Damp-proof courses	
		(DDCs) and flashings which states	
		"DDCs or flashings which states.	
		incorporated into macaney	
		construction to-	
		(a) Provide a parrier to the upward or	
		downward passage of moisture	
		through masonry.	

	<ul> <li>(b) Prevent moisture from entering into the interior of a building from the exterior.</li> <li>(c) Prevent moisture passing across a cavity to the inner leaf and Shed moisture through masonry to the outer face".</li> </ul>
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#### Consideration of written representations

- 5. The Developer provided a written submission on 22 November 2023, including the following information:
  - a. A request for an extension of time to provide written representations in response to the draft Building Work Rectification Order (**draft BWRO**) until 4 March 2024.
  - b. That the extent of alleged defects requires substantial investigation which will include, but not be limited to, engaging consultants and contractors part of the original project team and other specialist experts.
  - c. Key consultants are in the process of being engaged but these key consultants require until mid-February 2024 to complete their assessments. These assessments will include consideration of whether the alleged defects amount to 'serious defects' within the meaning of s.3 of the RAB Act.
  - d. That the Inspection Reports referred to in paragraph 3 have not been provided which may impact the assessment of the alleged defects.
  - e. An assurance that they are ready, willing and able to comply with any obligations that it may have under the RAB Act.
  - f. That they are already carrying out substantial work to rectify defects at the property in relation to the separate BWRO issued on 24 February 2021.
- 6. I have reviewed and considered the Developers representations and determine the following:

- a. Defects 1, 2, 3 and 8 these defects are fire safety related. These fire safety defects present an unreasonable risk to the occupants of the building in the event of a fire. For this reason Defects 1, 2, 3, and 8 must progress in accordance with this Order.
- b. Defects 6 and 7– these defects are waterproofing defects with active water penetration into the habitable spaces within residential apartments of units. It is important that priority is given to defects where water entry affects the habitability of the spaces. For this reason Defect 6 and 7 must progress in accordance with this Order.
- c. Defects 4, 5, 9, 10, 11, 12, 13, 14, 15 and 16 these defects are waterproofing, structure and building enclosure related defects. Whilst these are serious defects and must progress in accordance with this Order, I have allowed an extension of time for compliance.

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

- 7. I am of the view that the periods above for Defect 1 through 16 (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.
- 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.

#### **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).