

Attn. the Proper Officer
Croydon No. 8 Pty Ltd
ABN 98 819 687 530
Suite 3.01, 95 Pitt Street
SYDNEY NSW 2000

Service: By registered post and by email

22 December 2022

Building Work Rectification Order

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

Croydon No. 8 Pty Ltd ABN 93 819 687 530 is being given this Building Work Rectification Order (“Order”) in relation to 13-17 Grosvenor Street and 12-16 Boundary Street Croydon NSW 2132 (SP99648) (“the Building”).

Croydon No. 8 Pty Ltd is required to cause building work to be carried out to remediate the potential serious defects as set out in paragraphs 8 to 23 of this Order.

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. 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 the Building or that the Building has a serious defect, they may order the developer to rectify building work to remediate the serious defect or potential defect.
3. Mrs Elizabeth Stewart is an authorised delegate of the Secretary of the Department.
4. Croydon No. 8 Pty Ltd ABN 93 819 687 530 is the developer of the residential apartment building at 13-17 Grosvenor Street and 12-16 Boundary Street Croydon NSW 2132 (SP96428) (the Building) for the purposes of section 4(c) of the Act.
5. Under section 3 of the Act a 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.
6. Under s 6(1) of the *Design and Building Practitioners Act 2020* a 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.

Decision to issue a building work rectification order

7. I, Elizabeth Stewart, am the decision maker for this Building Work Rectification Order (**the Order**). I have decided to issue the Order to **Croydon No. 8 Pty Ltd** because I have formed a reasonable belief under s 33(1) of the Act the Building has a serious defect as set out in this Order.

Description of serious defect

8. Defect 1 – Waterproofing

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting a selection of roof areas of the Building (but in particular the roof areas of the foyer outside Unit 803, the basement bathroom area and within Unit 801) it was observed that PVC piping waterproofing membrane was peeling, allowing water to seep to the floor below and allowing water to ingress.

The inadequate peeling of the membrane as described above is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:

Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, Section 2 - Design and installation, 2.8 Termination of membranes, 2.8.4 penetrations, which states:

"Any fixings that penetrate the membrane shall be sealed. The sealant shall be compatible with the surface material. Where backing rods are used to support the sealant, they shall be a minimum 12mm."

Australian Standard 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing, which states:

"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause -

(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and

(b) undue dampness or deterioration of building elements."

9. Defect 2 – Waterproofing

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting the rooftop east elevation of the rooftop of the Building, and the external wall of the Building (level 8 east elevation), the following observations were made:

1. Efflorescence and calcification was emerging from base of walls.
2. Drummy or hollow render was pulling from external walls.

The issues described above is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:

Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, Section 2 - Design and installation, 2.8 Termination of membranes, which states:

"Where the membrane termination is to prevent water entry, the finished height of the membrane above the finished surface level shall be sufficient to prevent water, including wind driven, flowing over the top of the membrane."

And;

Australian Standard 3700 Masonry Structures Section 12.3 Materials, 12.3.2 Masonry Units, 12.3.2.1 Moisture Content, which states:

"The moisture content of the units at the time of laying shall be such that adverse effects, including reduced bond, occurrence of efflorescence and increased shrinkage, do not result in nonconformance with requirements of this standard."

And;

Australian Standard 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing, which states:

"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause -

(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and

(b) undue dampness or deterioration of building elements."

10. Defect 3 – Waterproofing

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. The following observations were made:

- (a) There was water penetration through the external walls and openings of individual lots due to a deficiency with waterproofing and weatherproofing. In particular, water penetration at floor level was observed in: Unit 801; Unit 805; Unit G10; Unit 301; Unit 103; and Unit 602.
- (b) There was water penetration through the external walls and openings of common property due to a deficiency with waterproofing and weatherproofing. Water penetration at floor level was also observed at the Boundary Street entrance door.

The inadequate waterproofing system termination details at doors and windows as described above is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:

Australian Standard 4654.2, Waterproofing Membranes for External Above Ground Use, Section 2 - Design and installation, 2.8 Termination and membranes, 2.8.3 Doors and windows onto external waterproofed areas, which states:

For doors and windows onto external waterproofed areas, the following apply:

(a) Sub-sill flashing shall be included as part of the membrane system. (b) Where the internal and external finished floor levels do not allow an upturn, the membranes shall be fixed under the sill and terminate in the stormwater system

Australian Standard 1170.2 Wind Actions, Section 2 Calculation of Wind Actions, 2.1 General, which states:

- (a) Determine site wind speeds;*
- (b) Determine design wind speed from the site wind speeds;*
- (c) Determine design wind pressures and distributed forces;*
- (d) Calculate wind actions*

Deemed-to-Satisfy provision F1.4 is a pathway that can satisfy the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:

“A roof and external wall (including openings around windows and doors) must prevent the penetration of to prevent penetration of water that could cause-

- (a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and*
- (b) Undue dampness or deterioration of building elements.”*

11. Defect 4 – Waterproofing

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting the fire stairs (Grosvenor St) of the Building it was observed that water ingress from the planter box gardens and walls to the fire stairs was causing water to pool and create excess condensation.

The inadequate planter construction, membrane termination and the stormwater drainage systems as described above is a serious defect because it is a defect in a building element (waterproofing) that is attributable to a failure to comply with the following:

Australian Standard 4654.2-2012: Waterproofing membranes for external above ground use: Section 2 – Design and Installation, 2.13 Planter Boxes, which states:

"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. Falls in the base of the planter shall be in accordance with Clause 2.5.2 with a minimum of 1 to 100 (10mm per 1m); A suitable overflow should be provided; Protection boards should be installed to minimize root damage to the membrane; Externally exposed walls of the planter boxes should be waterproofed to prevent failure of the internal membrane."

And

2.5 Substrate, 2.5.2 Falls, which states:

"Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be 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."

NOTE: Falls for surface drainage shall be no flatter than 1 in 100."

And 2.10 Drains, which states:

"The membrane shall be connected to the stormwater drainage system through a turn down of the membrane into the inlet of the system ..."

Australian Standard 4654.2 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing, Performance Requirement FP1.4 Weatherproofing, which states:

"A roof and external wall (including openings around windows and doors) must prevent the penetration of to prevent penetration of water that could cause-

(a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and

(b) Undue dampness or deterioration of building elements."

Australian Standard/NZS 3500.3:2003 – Plumbing and drainage, Part 3: Stormwater drainage, Section 5 Surface water drainage systems - Design, 5.3 Layout, 5.3.1 General criteria for layouts, 5.3.1.3 Ponding, which states:

"Except for on-site stormwater detention (OSD) system, ponding of stormwater shall only occur temporarily at sag pits complying with Clause 5.4.10.1."

12. Defect 5 – Fire Safety Systems

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. The following observations were made in the basement levels of the Building:

- (a) There was an unprotected 100 mm PVC pipe floor waste penetrating the concrete soffit.
- (b) There was an unprotected PVC pipe penetrating the concrete soffit above the passageway between the basement car park and the ground floor.

- (c) In multiple locations there were penetrations and openings in the concrete slabs and walls separating levels of the building had not been provided with compliant fire stopping measures.

The unprotected penetrations as described above is a serious defect because it is a defect in a building element (fire safety systems) that is attributable to a failure to comply with the following:

BCA Volume One, Section 3 Fire resistance, Part C3 Protection of openings, Deemed-to-satisfy provision C3.15 Openings for service installations, which states in part:

“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 incipient spread of fire, that installation must comply with any one of the following:

“(a) Tested systems

- (i) The service, building element and any protection method at the penetration are identical with a prototype assembly of the service, building element and protection method which has been tested in accordance with AS 4072.1 and AS 1530.4 and has achieved the required FRL or resistance to the incipient spread of fire”.*

Deemed-to-satisfy provision C3.15 Openings for service installations is a pathway that can satisfy the BCA Volume One, Section C Fire resistance, Performance Requirement CP8, which states in part:

“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”.

13. Defect 6 – Fire Safety Systems

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. It was observed that the fire isolated stair enclosure of the Building was compromised by openings/voids.

The non-compliant openings to the fire isolated stair enclosures of the Building is a serious defect because it is a defect in a building element (fire safety systems) that is attributable to a failure to comply with the following:

BCA Volume One. Section C Fire resistance, Specification C1.1 Fire resisting construction, Deemed-to-Satisfy Provisions:

2.2 Fire protection for a support of another part which states:

“ Where a part of a building required to have an FRL depends upon direct vertical or lateral support from another part to maintain its FRL, that supporting part, subject to(b), must—

- i. have an FRL not less than that required by other provisions of this Specification; and*
- ii. if located within the same fire compartment as the part it supports have an FRL in respect of structural adequacy the greater of that required—*

A. for the supporting part itself; and

B. for the part it supports; and

iii. be non-combustible—

A. if required by other provisions of this Specification; or

B. if the part it supports is required to be non-combustible.”

Deemed-to-Satisfy provision Specification C1.1 is a pathway that can satisfy the BCA Volume One Section C Fire resistance, Performance requirement CP1 which states:

“A building must have elements which will, to the degree necessary, maintain structural stability during a fire appropriate to—

a. the function or use of the building; and

b. the fire load; and ...

i. fire brigade intervention; and

j. other elements they support; and

k. the evacuation time.”

And

CP4 which states:

“To maintain tenable conditions during occupant evacuation, a material and an assembly must, to the degree necessary, resist the spread of fire and limit the generation of smoke and heat, and any toxic gases likely to be produced, appropriate to—

a. the evacuation time; and

b. the number, mobility and other characteristics of occupants; and

c. the function or use of the building; and

d. any active fire safety systems installed in the building.”

14. Defect 7 – Fire Safety Systems

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting the fire compartment room of the Building, it was observed that a spoon drain continued from the fire stair to the inside of the fire pump room and the authorised officers noted that this had the potential to spread fire and smoke via a continuous channel.

The inadequate fire-resisting sealing as described above is a serious defect because it is a defect in a building element (fire safety systems) that is attributable to a failure to comply with the following:

BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions, C3.16 Construction joints, which states:

“(a) Construction joints, spaces and the like in and between building elements required to be fire-resisting with respect to integrity and insulation must be protected in a manner identical with a prototype tested in accordance with AS 1530.4 to achieve the required FRL.”

And

Deemed-to-Satisfy provision C3.16 is a pathway that can satisfy the BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Performance Requirement CP8 Fire protection of openings and penetrations, 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.”

15. Defect 8 – Fire Safety Systems

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting the fire compartment rooms of the Building (the fire isolated stairs) it was observed that the sprinkler deflector had been installed approximately:

- (a) 20 mm horizontally from the fire service (fire stairs);
- (b) 100 mm horizontally from the mechanical exhaust duct (basement car park); and
- (c) 100 mm above the bottom of the duct (basement car park).

The sprinkler head installation is a serious defect because it is a defect in a building element (fire safety systems) that is attributable to a failure to comply with the following:

Australian Standard 2118.1:2017 Automatic fire sprinkler systems Part 1: General systems, Section 5 Spacing and location of sprinklers, 5.7 Obstruction to sprinkler discharge, 5.7.2 Upright and pendant sprinklers, which states in part:

“Where deflectors of sprinklers are above the level of the bottom of obstructions, the sprinklers shall be at such distance from the obstruction that interference with the sprinkler discharge pattern is avoided.

The clearances required from obstructions are dependent upon the maximum coverage of the sprinkler being used, and shall be as specified in Figure 5.7.2 and Table 5.7.2”.

Table 5.7.2 notes any obstruction within a horizontal distance of 300mm of the sprinkler deflector shall be a minimum 10 mm below the bottom level of the obstruction.

Australian Standard 2118.1 appears as a standard referenced in the BCA Volume One Section E Services and equipment, Part E1 Fire fighting equipment, Deemed-to-Satisfy Provision E1.5 Sprinklers, which states:

“A sprinkler system must-

(a) be installed in a building or part of a building when required by Table E1.5; and (b) comply with Specification E1.5 and Specification E1.5a as applicable.” (2019 on)

And

Specification E1.5a Class 2 and 3 buildings not more than 25 m in effective height, Deemed-to-Satisfy Provision 2 System requirements which states:

(a) A required automatic fire sprinkler system installed in a Class 2 or 3 building with an effective height of not more than 25 m and a rise in storeys of 4 or more must comply with—

(i) AS 2118.1;”

Deemed-to-Satisfy E1.5 is a pathway that can satisfy the BCA Volume One, Section E Services and equipment, Health and Amenity, Part E1 Firefighting equipment, Performance Requirement EP1.4 Automatic fire suppression systems which states:

“An automatic fire suppression system must be installed to the degree necessary to control the development and spread of fire appropriate to—

- (a) the size of the fire compartment; and*
- (b) the function or use of the building; and*
- (c) the fire hazard; and*
- (d) the height of the building.”*

16. Defect 9 – Fire Safety Systems

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. It was observed that the metal fire door frames emitted contrasting sounds when tapped, indicating the inadequate filling of the fire door jambs within fire-isolated doors throughout the Building.

The inadequate fire door frame filling as described above is a serious defect because it is a defect in a building element (fire safety systems) that is attributable to a failure to comply with the following:

Australian Standard AS 1905.1-2005 Components for the protection of openings in fire-resistant walls, Part 1: Fire-resistant door sets, Section 5 Installation, clause 5.4 allowable variations for fixing of doorframes which states:

“Where the door frame is to be fixed to the wall, rather than incorporated in the wall as construction progresses, and where the tested specimen construction is as described in clause 5.3, the following shall apply:

- a. ...*
- b. ...*
- c. ...*
- (d) Jamb cavities shall be fully grouted.*
- (e) The head cavity shall be grouted in a manner that will prevent a flame passage across the top of the frame.”*

Australian Standard 1905.1 appears as a standard referenced in the BCA Volume One, Section C Fire resistance, Part C3 Protection of openings and the following Deemed-to-Satisfy provisions which states:

“C3.4 Acceptable methods of protection

- a.*
- b. Fire doors, fire windows and fire shutters must comply with Specification C3.4”*

And

“Specification C3.4 Fire doors, smoke doors, fire windows and shutters.

2. Fire Doors

A required fire door must—

- 1. Comply with AS 1905.1; and*
- 2. Not fail by radiation through any glazed part during the period specified for integrity in the required FRL.”*

Deemed-to-Satisfy provision C3.4 is a pathway that can satisfy the BCA Volume One, Section C Fire resistance, Performance Requirement CP2 Spread of fire which states:

“ a. A building must have elements which will, to the degree necessary, avoid the spread of fire—

i.to exits; and

ii.to sole-occupancy units and public corridors; and

iii. between buildings; and

iv.in a building.”

17. Defect 10 – Structural System

On 3 August 2022 authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. The following observations were made in the basement fire stairs (south) of the Building and the ceiling of the basement pump room of the Building:

- (a) Exposed steel reinforcements.
- (b) The structural steel junction details comprised black steel profiled components without preparation and without protective coating of the structural steel components.
- (c) The structural steel junctions were not satisfactorily mated to the bored piers where structural grout packing was not completely filled.
- (d) At the interface, there was an absence of adequate corrosion protection of the exposed structural steel.

The cracking identified and as otherwise described above is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:

Australian Standard AS 3600 Concrete Structures, Section 4 Design for durability, 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.1 General, which states:

“The cover to reinforcing steel and tendons shall be the greatest of the values determined from Clauses 4.10.2 and 4.10.3, as appropriate, unless exceeded by the covers required by Section 5 for fire resistance.”

And 2.3 Design for serviceability, 2.3.3 Cracking, 2.3.3.1 General, which states:

“Cracking in concrete structures shall be controlled so that structural performance, durability and appearance of the structure are not compromised.”

Deemed-to-Satisfy section B Structure is a pathway that can satisfy the BCA Volume One, Part B1 Structural provisions, BP1.1 Structural reliability, which states:

“Structural reliability

- (a) A building or structure, during construction and use, with appropriate degrees of reliability, must-*
 - (i) Perform adequately under all reasonably expected design actions; and*

(ii) Withstand extreme or frequently repeated design actions; and

(iii) Be designed to sustain local damage, with the structural system as a whole remaining stable and not being damaged to an extent disproportionate to the original local damage; ..."

(b) The actions to be considered to satisfy (a) include but are not limited to:

(vi) liquid pressure action; and

(vii) ground water action; and

(viii) rain water action (including posing action), and ..."

18. Defect 11 – Building Enclosure

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. The following observations were made:

- (a) From the rooftop of the Building looking down directly towards the damaged area, a notable gap was observed between the trim and wall cladding, as particularised in photograph labelled 4.1.2 of the Audit Report dated 26 August 2022.
- (b) Wind driven rain towards the Building would allow rainwater to track down along the wall cladding and into the gap of the trim. Water would then track onto the plasterboard of the window recess soffit of the Building.
- (c) There was a lack of flashing installation beneath the wall cladding and turned to direct the flow of rainwater away from the wall of the Building. In photograph labelled 4.1.3 of the Audit Report dated 26 August 2022, it appeared as though 'Z' flashing had been used directly adjacent to the damaged item.

The inadequate installation as described above is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:

BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements FP1.4 Weatherproofing, which states:

"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause—

(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and

(b) undue dampness or deterioration of building elements."

19. Defect 12 – Structural Systems

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. It was observed that there was uncontrolled cracking of the external brick and rendered walls of the Building.

The inadequate installation as described above is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:

Australian Standard 3700:2100 Masonry structures, Section 12 Construction, 12.4 Workmanship section 12.4.3 – Movement control joints:

"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."

20. Defect 13 – Structural Systems

On 2 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. It was observed that there was external water penetration through the suspended concrete ceiling to the basement carpark of the Building.

The failure to prevent external water ingress to the basement of the Building is a serious defect because it is a defect in a building element (structural systems) that is attributable to a failure to comply with the following:

1. Building Code of Australia, Volume 1, Part B1 Structural Provisions; and

2. Building Code of Australia, Volume 1, Part F1 Damp and Weatherproofing

The following Performance Requirements have not been met:

Part B1 Structural Provisions which specifies in part:

BP1.1 (a) A building or structure, during construction and use, with appropriate degrees of reliability, must –

- (i) perform adequately under all reasonably expected design actions; and*
- (ii) withstand extreme or frequent repeated design actions; and*

(b) The actions to be considered to satisfy (a) include but are not limited to –

(vii) ground water action; and

(viii) rain water action (including ponding action);

Part F1 Damp and Weatherproofing which specifies in part:

FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –

- (a) unhealthy or dangerous conditions, or loss of amenity for occupants; and*
- (b) undue dampness or deterioration of building elements*

AND

FP1.5 Moisture from the ground must be prevented from causing –

- (a) undue dampness or deterioration of building elements; and*
- (b) unhealthy or dangerous conditions, or loss of amenity for occupants.*

21. Defect 14 – Building Essential Services

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. Whilst inspecting the rear of the Building, it was observed that the fire hydrant was unsupported by absent bracketing which had led to excessive movement.

The inadequate pipe system installation is considered a serious defect because it is a defect in a building element (building essential services) that is attributable to a failure to comply with the following performance requirements:

Australian Standard 3500.1:2018 Plumbing and drainage, Part 1: Water services, Section 5 Installation of cold water services, 5.6 Support and fixing above ground, 5.6.1 General, which states:

"Water service installed above ground shall be retained in position by brackets, clips or hangers.

And

5.6.2 Brackets, clips and hangers, which states:

"Brackets, clips and hangers shall be-

- (a) formed of material compatible with pipe;*
- (b) securely attached to the building structure and not to any other service;*
- (c) designed to withstand the applied loads;*
- (d) where exposed to a corrosive environment, protected against corrosion;*
- (e) of like material or lined with a non-abrasive, inert material for that section where contact with the piping may occur;*
- (f) clamped securely to prevent movement, unless designed to allow for thermal movement;*
- (g) restrained to prevent lateral movement; and*
- (h) installed so that no movement can occur while a valve is being operated and so that the weight of the valve is not transferred to the pipe.*

And

5.6.3 Limitations of pipe supports, which states:

"The following applies:

- (a) Pipes shall not be supported by brazing or welding short sections of any material to the pipe surface, nor by clamping, brazing or welding to adjacent pipes.*
- (b) Brackets, clips and hangers incorporating PVC shall not be used in contact with stainless steel pipes."*

And

5.6.4 Spacing, which states:

"Water services shall be supported and fixed at the intervals specified in Table 5.6.4."

Australian Standards 2419.1:2017 Fire hydrant installations, Part 1: System design, installation and commissioning, Section 10 Pipe supports, 10.5 Requirements for pipe-support components, 10.5.4 U-hangers/saddles (clips), which states:

"The dimensions for U-hangers/saddles shall be in accordance with the requirements of Table 10.5.4."

And

10.7 Location of supports, 10.7.1 Horizontal pipework, which states:

"Supports shall be located not further than 1 m from any change in direction or a junction in the pipework (e.g. a bend, elbow or tee). The distance from the last support to the end of any horizontal pipe shall not exceed 1 m."

10.7.2 Vertical pipework, which states:

"Vertical rising pipes (i.e. pipe risers) shall be supported by hangers or riser clamps at each floor level and at intermediate locations, as required. Distances between supports shall be in accordance with Table 10.6."

Where a vertical rising pipe varies from the vertical plane by more than 11 ° [(see Figure 10.7.2(a)], for the purpose of pipe support, it shall be considered as a change of direction or offset to the vertical rising pipe. Where a vertical rising pipe incorporates a change of direction or offset, it shall be supported not more than 300 mm from any mechanically jointed coupling of the fitting as shown in Figure 10.7.2(b).

Where the vertical rising pipe incorporates two changes of direction and the distance between the mechanically jointed couplings is not more than 600 mm, a single pipe support shall be provided between couplings.

22. Defect 15 – Building essential services

On 3 August 2022, authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting the basement area of the Building, it was observed that the electrical switchboard had been attached to a wet system.

The inadequate pipe installation is a serious defect because it is a defect in a building element (building essential services) that is attributable to a failure to comply with:

Australian Standard 3000:2018 Electrical installations, Wiring Rules, Part 1 Scope, application and fundamental principles, 1.7 Selection and installation of electrical equipment 1.7.4 Damp situation, which states:

"Electrical equipment used in damp situations shall be selected and installed to-

(a) operate safely near or within a damp or wet environment;

(b) provide additional protection against electric shock in locations where the presence of water or high humidity presents an increased risk; and

(c) provide adequate protection against damage that might reasonably be expected from the presence of water or high humidity."

23. Defect 16 – Building essential services

On 3 August 2022 authorised officers of the Department conducted an inspection pursuant to s 20 of the Act in the Building. When inspecting the rooftop areas of the Building it was observed that the electrical wiring and refrigerant pipe insulation had been UV and weather affected and in particular that the insulation layers were becoming brittle and cracked, placing at risk the protective coating for the electrical services.

The installation is a serious defect because it is a defect in a building element (building essential services) that is attributable to a possible failure to comply with:

Australian Standard 5141 Residential heating and cooling systems – Minimum applications and requirements for energy efficiency, performance and comfort criteria, Section 3 Installation requirements, 3.3.4.6 P-trap, which states:

"A P-trap shall be used in all non-pumped or indoor components where the drain outlet is exposed to negative air pressure created from the indoor fan to assist drainage unless otherwise indicated by the manufacturer's instructions."

And

Section 2 Design, 2.4 Selection and sitting of equipment, 2.4.1 General, 2.4.1.1 Access for maintenance, which states:

"Units shall be installed to provide efficient and safe access and, where necessary, lighting for maintenance. The location of the unit shall take into account clearance needed for removal of parts and access to internal components for servicing."

Building Work to be Carried Out

24. Croydon No. 8 Pty Ltd must carry out building work, or cause building work to be carried out as follows:

- (a) **Remediate Defect 1 by:** Developer to carry out rectification of the pipe vent's installation in accordance with the BCA Volume One and the Australian Standard 4654.2-2012.

Particular attention to be given, but not limited to: (a) Membrane upward termination around the PVC pipe in accordance with Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, Section 2 - Design and installation, 2.8 Termination of membranes, 2.8.4 penetrations.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

- (b) **Remediate Defect 2 by:** Developer to carry out rectification of weatherproofing of the external wall in accordance with the BCA Volume One, Australian Standard 4654.2-2012 and Australian Standard 3700. Particular attention to be given, but not limited to: (a) moisture management of external walls.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

- (c) **Remediate Defect 3 by:** Developer to provide a rectification work method statement demonstrating how the waterproofing defects will be remediated in accordance with the BCA Volume 1, Australian Standard 4654.2 Waterproofing membranes for external above ground use.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

- (d) **Remediate Defect 4 by:** Developer to carry out rectification of the planter box construction and waterproofing to walls and roof waterproofing defects in accordance with the BCA Volume One, Australian Standard 4654.2 Waterproofing membranes for external above ground use and Australian Standard/NZS 3500.3:2003 – Plumbing and drainage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports

- (e) **Remediate Defect 5 by:** Developer to carry out rectification of the protection of service penetrations in accordance with the BCA Volume.

Developer to demonstrate compliance of remediation works by providing evidence, including but not limited to, comprehensive photographs of work in progress, installer compliance certificate and any third party inspection reports.

- (f) **Remediate Defect 6 by:** Developer to survey and rectify, all non-compliance opening to the fire isolated stair enclosures in accordance with the BCA Volume One.

Developer to demonstrate compliance of remediation works by providing evidence, including but not limited to, comprehensive photographs of work in progress, installer compliance certificate and any third party inspection reports.

- (g) **Remediate Defect 7 by:** Developer to rectify the fire-resisting sealing defects in accordance with the BCA Volume One. Particular attention to be given, but not limited to the installation of wall sealed in compliance with fire resistance tests that are representative of the intended application.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

- (h) **Remediate Defect 8 by:** Developer to carry out rectification of the fire sprinkler defects in accordance with the BCA Volume One and Australian Standard 2118.1 Automatic fire sprinkler systems - General systems.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

- (i) **Remediate Defect 9 by:** Developer to rectify and ensure the inadequate fire door frame filling door of the fire doors, complying with the BCA Volume One, and AS 1905.1 - Components for the protection of openings in fire-resistant walls, Part 1: Fire-resistant door sets.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

- (j) **Remediate Defect 10 by:** Developer to carry out rectification of the cracking defects in accordance with BCA Volume One and Australian Standard 3600. Particular attention to be given, but not limited to the following areas:

1. Conduct remedial rectification work to the structural concrete slab in co-ordination with the suitable protective coating to protect the steel structure against corrosion; and

2. Attention to the junctions of the structural steel and bored piers have not been adequately treated to prevent corrosion;

3. Make good any consequential damage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

- (k) **Remediate Defect 11 by:** Particular attention to be given, but not limited to the following areas:

(a) The builder is to install 'Z flashing' along the window recess and replace damaged materials.

(b) Wall cladding is to be temporarily removed and stored on-site. The head trim is to be removed and disposed. 'Z' flashing is to be supplied and installed along the head of the window recess.

(c) Re-install the stored wall cladding so that it sits on top of the flashing.

(d) Make good any resultant consequential damage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

- (l) **Remediate Defect 12 by:** Developer to rectify the defect in accordance with the BCA Volume One and Australian Standard 3700 – Masonry Structures.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports.

- (m) **Remediate Defect 13 by:** Developer to rectify issue in accordance with the BCA, Volume 1.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

- (n) **Remediate Defect 14 by:** Developer to carry out rectification of the support and fixing cold water service defects in accordance with the BCA Volume One, Australian Standard 3500.1:2018 Plumbing and drainage.

Particular attention to be given, but not limited to the following:

- (a) Fix all pipes using brackets, clips and hangers.
- (b) Make good any consequential damage.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

- (o) **Remediate Defect 15 by:** Developer to carry out rectification of the electrical defects in accordance with BCA Volume One and Australian Standard 3000:2018 Electrical Installations, Wiring Rules.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

- (p) **Remediate Defect 16 by:** Developer to carry out rectification of the refrigeration pipework defects in accordance with the BCA Volume One and Australian Standard 5141.1 Residential heating and cooling systems-Minimum application and requirements for energy efficiency performance and comfort criteria.

Particular attention to be given, but not limited to the following:

(a) Confirm whether the condensate drains are pumped. If yes, provide photographic evidence if no, then (b);

(b) refer to the manufacturer's installation manual to confirm whether or not a P trap is required to be installed in the condensate line and if yes, rectify accordingly and provide photographic evidence;

(c) Provide the manufacturer's installation manual.

(d) Cross check the manufacturer's maintenance access requirements vs what is provided on site and

(e) Demonstrate how the in-ceiling ducted air conditioning unit filter can be serviced.

Developer to demonstrate compliance of remediation works by providing evidence including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third party inspection reports.

Period for Compliance with Order

25. The work specified in paragraph **24** of this Order must be completed as follows:

- (a) Defect 1 – Within 180 days of issuance of this Order.
- (b) Defect 2 – Within 180 days of issuance of this Order.
- (c) Defect 3 – Within 120 days of issuance of this Order.
- (d) Defect 4 – Within 180 days of issuance of this Order.
- (e) Defect 5 – Within 90 days of issuance of this Order.
- (f) Defect 6 – Within 60 days of issuance of this Order.
- (g) Defect 7 – Within 60 days of issuance of this Order.
- (h) Defect 8 – Within 120 days of issuance of this Order.
- (i) Defect 9 – Within 60 days of issuance of this Order.
- (j) Defect 10 – Within 90 days of issuance of this Order.
- (k) Defect 11 – Within 160 days of issuance of this Order.
- (l) Defect 12 – Within 180 days of issuance of this Order.
- (m) Defect 13 – Within 180 days of issuance of this Order.
- (n) Defect 14 – Within 90 days of issuance of this Order.
- (o) Defect 15 – Within 60 days of issuance of this Order.
- (p) Defect 16 – Within 90 days of issuance of this Order.

Conditions of this Order

26. **Croydon No. 8 Pty Ltd** must notify Chris Lentholt, in writing, by email within 2 business days of the work required by this Order being completed.

Duration of this Order

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

Elizabeth Stewart
Director Legal Operations
Department of Customer Service

REASONS FOR THE ORDER

Reasonable belief and serious defects

I, Elizabeth Stewart, an authorised delegate of the Secretary of the Department, have formed a reasonable belief for the purposes of s 33(1) of the Act in relation to Defects 1 to 16 in the Order, that in the Building has serious defects.

1. **Defect 1** - the inadequate peeling of the membrane as described in paragraph 8 of the Order, is a serious defect because it is a deficiency in a building element (waterproofing) that are required to achieve compliance with the performance requirements as particularised in paragraph 8 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 section 1.1 in which I also observed photographs which depicted the installation of a drip tray under roof penetration (foyer outside Unit 803), water damage from above water proofing of planter box (basement bathroom area), and water damage from above water ingress from 50 mm vent pipe roof penetration (Unit 801) and as otherwise particularised in section 1.1 of the Audit Report and paragraph 8 of the Order.
2. **Defect 2** - the issues as described in paragraph 9 of the Order, is a serious defect because it is a deficiency in a building element (waterproofing) that are required to achieve compliance with the performance requirements as particularised in paragraph 9 of the Orders. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022. Section 1.2 also observed photograph of the external wall on the east elevation roof top showing water and calcification exiting that wall, together with photographs depicting water and calcification exiting the external wall at level 8 east elevation and a photograph which depicted drummy render to the external wall from the roof top east elevations and as otherwise particularised in s1.2 of the Audit Report and paragraph 9 of the Order.
3. **Defect 3** – the inadequate waterproofing system termination details at doors and windows as described in paragraph 10 of the Order, is a serious defect because there i is a deficiency in a building element (waterproofing) that are required to achieve compliance with the performance requirements as particularised in paragraph 10 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s1.3 in which I also observed photographs which depicted internal window frames showing water damage from a leaking façade together with photographs which depicted water ingress to apartments at the ground level of the Building and as otherwise particularised in s1.3 of the Audit Report and paragraph 10 of the Order.
4. **Defect 4** – the inadequate plant construction, membrane termination and the stormwater drainage systems as described in paragraph 11 of the Order is a serious defect because it is a deficiency in a building element (waterproofing) that are required to achieve compliance with the performance requirements as particularised in paragraph 11 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s1.4 in which I observed photographs which depicted condensation and moisture on the ceiling of fire stairs, together with water ingress to the fire stairs from the walls of the Building and as otherwise particularised in s1.4 of the Audit Report and paragraph 11 of the Order.
5. **Defect 5** – the unprotected penetrations as described in paragraph 12 of the Order, is a serious defect because it is a deficiency in a building element (fire safety systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 12 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s2.1 in which I also observed photographs which depicted at the basement level a fire collar that had not been fixed or labelled, together with photographs which depicted a lack of fire stoppings installed to water services between floors, along with a failure to install smoke seals to services cupboards and inappropriate fire penetrations between fire compartments (notably in the garbage room located on the ground floor of the Building). I also observed photographs which depicted fire preparation to block work having not been installed to a tested system along with a failure to install fire stops to fire service/conduits or water services between floors in the water metre services riser and as otherwise particularised in s2.1 of the Audit Report and paragraph 12 of the Order.
6. **Defect 6** – the non-compliant openings to the fire isolated stair enclosures of the building as described in paragraph 13 of the Order, is a serious defect because it is a deficiency in a building element (fire safety systems) that are required to achieve compliance with the performance requirements as

particularised in paragraph 13 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s2.2 in which I also observed photographs which depicted voids in the fire stair compartments of the Building and as otherwise particularised in s2.2 of the Audit Report and paragraph 13 of the Order.

7. **Defect 7** – the inadequate fire resisting sealing as described in paragraph 14 of the Order is a serious defect because it is a deficiency in a building element (fire safety systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 14 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s2.3 in which I also observed photographs which depicted a void in the fire compartment of the Building having been caused by a spoon drain and as otherwise particularised in s2.3 of the Audit Report and 14 of the Order.
8. **Defect 8** – the inadequate sprinkler head installation as described in paragraph 15 of the Order, is a serious defect because it is a deficiency in a building element (fire safety systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 15 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s2.4 in which I also observed photographs which depicted the sprinkler deflector installation points with reference to the fire service (fire stairs) of the Building and as otherwise particularised in s2.4 of the Audit Report and paragraph 15 of the Order.
9. **Defect 9** – the inadequate fire door frame filling as described in paragraph 16 of the Order, is a serious defect because it is a deficiency in a building element (fire safety systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 16 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s2.5 in which I also observed photographs which depicted fire door frames tagged non-compliant and as otherwise particularised in s2.5 of the Audit Report and paragraph 16 of the Order.
10. **Defect 10** – the cracking identified and as described in paragraph 17 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 17 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s3.1 in which I also observed photographs which depicted the slab in the basement fire stairs (south) of the building having been grinded to allow height to allow fire access door to open together with (also in the fire stairs (south) in the basement of the building that showed the steel reinforcement exposed, and as otherwise particularised in s3.1 of the Audit Report and paragraph 17 of the Order.
11. **Defect 11** – the inadequate installations as described in paragraph 18 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 18 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s4.1 in which I also observed photographs which depicted unsealed window heads between lintel and window frame together with a photograph of the exterior of the Building depicting damp course having not been observed at the correct location, and as otherwise particularised in s4.1 of the Audit Report and paragraph 18 of the Order.
12. **Defect 12** – the inadequate installation as described in paragraph 19 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 19 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s4.2 in which I also observed photographs which depicted cracking to the masonry wall of the Building and as otherwise particularised in s4.2 of the Audit Report and paragraph 19 of the Order.
13. **Defect 13** – the failure to prevent external water ingress to the basement of the Building as described in paragraph 20 of the Order, is a serious defect because it is a deficiency in a building element (structural systems) that are required to achieve compliance with the performance requirements as particularised in paragraph 20 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s4.3 in which I also observed photographs which depicted external water penetration through the suspended concrete ceiling to the basement car park of the Building, and as otherwise particularised in s4.3 of the Audit Report and paragraph 20 of the Order.

14. **Defect 14** – the inadequate pipe system installation as described in paragraph 21 of the Order, is a serious defect because it is a deficiency in a building element (building essential services) that are required to achieve compliance with the performance requirements as particularised in paragraph 21 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s5.1 in which I also observed photographs which depicted the fire hydrant of the building as being unsupported and as otherwise particularised in s5.1 of the Audit Report and paragraph 21 of the Order.
15. **Defect 15** – the inadequate pipe installation as described in paragraph 22 of the Order, is a serious defect because it is a deficiency in a building element (building essential services) that are required to achieve compliance with the performance requirements as particularised in paragraph 22 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s5.2 in which I also observed a photograph which depicted the electrical switchboard being attached to a wet wall system and as otherwise particularised in s5.2 of the Audit Report and paragraph 22 of the Order.
16. **Defect 16** – the installation of electrical wiring and refrigerant pipe installation on the rooftop of the building and as otherwise described in paragraph 23 of the Order, is a serious defect because it is a deficiency in a building element (building essential services) that are required to achieve compliance with the performance requirements as particularised in paragraph 23 of the Order. I have formed this belief after reviewing a copy of the Audit Report dated 26 August 2022 s5.3 in which I also observed photographs which depicted the unprotected and unsupported refrigerant and electrical piping on the rooftop areas of the Building, together with weatherproofing of penetrations being non-compliant and as otherwise particularised in s5.3 of the Audit Report and paragraph 23 of the Order.

Period for compliance

17. I am of the view that a time periods as set out in paragraph 25 of the Order are reasonable periods for compliance in all the circumstances for the rectification work required by the Order to be carried out. I have formed this belief balancing the risks that the serious defect poses against the period of time it will take to give effect to the rectification work. I am aware that there are residents occupying this location as the Building is completed which will delay rectification work. I am of the view that the time periods as set out in paragraph 25 of the Order are sufficient to conduct the work as particularised in paragraph 24 of the Order.

Consideration of written representations

18. On 27 September 2022 a notice of intention to issue the Order and a draft copy of the Order was served on the Developer, Inner West Council ("**Local Council**"), the Owners of Strata Plan No 96428 ("**Owners Corporation**") and Steven Saad ("**Certifier**"). The parties were invited to provide submissions relating to the draft copy of the Order by 19 October 2022.
19. The Developer provided the Department with written submissions in the form of a letter on 9 December 2022 ("**Developer Representations**") which included the following:
- (a) that the Developer acknowledged receipt of the Audit Report, the draft copy of the Order, Undertaking Deed Poll and draft Undertaking;
 - (b) that the Developer was unable to respond to the Department by 19 October 2022 as it was awaiting the outcome of a meeting between itself and the Owners Corporation to discuss the parties' intentions moving forward and such meeting had not been convened prior to 19 October 2022;
 - (c) that a meeting was held between the Developer and the Owners Corporation on 19 October 2022 in which the Owners Corporation expressed its preference to settle the legal proceedings on foot between the parties (Supreme Court of New South Wales 2021/97602) by way of a cash settlement to be paid by the Developer to the Owners Corporation ("**Cash Settlement**");
 - (d) that the Developer made a formal Cash Settlement offer to the Owners Corporation on 15 November 2022 but that the Developer had not received a response to the offer and as such formed the view that the offer was rejected by the Owners Corporation;
 - (e) that the Developer explicitly acknowledged that "the items identified in the Audit Report are defects and that those defects require rectification";

- (f) that the periods of time to rectify the serious defects as set out in the draft copy of the Order were generally acceptable, however confirmation of a timeframe to complete the necessary works would be subject to feedback from consultants and building practitioners on both the scope of the rectification works and costings of same as the Developer wished to defer providing an answer on the period of time required to rectify the serious defects until that feedback was obtained;
- (g) that the Developer hoped to have received legal advice on the Undertaking Process Deed Poll and RAB Act Undertaking by the end of January 2023 or the beginning of February 2023;

20. A representative of the Owners Corporation provided the Department with written submissions by way of email on 14 October 2022 ("**Owners Corporation Representations**") which included the following:

- (a) that the defect reports previously obtained by the Owners Corporation from various experts identified hundreds of defects;
- (b) that the Department consider expanding the final copy of the Order to cover the full extent of the defects submitted and identified by the experts engaged by the Owners Corporation as "they are all important to protect the overall integrity of the building";
- (c) that once a final Order is issued, that the time frames for the Order to be enforceable to fall within 2022 if possible; and
- (d) that the final Order prioritise the "urgent defects" as soon as possible due to unprecedented rainfall experienced this year as the top levels of the building in particular are not watertight and almost uninhabitable, including:
 - (i) Defect 1;
 - (ii) Defect 3;
 - (iii) Defect 13; and
 - (iv) Defect 15.

21. I have reviewed and considered the Developer Representations and the Owners Corporation Representations.

22. I make the following observations in relation to the Developer Representations:

- (a) the Developer seeks an extension of time to make written submissions in respect of the draft copy of the Order, in particular in relation to the timing of the carrying out of the rectification works in respect of each of the defects identified in the draft copy of the Order until such time as the Developer has obtained advice from consultants and building practitioners for the purpose of undertaking the rectification work;
- (b) the Developer appears to seek an extension of time to review and provide comments on the Undertaking Process Deed Poll and RAB Act Undertaking until such time as the Developer has obtained legal advice;
- (c) given the Developer is a party to legal proceedings with the Owners Corporation in relation to the defects in the Building and thus on notice of the fact that there are serious defects in the Building (of which this Order identifies 16) I am of the view that the Developer has had a reasonable period of time to consider the defects identified in this Order and the rectification works and time periods for completing such works, and I refuse the request to grant an extension of time to make further written submissions in respect of the draft copy of the Order.

23. I make the following observations in relation to the Owners Corporation Representations:

- (a) I am of the view that the request for the time periods for compliance with the Order to fall within 2022 as being an unreasonable request, having regard to the date on which this Order is made.
- (b) I am of the view that the time period for compliance with the final Order in relation to Defects 1, 3, 13 and 15 as requested by the Owners Corporation (being "as soon as possible") is insufficiently certain.
- (c) As such, I am of the view that the time periods for compliance for each of those Defects as set out in this Order are reasonable periods of time to undertake the works, as a new design will be required to be finalised, materials will need to be ordered and workers will need to be secured to undertake the work. In addition, as this is an occupied building, the work will need to be done in stages thus causing delay.

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

24. I have considered all of the circumstances. I accept that the order requires considerable further construction work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the Developer must be balanced against the benefit to the occupiers of the units which comprise the Building in having the Building constructed to the approved plans and in accordance with the Building Code of Australia and the relevant Australian Standards so as to ensure in respect of:

- (a) Defect 1 – that the rooftop is appropriately waterproofed so as to prevent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
- (b) Defect 2 – that the rooftop and external walls of the Building be free from water penetration and consequent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
- (c) Defect 3 – that the external walls and openings of common property are adequately waterproofed and weatherproofed so as to prevent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
- (d) Defect 4 – that the planter boxes of the Building be appropriately waterproofed and otherwise free from water penetration and consequent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
- (e) Defect 5 – that the fire services compartment rooms be rectified so as to resist and reduce the spread of fire within the Building;
- (f) Defect 6 – that the voids in the fire isolated stair enclosures of the Building be rectified that the fire services compartments of the Building may resist and reduce the spread of fire within the Building;
- (g) Defect 7 – that the fire services compartment rooms be appropriately fire-resisting sealed so as to resist and reduce the spread of fire within (and structural damage to) the Building;
- (h) Defect 8 – that the sprinkler deflector in the fire compartment rooms of the Building be installed in locations such that the obstruction of or interference with the sprinkler discharge pattern is avoided, so as to resist and reduce the spread of fire within (and structural damage to) the Building;
- (i) Defect 9 – that the fire door jambs within the fire-isolated doors throughout the Building be adequately filled so as to avoid the spread of fire in the Building;
- (j) Defect 10 – that the cracking identified in the basement fire stairs (south) and basement pump room of the Building be rectified so as to ensure the structural reliability and durability of the Building;

- (k) Defect 11 – that the Building be adequately weatherproofed so as to so as to prevent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements;
- (l) Defect 12 – that the uncontrolled cracking of the external brick and rendered walls of the Building be rectified so as to ensure the structural reliability and durability of the Building;
- (m) Defect 13 – that the suspended concrete ceiling to the basement car park of the Building be rectified so as to prevent unhealthy or dangerous conditions, or loss of amenity to occupants or undue dampness or deterioration of building elements and to ensure the structural reliability and durability of the Building;
- (n) Defect 14 – that the fire hydrant pipe installation system be adequately installed and supported so that no movement can occur;
- (o) Defect 15 – that the electrical switchboard be installed in such a manner so as to ensure it is kept free from damage and is able to operate in a safe manner;
- (p) Defect 16 – that the electrical wiring and refrigerant pipe insulation be rectified so as to ensure the safe and uninterrupted operation of building essential services of the Building.