



Customer
Service

Attn: Proper Officer
The Owners of Strata Plan No. 88564
EON APARTMENTS
1 Kirby Walk,
ZETLAND NSW 2017

Service: By Express Post and by email to [REDACTED]

16 November 2023

Building Work Rectification Order

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

The Owners of Strata Plan No. 88564 are being given this Building Work Rectification Order (Order) in relation to **1 Kirby Walk, Zetland NSW 2017 (SP88564)** (the Development).

The Owners of Strata Plan No. 88564 are required to cause building work to be carried out to remediate the potential serious defect 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 included as **Attachment A** to this order.
4. Elizabeth Stewart, Director Legal Operations, is an authorised delegate of the Secretary of the Department.
5. **The Owners of Strata Plan No. 88564** are the developer of the residential apartment building known as **1 Kirby Walk, Zetland NSW 2017 (SP88564) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development comprises of the removal and replacement of combustible cladding on an existing residential apartment building.
7. On the 11 April 2023 and 03 October 2023 authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Elizabeth Stewart, under section 33 of the Act, require you **The Owners of Strata Plan No. 88564** 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:

Table 1: Requirements in respect of Serious Defects

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.	External replacement cladding on the external walls of the building/s.	The replacement compressed fibre cement cladding building product has not been certified and/or approved in accordance with the Building Product Rectification Order issued by the City of Sydney Council dated 10 June 2021 causing the building work to be carried out in a way that could result in a serious defect in the residential apartment building.	The replacement cladding is required to be installed in accordance with the Building Product Rectification Order issued by the City of Sydney Council dated 10 June 2021.	3 months

9. I, Elizabeth Stewart, 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 2 below and under section 34(1A) of the Act require that you **The Owners of Strata Plan No. 88564** do the things specified in column 5 of Table 2 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
1.	External replacement cladding on the external walls of the building/s.	The replacement cladding system, including the façade covering, framing, insulation and any related materials, has not been certified as complying with all of the relevant requirements of the National Construction Code.	Install the external wall cladding system in accordance with the relevant requirements of the National Construction Code.	<p>Within the time period specified in column 6,</p> <ol style="list-style-type: none"> 1. Submit a statement from a Certifier - Fire Safety or Building Surveyor - Unrestricted accredited/registered by NSW Fair Trading stating that the new cladding material (and any related materials incorporated therein including the facade covering, framing and insulation) used to re-clad the building is suitable and complies with the relevant requirements of the NCC (including but not limited to compliance with Part A5 of the NCC); 2. Submit a statement from the City of Sydney Council to confirm that the requirements of term 1.01 and 1.02 of the Building Product Rectification Order issued by the City of Sydney Council dated 10 June 2021 have been satisfied. 3. Submit a copy of the structural engineering certification required by condition 6 of Schedule 1 of Council's 	3 months

				<p>Building Product Rectification Order dated 10 June 2021,</p> <p>4. Submit certification in the form approved by Council in accordance with term 1.04 of the Building Product Rectification Order issued by the City of Sydney Council dated 10 June 2021 for the completed work.</p> <p>The certification is to confirm that the replacement material (including all components incorporated therein including the facade covering, framing and insulation) is deemed suitable and complies with the relevant requirements of the NCC (including but not limited to compliance with Part A5 of the NCC).</p>	
--	--	--	--	---	--

Duration of this Order

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

11. This Order is given on the date that is listed above in accordance with section 67 of the Act.



Elizabeth Stewart
Director Legal Operations
Office of the Building Commissioner, NSW Department of Customer Service

Reasons for Building Work Rectification Order

These Reasons for Order are with respect to the Order dated (date to be confirmed) issued to **The Owners of Strata Plan No. 88564** 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.

1. I, Elizabeth Stewart, have formed a reasonable belief that the Development has serious defects.
2. I have formed this belief after reviewing:
 - a) The City of Sydney Council Building Product Rectification Order issued by the City of Sydney Council on 10 June 2021,
 - b) The inspection carried out by authorised officers on the 11 April 2023 and 03 October 2023.
3. 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 or 2.

Table 3 – Basis of reasonable belief as to serious defects

Serious Defect Reference No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard
1.	Building Enclosure	The external wall cladding system has not been certified as complying with the requirements of the National Construction Code.	<p>The building or structure with appropriate degrees of reliability, must – (i) perform adequately under all reasonably expected design actions; and</p> <p>(ii) withstand extreme or frequently repeated design actions; and</p> <p>(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; and</p> <p>(iv) avoid causing damage to other properties, by resisting the actions to which it may reasonably expect to be subjected.</p>	BP1.1, CP1, CP2 and FP1.4 of the National Construction Code, Building Code of Australia, Volume One.

			<p>A building must have elements which will, to the degree necessary, maintain structural stability during a fire.</p> <p>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.</p> <p>An 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.</p>	
--	--	--	---	--

Consideration of written representations

4. I have considered the representations received from Mr Leo Wu dated 28 October 2023 pursuant to section 47 of the Act.

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

5. 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.
6. 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.
7. I am of the view that the periods above for Defect 1 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.

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).