



Attn: Proper Officer
Toplace Pty Ltd (ABN 63 135 918 491)
121 Majors Bay Road
CONCORD NSW 2137

Service: By registered post and by e-mail

7 July 2023

Building Work Rectification Order

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

Toplace Pty Limited (ACN 135 918 491) is being given this Building Work Rectification Order (Order) in relation to 11-15 Charles St Canterbury (Lots 9 & 10 DP 578249, Lot 10 DP 828270; CP SP93087) (the Development) (the Development). Toplace Pty Limited (ACN 135 918 491) is required to cause building work to be carried out to remediate the potential serious defects as set out in below in this Order.

Failure to comply with the requirements in this Order is a criminal offence.

Background


1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious defect.
3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines the term “building element” by reference to the *Design and Building Practitioners Act 2020* (**DBP Act**). Section 4 of the Act defines the term “developer”. Section 6 of the Act provides the building work to which the Act applies. Relevant excerpts from sections 3, 4 and 6 of the Act and section 6 of the DBP Act are **Attachment A** to this order.
4. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. Toplace Pty Limited (ACN 135 918 491) is the developer of the residential apartment building at 11-15 Charles St Canterbury (Lots 9 & 10 DP 578249, Lot 10 DP 828270; CP SP93087) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development comprises of 11 storey mixed-use building consisting of 276 apartment units, and underground car parks.
7. On 23 August 2022, a Building Work Rectification Order notice was issued to Toplace Pty Limited (ACN 135 918 491) in relation to the Development.

Requirements in relation to Serious Defects

8. I, Matthew Whitton, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you Toplace Pty Limited (ACN 135

918 491) do the things specified in column 5 of Table 1 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 1:

Table 1: 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	Building C: Basement floor level 2 slab; Basement floor level 1 slab; Ground floor level slab	Inadequacy of the transfer beams/slabs and the columns to support the ground floor and level 1 of Building C “	Provide that the transfer beams/slabs and the columns located at Basement floor level 2 slab, Basement floor level 1 slab, Ground floor level and level 1 slab are structurally adequate and will support the Ground floor and Level 1 of Building C	<p>Within the time period specified in column 6,</p> <p>Stage 1 Provide, real time monitoring of the Ground floor level slab, at minimum locations outlined in the below diagram, and maintain records of the collected data of the real time monitoring:</p>  <p>The records of the collected data must:</p>	<p>Stage 1: 2 weeks</p> <p>Stage 2: 4 weeks</p> <p>Stage 3: 5 weeks</p> <p>Stage 4: 12 weeks</p>

				<ul style="list-style-type: none"> i. be post-processed and translated into the building responses (i.e. deflection) by a suitably qualified and experienced structural engineer on a daily basis; ii. be such that it can detect any major variation to previous data and alarm an urgent action; and iii. be provided to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au <p>Stage 2 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced structural engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; and iii. detail the specific building work necessary to comply with the <i>Robert Bird Group Report</i> dated 21 June 2023 in relation to the Development in order to eliminate the serious defect and meet the specified standard. <p>Stage 3 Submit a regulated design and design compliance declaration to the NSW planning portal</p> <p>The regulated design and design compliance declaration required to be submitted must:</p>	
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				<ul style="list-style-type: none"> i. be prepared by a registered structural engineer under the <i>Design and Building Practitioners Act 2020</i>; ii. be prepared with consideration to this Order and the Reasons for this Order; and iii. be prepared with consideration to the written report as per Stage 2 <p>Stage 4</p> <ul style="list-style-type: none"> • Carry out the work the rectify the defect in accordance with the Stage 2 report & Stage 3 regulated design; and • Complete any consequential repairs as a result of work conducted to rectify the defect. 	
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Duration of this Order

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

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



Matthew Whitton
NSW Assistant Building Commissioner
Building and Construction Compliance
NSW Fair Trading Department of Customer Service

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 7 July 2023 issued to Toplace Pty Limited (ACN 135 918 491) under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Matthew Whitton, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - a) A Building Work Rectification Order notice issued to Toplace Pty Limited (ACN 135 918 491) in relation to the Development on 23 August 2022
 - b) A structural report from *EI Consulting Engineers* dated May 2023 provided by Toplace Pty Limited (ACN 135 918 491) in relation to the Development,
 - c) A structural report from *Slab Scan* dated 9 June 2023 provided by Toplace Pty Limited (ACN 135 918 491) in relation to the Development; and
 - d) A structural report from *Robert Bird Group Report* dated 21 June 2023 in relation to the Development.
4. My belief is also based upon the following matters, set out in Table 1. I note that Column 1 of Table 1 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.

Table 2 – 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	Consequences of serious defect
1.	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)	Inadequacy of the transfer beams/slabs and the columns to support the ground floor and level one of Building C	<p>Transfer beams/slabs, which are not structurally adequate to support the Ground floor and Level 1, is a defect because it is a defect in a building element (internal load bearing) that is likely to cause the inability to inhabit or use the building (or part of the building) for its intended purpose, the destruction of the building or any part of the building and a threat of collapse of the building or any part of the building.</p> <p>Columns C34, C36, C37, C38, C51, C52, C55, C56, C72, C91, C92, and C93 have not been detailed with fitments providing sufficient confinement to the core is a defect because it is a defect in a building element (internal</p>	<ul style="list-style-type: none"> • <i>BCA Volume 1, Section B, Structure</i> • <i>AS 3600 Concrete Structures:</i> • <i>AS 1170.0 Structural Design Actions Part 0: General Principles</i> • <i>AS 1170.1 Structural Design Actions: Part 1 - Permanent, Imposed and Other Actions</i> • <i>AS 4100: Steel Structure</i> 	Inability to inhabit or use the building (or part of the building) for its intended purpose, the destruction of the building or any part of the building and a threat of collapse of the building or any part of the building

			load bearing) that is likely to cause the inability to inhabit or use the building (or part of the building) for its intended purpose, the destruction of the building or any part of the building and a threat of collapse of the building or any part of the building		
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Consideration of written representations

5. The decision maker will consider any written representations pursuant to section 47 of the Act.

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

6. 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.
7. 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 unit in having the building constructed so that it does not cause or likely to cause the inability to inhabit or use the building (or part of the building) for its intended purpose, the destruction of the building or any part of the building and a threat of collapse of the building or any part of the building
8. Considering these potential consequences as outlined in this order, I give greater weight to the seriousness of the defect and failure ensure that that the construction of the element does not cause or likely to cause the inability to inhabit or use the building (or part of the building) for its intended purpose, the destruction of the building or any part of the building and a threat of collapse of the building or any part of the building and the benefits arising from remediating the defect and I find that it is appropriate, in the exercise of my discretion, to require Toplace Pty Ltd to carry out the building work contained in this Order.

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*.

owner's 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).