

Attn: Proper Officer
Iridium Developments Pty Ltd (ACN 615 947 307)
Level 16, 101 Miller Street
NORTH SYDNEY NSW 2060

CAS Ref: 11128019

Service: By registered post and by email

11 April 2024

Building Work Rectification Order

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

Iridium Developments Pty Ltd (ACN 615 947 307) is being given this Building Work Rectification Order (Order) in relation to 49-57 Gerrale Street Cronulla (SP 2379 & 2733, formerly Lot 1 DP 724908) (the Development).

Iridium Developments Pty Ltd (ACN 615 947 307) is required to cause building work to be carried out or take other specified action to remediate the serious and/or potential serious defects as set out 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. I, Matt Press, Director (Building Compliance, Building Commission NSW, Department of Customer Service) am an authorised delegate of the Secretary of the Department.
5. **Iridium Developments Pty Ltd (ACN 615 947 307)** is the developer of the residential apartment building known as ‘**Wavelength**’ at **49-57 Gerrale Street Cronulla (SP 2379 & 2733, formerly Lot 1 DP 724908) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development consists of an 11-storey building containing 67 apartments, ground floor commercial retail space and underground carparks.
7. On 19 December 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matt Press, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 1 below and under section 34(1A) of the Act require that you **Iridium Developments Pty Ltd (ACN 615 947 307)** 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 Ref No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work (s 34(1)(a))	Requirement (s 34(1A))	Time for compliance with Requirement from the date this order is given (s 39(1))
1.	Ground floor corridor passageway between shop 2 and waste room	There are unprotected service penetrations in a wall required to have a fire resistance level (FRL).	Ensure all service penetrations are protected to maintain an appropriate FRL.	<p>Within the time period specified in column 6,</p> <p>Stage 1 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 person or specialist appropriate to the subject areas of the building being a registered fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 5 months</p>
2.	Ground floor walls in back of house passageway:	A building element required to have a FRL does not achieve the required FRL. Block walls appear to be	Ensure construction method meets the appropriate FRL.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 5 months</p>

	<p>Wall between Shop 2 and passageway</p> <p>Wall between waste room and passageway</p>	<p>of a hollow construction.</p>		<p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a registered fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2</p> <p>Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
3.	<p>Fire stairs 1 and 2 service risers on all levels</p>	<p>Ductwork is expelling soot into the stairwell indicating non-sealed ductwork.</p>	<p>Ensure ductwork is properly sealed.</p>	<p>Within the time period specified in column 6,</p> <p>Stage 1</p> <p>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 person or specialist appropriate to the subject areas of the building being a registered mechanical engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	<p>Stage 1: 2 months</p> <p>Stage 2: 5 months</p>

				<p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
4.	Fire stairs 1 and 2, all levels	Speed panel appears to be unsealed or unprotected, as soot is escaping from the fire protected compartment.	Ensure all construction gaps, joints and spaces between building elements are protected to stop the spread of fire, smoke, or heat through the building.	<p>Within the time period specified in column 6,</p> <p>Stage 1 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 person or specialist appropriate to the subject areas of the building being a registered fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 5 months</p>
5.	Ground level fire passageway at back of house	The pressurisation system was not installed and there are no relief air paths from the rear fire isolated passageway.	Ensure an appropriate pressurisation system is installed in accordance	<p>Within the time period specified in column 6,</p> <p>Stage 1 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>	<p>Stage 1: 2 months</p> <p>Stage 2: 5 months</p>

			with the FSER requirements	<ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a registered fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
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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.



Matt Press
Director Building Compliance
Building Commission NSW

Date: 11/04/24

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 11 April 2024 issued to **Iridium Developments Pty Ltd (ACN 615 947 307)** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Matt Press, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - (a) An inspection report dated 19 December 2023 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act in the Building on 19 December 2023.
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 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 Ref 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.	Fire safety systems	There are unprotected service penetrations in a wall required to have a fire resistance level (FRL).	Service protections are required to be protected with a system identical to a prototype assembly of the service to maintain an appropriate FRL.	<p>A fire safety system (or element of a building forming part of a fire safety system) is required to satisfy the performance requirements specified under NCC Volume One,2019, Section C Fire Resistance, Performance Requirement CP8 Fire protection of openings and penetrations, which states:</p> <p><i>“CP8 Fire protection of openings and penetrations 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 –</i></p> <p><i>a) where openings, construction joints and the like occur; and</i></p> <p><i>b) where penetrations occur for building services.”</i></p> <p>“C3.15 Openings for service installations</p> <p><i>Where an electrical, electronic, plumbing, mechanical ventilation, air-conditioning, or other service penetrates a building element (other than an external wall or roof)</i></p>	The failure to adequately protect openings could lead to fire or smoke spreading in an uncontrolled manner through the building.

				<p>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:</p> <p>a) Tested systems</p> <p>i) The service, building element and any protection method at the penetration –</p> <p>A) 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; or</p> <p>B) differ from a prototype assembly of the service, building element and protection method in accordance with Section 4 of AS 4072.1.</p> <p>ii) It complies with (i) except for the insulation criteria relating to the service if –</p> <p>A) the service is a pipe system comprised entirely of metal (excluding pipe seals or the like); and</p> <p>B) any combustible building element is not located within 100 mm of the service for a distance of 2 m from the penetration; and</p> <p>C) combustible material is not able to be located within 100 mm of the service for a distance of 2 m from the penetration; and</p> <p>D) it is not located in a required exit.</p>	
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				<p><i>iii) The determination of the required FRL must be confirmed in a report from an Accredited Testing Laboratory in accordance with Schedule 5.</i></p> <p><i>b) Ventilation and air-conditioning — In the case of ventilating or air-conditioning ducts or equipment, the installation is in accordance with AS 1668.1.”</i></p>	
2.	Fire safety systems	A building element required to have a FRL does not achieve the required FRL. Block walls appear to be of a hollow construction.	Block walls should be core filled to maintain an appropriate FRL.	<p>A fire safety system (or element of a building forming part of a fire safety system) is required to satisfy the performance requirements specified under NCC Volume 1, 2019, Section C Fire Resistance, CP1 Structural stability during a fire, which states:</p> <p><i>“CP1 Structural stability during a fire A building must have elements which will, to the degree necessary, maintain structural stability during a fire appropriate to—</i></p> <ul style="list-style-type: none"> <i>(a)the function or use of the building;</i> <i>and</i> <i>(b)the fire load; and</i> <i>(c)the potential fire intensity; and</i> <i>(d)the fire hazard; and</i> <i>(e)the height of the building; and</i> <i>(f)its proximity to other property; and</i> <i>(g)any active fire safety systems installed in the building; and</i> <i>(h)the size of any fire compartment; and</i> <i>(i)fire brigade intervention; and</i> <i>(j)other elements they support; and</i> <i>(k)the evacuation time.”</i> 	The failure to achieve the minimum FRL means that the building element will not be able to perform (structural stability, integrity, insulation) in a fire. This could endanger occupants and the fire brigade.

				<p>And CP2 Spread of fire, which states: <i>“CP2 Spread of fire (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.”</i></p> <p>In the absence of a documented performance solution, the pathway to satisfy CP1 and CP2 is via satisfying the Deemed-to-Satisfy provisions. The applicable Deemed to-Satisfy provision is Specification C1.1 Fire-resisting construction, 3. Type A Fire-Resisting Construction, 3.1 Fire-resistance of building elements, which states: <i>“In a building required to be of Type A construction — (a) each building element listed in Table 3 and any beam or column incorporated in it, must have an FRL not less than that listed in the Table for the particular Class of building concerned;”</i></p> <p>The Corridor Walls are documented to be constructed to achieve FRL120/120/120 and -/120/120 on the approved plans, the failure to construct in accordance with</p>	
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				the approved plans demonstrates a failure to comply with the performance requirements of the BCA and the approved plans.	
3.	Those aspects of the mechanical services for a building that are required to achieve compliance with the BCA.	Ductwork is expelling soot into the stairwell indicating non-sealed ductwork.	Ductwork must be appropriately sealed to prevent the expulsion of hazardous materials.	<p>Australian Standard AS 4254.2-2012 Ductwork for air-handling systems in buildings-Rigid duct is a relevant Australian Standard for rigid ducting. The improper installation of ductwork sealing demonstrates a failure to comply with AS4254.2 Section 2 Duct construction and installation, 2.2 Duct Sealing, which states:</p> <p><i>“2.2.1 General Where sealing is a requirement of this Standard, the following criteria apply to the sealing of ducts: (a) Adhesives, mastics, gaskets, or combination thereof shall be used to close openings in the surface of the ductwork through which air leakage would otherwise occur. (b) Where welding is used for sealing, it shall be continuous....</i></p> <p><i>3.2.2 Kitchen exhaust ductwork sealing Ductwork used in relation to kitchen exhaust systems shall be sealed as follows; Joints and seams shall be grooved or lapped and fully sealed by- (a) Continuous weld; (b) Rivet and solder; or</i></p>	The improper installation of the rigid duct could reduce the building's overall energy efficiency, reduce the air handling system's capacity and lead to a build-up of objectionable or noxious gasses. This could endanger occupants and the fire brigade.

				<p><i>(c) Liquid sealant or mastic that is unaffected by grease, water or cleaning agents when held under compression between surfaces of joints and seams.”</i></p> <p>AS 4254.2 is referenced in the BCA Volume One,2019, Specification C1.10, Fire Hazard Properties, Deemed-to-Satisfy Provisions, Section 5, Air-handling ductwork, which states; <i>“Rigid and flexible ductwork in a Class 2 to 9 building must comply with the fire hazard properties set out in AS 4254.1 and AS 4254.2.”</i></p> <p>The improper ductwork sealing also fails to comply with the Performance Requirements of the BCA Volume One, 2019, Section F Health and Amenity, Part F4 Light and Ventilation, FP4.5 Disposal of contaminated air which states; <i>“Contaminated air must be disposed of in a manner which does not unduly create a nuisance or hazard to people in the building or other property.”</i></p>	
4.	Fire safety systems	Speed panel appears to be unsealed or unprotected, as soot is escaping from the fire	Construction joints and gaps between building elements are required to be protected.	Construction joints and gaps/spaces between building elements are required to satisfy the performance requirements specified under NCC Volume One,2019, Section C Fire Resistance, Performance Requirement CP8 Fire protection of openings and penetrations, which states:	The failure to adequately protect joints or spaces could lead to fire or smoke spreading in an uncontrolled manner through the building.

		protected compartment.		<p><i>“CP8 Fire protection of openings and penetrations 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.”</i></p> <p>In the absence of a documented performance solution, the pathway to satisfy CP8 is via satisfying the Deemed-to-Satisfy provisions. The applicable Deemed-to-Satisfy provision is BCA Clause C3.16 Construction joints, which states: “C3.16 Construction joints 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 AS1530.4 to achieve the required FRL. b) The requirements of (a) do not apply where joints, spaces and the like between fire-protected timber elements are provided with cavity barriers in accordance with Specification C1.13.”</p>	
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				<p>The unsealed opening in the shaft demonstrates a failure to comply with the BCA Volume One, Section 3 Fire resistance, Specification C1.1 Fire-resisting construction, Deemed-to-satisfy provision - General requirements, 2.7 Enclosure of shafts, which states in part - <i>“Shafts required to have an FRL must be enclosed at the top and bottom by construction having an FRL not less than that required for the walls of a nonloadbearing shaft in the same building,”</i></p> <p>Deemed-to-satisfy provision 2.7 Enclosure of shafts, is a pathway that can satisfy the BCA Volume One, Section C Fire resistance, Performance Requirement CP2, which states in part - <i>“(a) A building must have elements which will, to the degree necessary, avoid the spread of fire —</i> <i>(i) to exits; and</i> <i>(ii) to sole-occupancy units and public corridors; and</i> <i>(iii) between buildings; and</i> <i>(iv) in a building”.</i></p> <p>Therefore, as the openings in the shaft does not comply with Deemed-to-satisfy provision 2.7 Enclosure of shafts, the BCA Volume One Performance Requirement cannot be shown to have been satisfied.</p>	
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5.	Fire safety systems	The pressurisation system was not installed and there are no relief air paths from the rear fire isolated passageway.	The FSER requirements require a stair pressurisation system to be installed.	<p>Smoke hazard management systems are required to satisfy the performance requirements specified under NCC Volume One, Section E Services and Equipment, Part E2 Smoke Hazard Management , EP2.2 Safe Evacuation Routes, which states:</p> <p><i>(a) In the event of a fire in a building the conditions in any evacuation route must be maintained for the period of time occupants take to evacuate the part of the building so that –</i></p> <p><i>(i) the temperature will not endanger human life; and</i></p> <p><i>(ii) the level of visibility will enable the evacuation route to be determined; and</i></p> <p><i>(iii) the level of toxicity will not endanger human life.</i></p> <p>Smoke hazard management systems are required to satisfy the Deemed-to-Satisfy Provisions specified under NCC Volume One, Section E Services and Equipment, Part E2 Smoke Hazard Management ,E2.2 General Requirements, which states:</p> <p><i>(a) A building must comply with (b), (c), (d) and –</i></p> <p><i>(i) Table E2.2a as applicable to Class 2 to 9 buildings such that each separate part complies with the relevant provisions for the classification; and</i></p>	<p>In the event of a fire in a building the conditions in any evacuation route must be maintained for the period of time occupants take to evacuate the part of the building so that –</p> <p>(i) the temperature will not endanger human life; and</p> <p>(ii) the level of visibility will enable the evacuation route to be determined; and</p> <p>(iii) the level of toxicity will not endanger human life.</p>
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				<p>(ii) Table E2.2b as applicable to Class 6 and 9b buildings such that each separate part complies with the relevant provisions for the classification.</p> <p>Table E2.2a General provisions</p> <p>Fire-isolated exits</p> <p>A required –</p> <p>(a) fire-isolated stairway, including any associated fire-isolated passageway or fire-isolated ramp serving –</p> <p>(i) any storey above an effective height of 25 m; or</p> <p>(ii) more than 2 below ground storeys, not counted in the rise in storeys in accordance with C1.2; or</p> <p>(iii) an atrium to which Part G3 applies;</p> <p>or</p> <p>(iv) a Class 9a building with a rise in storeys of more than 2; or</p> <p>(v) a Class 9c building with a rise in storeys of more than 2; or</p> <p>(vi) a Class 3 building used as a residential care building with a rise in storeys of more than 2; and</p> <p>(b) fire-isolated passageway or fire-isolated ramp with a length of travel more than 60 m to a road or open space, must be provided with--</p> <p>(c) an automatic air pressurisation system for fire-isolated exits in accordance with AS 1668.1; or</p> <p>(d) open access ramps or balconies in accordance with D2.5.</p> <p>Notes:</p>	
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				<p><i>1. An automatic air pressurisation system for fire-isolated exits applies to the entire exit.</i></p> <p><i>2. Refer D1.7(d) for pressurisation of a fire-isolated exit having more than 2 access doorways from within the same storey</i></p>	
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Consideration of written representations

5. On 6 February 2024, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Certifier and Owners Corporation. The served parties were invited to provide written representations relating to the Order to the Department by 27 February 2024.
 - a. Letter received from Sutherland Shire Council (SSC), dated 15 February 2024. We note SSC has not raised any objections to the defects outlined in the Draft BWRO issued by BCNSW. We note that in the same submission, SSC has included a list of additional items which SSC wishes for BCNSW to add to the Draft BWRO. Authorised Officers have determined that these items will not be included in the current draft BWRO. The reason for this decision is because these items do not directly pertain to the defects listed in the current draft BWRO. Any additional items will require further investigation by the BCNSW. SSC will be updated in relation to any additional compliance action for the subject development.
 - b. Letter received from Iridium Developments Pty Ltd (the developer), dated 27 February 2024. We note the developer requested additional time to be added into the compliance period for the BWRO, having regard to advice that the developer has received from its experts to date in relation to the completion of rectification work. The department has not received a copy of the referenced expert advice so that the proposal may be reviewed by the department in detail, and hence will not be granting this request. The developer may submit future extension of time requests with relevant advice from its experts to show that additional rectification time is required for consideration by the department.
 - c. Letter received from Mr Daniel Radman from Grace Lawyers acting on behalf of the owners, dated 27 February 2024. We note Mr Radman requested that the department refrain from proceeding the draft BWRO to final until 19 March 2024, to enable experts to complete their own investigations of the development (including defects subject to the draft order). We note Mr Radman also advised that their client's intention is to provide the relevant outputs of the investigations to BCNSW to enable any appropriate items to be added to the Draft Order before it is finalised. The points raised do not directly

pertain the defects listed in the current draft BWRO. Any additional items will require further investigation by the BCNSW. The owners will be updated in relation to any additional compliance action for the subject development.

6. On 28 February 2024 the Developer has requested an extension of time to comply for this Order, which was granted by the Department.

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

7. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defect identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defect and I find that it is appropriate, in the exercise of my discretion, to make the Order to carry out the specified actions in the Order within the time specified in the Order.
8. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defect.
9. I am of the view that the periods above for Defect 1 through 5 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.

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).

Notes about this Order

- **A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.**
- **It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For and individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.**
- **You may appeal to the Land and Environment Court against this Order within 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.**
- **You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.**
- **The Secretary has given the following persons notice of the making of this building work rectification order:**
 - **the relevant local council,**
 - **if the local council is not the certifier in relation to the building work—the principal certifier,**
 - **if you are not the owner of the land concerned—the owner of the land concerned,**
 - **the Registrar-General,**
 - **if the order relates to a strata building—the relevant owners corporation,**
 - **any other person prescribed by the regulations.**
- **This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.**

