

Attn: Proper Officer

605835194 Pty Ltd (formerly Musdev Pty Ltd) (ACN 605 835 194)

C/O Speir and Associates

SE 23 103 George St

Parramatta NSW 2150

Service: by email

24 April 2023

## Building Work Rectification Order

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

605835194 Pty Ltd (formerly Musdev Pty Ltd) (ACN 605 835 194) is being given this Building Work Rectification Order (Order) in relation to address 11 Farm Street, Gladesville (SP 95432) (the Development).

605835194 Pty Ltd (formerly Musdev Pty Ltd) (ACN 605 835 194) 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. Stewart Scarlett, Acting Assistant Building Commissioner is an authorised delegate of the Secretary of the Department.
5. **605835194 Pty Ltd (formerly Musdev Pty Ltd)** is the developer of the residential apartment building known as **11 Farm Street, Gladesville (SP 95432) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development comprises a 4 storey apartment building consisting of 9 apartment units and underground car parks. The Act applies to building work at the Development because it is a Class 2 Development, is currently occupied and is less than 10 years old.
7. On 15 September 2022, authorised officers conducted a lawful inspection of the Development.

8. On 21 March 2023, a Notice of Intention to issue the Order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Owners Corporation and Certifier. The Developer, Local Council, Office of the Registrar General, and Certifier were invited to provide written representations relating to the Order to the Department by 28 March 2023. The Owners Corporation was invited to provide written representations relating to the Order to the Department by 11 April 2023.

a. No submissions were received as of 28 March 2023 or as of the date of this Order from the Developer, Local Council, Office of the Registrar General, and Certifier.

b. No submissions were received as of 11 April 2023 or as of the date of this Order from the Owners Corporation.

#### Requirements in relation to Serious Defects

9. I, Stewart Scarlett, Acting Assistant Building Commissioner, 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 **605835194 Pty Ltd (formerly Musdev Pty Ltd) (ACN 605 835 194)** 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 Number	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	Central area of the ground floor driveway	Water penetration into the Building adversely impacting on the occupants intended use of the driveway area	Prevent the entry of water into the basement	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>
2	Unit 7 car space	Water penetration into the Building adversely impacting on the occupants intended use of the unit 7 car space	Prevent the entry of water into the basement	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> </ul>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>

				<ul style="list-style-type: none"> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	
<b>3</b>	Storage cage at the rear of the Unit 9 car space.	Water penetration into the Building adversely impacting on the occupants using the storage cage of Unit 9	Prevent the entry of water into the basement	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>
<b>4</b>	Garbage room.	Water penetration into the Building adversely impacting on the occupants intended use of the garbage area.	Prevent the entry of water into the garbage area	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>

5	Southern end of basement	Water penetrating through a hole in the concrete soffit housing flexible corrugated conduit extending from the basement to the ground floor above.	Prevent the entry of water into the basement	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>
6	Southern end of basement	Water penetrating from around a PVC drainage pipe extending from above the car spaces along the southern end of the basement to the ground level.	Prevent the entry of water into the basement	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>
7	Unit 6 Balcony	Water penetrating in an isolated area approximately 100 mm in diameter through the concrete soffit above the southern balcony of Unit 6.	Prevent the entry of water onto the Unit 6 balcony	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> </ul>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>

				<ul style="list-style-type: none"> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	
8	Unit 7 front entry	Water penetrating the ceiling lining adjacent to the front entry door of Unit 7.	Prevent the entry of water to the front entry of unit 7	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>
9	Hallway of unit 7	Water penetrating the ceiling lining adjacent to the hallway of Unit 7	Prevent the entry of water to hallway of unit 7	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i. be prepared by a suitably qualified and experienced person or specialist, being a registered design practitioner appropriate to the subject areas of the building;</li> <li>ii. be prepared with consideration to this Order and the Reasons for this Order;</li> <li>iii. be prepared with consideration to weatherproofing design and installation specifications; and</li> <li>iv. detail the specific building work necessary to meet the specified standard.</li> </ul> <p>Stage 2 – Carry out the work to rectify the weatherproofing breaches and consequential repairs in accordance with the report and drawings required to comply with Stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</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.

A handwritten signature in blue ink, appearing to read 'Stewart Scarlett', with a stylized, flowing script.

Stewart Scarlett  
**Acting 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 24 April 2023 issued to **605835194 Pty Ltd (formerly Musdev Pty Ltd) (ACN 605 835 194)** 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, Stewart Scarlett, Acting Assistant Building Commissioner, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
  - a. Site inspection notes and photographs gathered by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act on 15 September 2022.
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 Column 2 of Table 1 of the Order.

**Table 2 – basis of reasonable belief as to serious defects**

Serious Defect Reference	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	Waterproofing	Water cannot effectively be excluded from the driveway area in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>(b) undue dampness or deterioration of building elements.”</i>	The absence of measures to exclude water from the basement has caused unhealthy and dangerous conditions for the residents as the basement is not designed to be wet
2	Waterproofing	Water cannot effectively be excluded from the unit 7 car space in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>undue dampness or deterioration of building elements.”</i>	The absence of measures to exclude water from the basement has caused unhealthy and dangerous conditions for the residents as the basement is not designed to be wet
3	Waterproofing	Water cannot effectively be excluded from the storage cage of unit 9 in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>	The absence of measures to exclude water from the basement has caused unhealthy and dangerous conditions for the residents as the basement is not designed to be wet

			occupants; and undue dampness or deterioration of building elements.	(a) <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> (b) <i>undue dampness or deterioration of building elements."</i>	
4	Waterproofing	Water cannot effectively be excluded from the garbage room in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>undue dampness or deterioration of building elements."</i>	The absence of measures to exclude water from the garbage room has caused unhealthy and dangerous conditions for the residents as the garbage room is not designed to be wet
5	Waterproofing	Water cannot effectively be excluded from the concrete soffit in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>undue dampness or deterioration of building elements."</i>	The absence of measures to exclude water from the basement has caused unhealthy and dangerous conditions for the residents as the basement is not designed to be wet
6	Waterproofing	Water cannot effectively be excluded from the car spaces along the southern end of the basement to the ground level in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>undue dampness or deterioration of building elements."</i>	The absence of measures to exclude water from the basement has caused unhealthy and dangerous conditions for the residents as the basement is not designed to be wet
7	Waterproofing	Water cannot effectively be excluded from the concrete soffit above the southern balcony of Unit 6. in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i>	The absence of measures to exclude water from the balcony soffit has caused unhealthy and dangerous conditions for the residents as the balcony soffit is not designed to be wet



			dampness or deterioration of building elements.	<i>undue dampness or deterioration of building elements.”</i>	
8	Waterproofing	Water cannot effectively be excluded from ceiling lining adjacent to the front entry door of Unit 7. in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>undue dampness or deterioration of building elements.”</i>	The absence of measures to exclude water from the ceiling lining adjacent to the front entry door has caused unhealthy and dangerous conditions for the residents as the ceiling lining adjacent to the front entry door is not designed to be wet
9	Waterproofing	Water cannot effectively be excluded from ceiling lining at the southern end of the hallway of Unit 7. in circumstances where water is to be excluded.	A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause unhealthy or dangerous conditions, or loss of amenity for occupants; and undue dampness or deterioration of building elements.	<b>BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 which states:</b>  <i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-</i>  <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>undue dampness or deterioration of building elements.”</i>	The absence of measures to exclude water from the ceiling lining at the southern end of the hallway has caused unhealthy and dangerous conditions for the residents as the ceiling lining at the southern end of the hallway is not designed to be wet

#### Consideration of written representations

5. No submissions were received as of 28 March 2023 or as of the date of this order from the Developer, Local Council, Office of the Registrar General, and Certifier.
6. No submissions were received as of 11 April 2023 or as of the date of this Order from the Owners Corporation.

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

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

## Attachment A

### ***Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.***

#### **3 Definitions**

(1) In this Act —

**approved plans**, in relation to building work, means the following —

- (a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,
- (b) regulated designs under the *Design and Building Practitioners Act 2020*,
- (c) any other plans prescribed by the regulations for the purposes of this definition.

**Building Code of Australia** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**Building Commissioner** means the Building Commissioner referred to in section 61.

**building element** has the same meaning as in the *Design and Building Practitioners Act 2020* and includes any element of a building that is prescribed by the regulations for the purposes of this definition.

**building product** means any product, material or other thing that is, or could be, used in a building.

**building work** — see section 5.

**building work rectification order** — see section 33.

**class** of building means a building of that class as recognised by the *Building Code of Australia*.

**completion**, in relation to building work, means the date that the occupation certificate for the building or part of a building to which the building work relates was issued.

**Department** means the Department of Customer Service.

**developer** — see section 4.

**expected completion amendment notice** — see section 8.

**expected completion notice** — see section 7.

**expected date** — see section 7(2).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**occupation certificate** means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*.

**owners corporation** for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

**prohibition order** — see section 9.

**rectification bond** — see section 28.

**residential apartment building** means a class 2 building within the meaning of the *Building Code of Australia*, and includes any building containing a part that is classified as a class 2 component, but does not include any building or part of a building excluded from this definition by the regulations.

**Secretary** means the Secretary of the Department.

**serious defect**, in relation to a building, means —

- 1) 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
- 2) a defect in a building product or building element that —

- a. is attributable to defective design, defective or faulty workmanship or defective materials, and
  - b. 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
- 3) a defect of a kind that is prescribed by the regulations as a serious defect, or
- 4) 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*).

## **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).