

Attn. the Proper Officer Hector Court Pty Ltd (ACN 603 263 887) 121 Majors Bay Road CONCORD NSW 2137

Service: By registered post and by email

Building Work Rectification Order

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

Hector Court Pty Ltd (ACN 603 263 887) is being given this Building Work Rectification Order (Order) in relation to address 2 Affleck Circuit, Kellyville (Lot 101, Lot 102, Lot 103 DP 1195876) (the Development).

Hector Court Pty Ltd (ACN 603 263 887) 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

- The Department of Customer Service (the Department) administers the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (the Act). 1.
- 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.
- З. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines to 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.
- Matthew Whitton, Assistant Building Commissioner (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department. 4.
- 5. Hector Court Pty Ltd (ACN 603 263 887) is the developer of the residential apartment building at 2 Affleck Circuit, Kellyville (Lot 101, Lot 102, Lot 103 DP 1195876) (the Development) for the purposes of section 4(a) of the Act.
- 6. The Development is a class 2 building comprised of three residential flat buildings consisting of 4 storeys containing 53 apartments and underground carparks. The Act applies to building work at the Development.
- 7. On 6 December 2022, authorised officers conducted a lawful inspection of the Development.

CAS Ref: 11013363

24 August 2023

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 1 below and under section 34(1A) of the Act require that **Hector Court Pty Ltd (ACN 603 263 887)** 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: Requirements in respect of Serious Defects

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	Building 1 Roof top	The installation of substrate	Ensure water on the roof does not pond and	Within the time period specified in column 6,	Stage 1 – 2 months
	Building 2 Roof top Building 3 Roof top	the drainage outlet.	drains to the drainage outlet.	Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au	Stage 2 – 6 months
				 The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a Waterproofing consultant who is a registered building practitioner; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	
				drawings required to comply with Stage 1.	
2	Above the "Supply Air Fan Room" on the Basement 1 car parking level under Building 3	Water penetrating the ceiling of the Building into the basement.	Ensure water does not penetrate into the basement.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a waterproofing consultant who is a registered building practitioner: 	Stage 1 – 2 months Stage 2 – 4 months

				ii be prepared with consideration to this Order and	
				 iii. be prepared with consideration to this order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	
				consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
3	Basement Level 2	Service penetrations are not fire resistant.	Ensure that all service penetrations are sealed with a tested system.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for fire safety system remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a FPAS accredited individual; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. Stage 2 - Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1. 	Stage 1 – 2 months Stage 2 – 4 months
4	Building 1. Roof top	The louvred ventilation opening on the lift shaft on the rooftop of Building 1 wall has not been finished/sealed.	Seal the louvered ventilation to ensure it achieves an FRL of 120/120/120.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for fire safety system remediation to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a mechanical engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	Stage 1 – 2 months Stage 2 – 4 months

				Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
5	Basement 1	Service penetrations are not fire resistant.	Ensure that all service penetrations are sealed with a tested system.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for fire safety system remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a passive fire contractor; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	Stage 1 – 2 months Stage 2 – 4 months
6	Basement Levels	Uncontrolled cracking to basement slabs and soffits.	Ensure no further cracking occurs.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for structural system remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a Consulting Structural Engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	Stage 1 – 2 months Stage 2 – 6 months

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				Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
7	Unit G03 Unit 201 Unit 206 Unit 305 Unit 309 Unit 403	Water is entering into habitable areas of the building.	Prevent the entry of water into the building.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a Façade Engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	Stage 1 – 2 months Stage 2 – 6 months
				Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
8	Building 1, Level 4 common foyer Building 2, Level 3	Water is entering the Building into habitable areas of the Building.	Prevent the entry of water into the building.	 Within the time period specified in column 6, Stage 1 - Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a façade engineer who is a registered building practitioner; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	Stage 1 – 2 months Stage 2 – 4 months

				Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
9	Unit 305 balcony	Water is entering the balustrade wall.	Prevent moisture from entering the balustrade wall.	 Within the time period in column 6, Stage 1 - Submit a written report and drawings prepared for façade remediation to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a Structural Engineer who is a registered building practitioner; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and 	Stage 1 – 2 months Stage 2 – 4 months
				 N. detail the specific building work necessary to meet the specified standard. Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1. 	
10	Basement Level 1	Water penetrating the PPF walls of the Building into the basement	Ensure water does not penetrate the basement	 Within the time period specified in column 6, Stage 1 – Submit a written report and drawings prepared for weatherproofing remediation to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a waterproofing consultant who is a registered building practitioner; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. 	Stage 1 – 2 months Stage 2 – 6 months

				Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1.	
11	Basement levels 1 & 2	No physical protection of hydraulic stormwater pipes	Install protection to the hydraulic stormwater pipes	 Within the time period specified in column 6, Stage 1 – Submit a written report and drawings prepared for remediation to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must: i. be prepared by a suitably qualified and experienced person or specialist, being a registered practitioner appropriate to the subject areas of the building being a waterproofing consultant who is a registered building practitioner; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. Stage 2 – Carry out the work to rectify the defect and consequential repairs in accordance with the report and drawings required to comply with Stage 1. 	Stage 1 – 2 months Stage 2 – 4 months

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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 it is given in accordance with section 67 of the Act.

ABJ-0

Matthew Whitton 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 August 2023 issued to Hector Court Pty Ltd (ACN 603 263 887) 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:
 - An inspection report dated 14 February 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 6 a. December 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 2 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
1	Waterproofing	Water ponds on the roof surface.	Falls in finishes shall ensure water drains to the drainage outlet. On the roof the building water pools and does not drain to the drainage outlet.	 NCC Volume One BCA 2016, Section Part F1 Damp and Weatherproofing F1.4 states: "Waterproofing membranes for external above ground use must comply with AS 4654.1 and AS 4654.2" AS 4654.2-2012, Waterproofing Membranes for External Above Ground Use - Section 2 Design and Installation, clause 2.5 Substrate 2.5.2 Falls, which states: "Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be retained on the finished surface with the exception of residual water remaining due to surface tension. The fall shall be in the structural substrate or formed by a screed over the structural substrate."
2	Waterproofing	Water entry into the building causing unhealthy and dangerous conditions.	A roof must prevent the penetration of water into the building. In the Building water is entering the Building through the roof.	 BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements, FP1.4 Weatherproofing, which states: "A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-(a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and (b) Undue dampness or deterioration of building elements."
3	Fire Safety System	Service penetrations are not fire resistant.	Service penetrations are required to be installed with a tested system. In the building the service penetration was not installed identically with a	NCC Volume One BCA 2016, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations, which states the following: "Where an electrical, electronic, plumbing, mechanical ventilation, air-conditioning, or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with

	Consequences of serious defect
	The pooling of water has resulted in the delamination of the membrane and has resulted in water entering the building.
!	
	Unhealthy and dangerous conditions
r	Service penetrations without a properly installed tested system in the event of a fire may result in the rapid spread of fire.

			prototype assembly of the tested system. Fire collars have not been fixed using the fixing points with a minimum 25mm steel anchor, include openings greater than 20mm and have been installed in an overlapping manner.	 respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with any one of the following: (a) Tested systems (i) The service, building element and any protection method at the penetration are identical with a prototype assembly of the service, building element and protection method which has been tested in accordance with AS 4072.1 and AS 1530.4 and has achieved the required FRL or resistance to the incipient spread of fire."
4	Fire Safety System	Lift shaft louvre ventilation was not sealed to be fire resistant.	Installations are required to be sealed to maintain an appropriate fire resistance level to prevent incipient spread of fire.	 NCC Volume 1 BCA 2016, Section C2.10 Separation of lift shafts which states the following: "(a) Any lift connecting more than 2 storeys, or more than 3 storeys if the building is sprinklered, (other than lifts which are wholly within an atrium) must be separated from the remainder of the building by enclosure in a shaft in which — (i) in a building required to be of Type A construction — the walls have the relevant FRL prescribed by Specification C1.1; and (ii) in a building required to be of Type B construction — the walls — (A) if loadbearing, have the relevant FRL prescribed by Table 4 of Specification C1.1; or (B) if non-loadbearing, be of non-combustible construction. (b) Any lift in a patient care area in a Class 9a health-care building or a resident use area in Class 9c building must be separated from the remainder of the building by a shaft having an FRL of not less than — (i) in a building of Type A or B construction — 120/120/120; or (ii) in a building Code of Australia - Volume One Page 76 (c) An emergency lift must be contained within a fire-resisting shaft having an FRL of not less than 120/120/120. (d) Openings for lift landing doors and services must be protected in accordance with the Deemed-to-Satisfy Provisions of Part C3"
5	Fire Safety System	Service penetrations are not fire resistant.	Service penetrations are required to be installed with a tested system. In the building the service penetration was not installed with a tested system.	NCC Volume One BCA 2016, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisions: C3.15 Openings for service installations, which states the following: "Where an electrical, electronic, plumbing, mechanical ventilation, air-conditioning, or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with any one of the following:

	A lift shaft ventilation which is not sealed may result in the rapid spread of fire in the event of a fire.
-	Service penetrations without a tested system in the event of a fire may result in the rapid spread of fire.

				(b) Tested systems (i) The service, building element and any protection method at the penetration are identical with a prototype assembly of the service, building element and protection method which has been tested in accordance with AS 4072.1 and AS 1530.4 and has achieved the required FRL or resistance to the incipient spread of fire."
6	Structural	Uncontrolled cracking to concrete slabs and soffits.	General cracking in concrete structures shall be controlled so that structural performance, durability and appearance of the structure are not compromised.	 AS 3600 appears as a standard referenced in the BCA Volume One, Section B Structure, Part B1 Structural Provisions, Deemed- to-Satisfy provision B1.4 - Determination of structural resistance of materials and forms of construction which states: <i>"The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate.</i> <i>(b) Concrete:</i> <i>(i) Concrete construction (including reinforced and prestressed concrete): AS 3600.</i> Deemed-to-Satisfy provision B1.4 is a pathway that can satisfy the BCA Volume One, Section B Structure, Part B1: Structural Provisions Performance Requirement BP1.1 which states: <i>(a) A building or structure, during construction and use, with appropriate degrees of reliability, must-</i> <i>(i) perform adequately under all reasonably expected design actions, and</i> <i>(ii) withstand extreme or frequently repeated design actions, and</i> 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,"
7	Waterproofing	Water entry into the building causing unhealthy and dangerous conditions.	A roof must prevent the penetration of water into the building. In the Building water is entering the Building through the roof.	BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements, FP1.4 Weatherproofing, which states: "A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause- (a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and (b) Undue dampness or deterioration of building elements."
8	Waterproofing	Water entry into the building causing unhealthy and dangerous conditions.	A roof must prevent the penetration of water into the building. In the Building water is entering the Building through the roof.	 BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements, FP1.4 Weatherproofing, which states: "A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-(a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and (b) Undue dampness or deterioration of building elements."

Durability and integrity of the concrete slab / soffit may be compromised.
Unhealthy and dangerous conditions
Unhealthy and dangerous conditions

9	Waterproofing	Water entry causing deterioration of a structural building element.	Moisture emanating from the wall suggests that the wall has not been core filled correctly, causing deterioration of the structure.	NCC Volume One BCA 2016, Part F1 Damp and weatherproofing, Performance Requirements FP1.4 states: "A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause- (a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and (b) Undue dampness or deterioration of building elements."	Undue dampness o building elements
10	Waterproofing	Water entry into the building causing unhealthy and dangerous conditions.	A roof must prevent the penetration of water into the building. In the Building water is entering the Building through the roof.	 BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements, FP1.4 Weatherproofing, which states: <i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause-(a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and (b) Undue dampness or deterioration of building elements."</i> 	Unhealthy and dan
11	Plumbing Services	Stormwater pipes have not been physically protected from mechanical damage.	Stormwater pipes are required to be protected from damage by vehicles. In the Building the stormwater pipes in the carpark had no protection.	Australian/ New Zealand Standard 3500.3-2018 Plumbing and drainage – Stormwater drainage, Section 4 Roof drainage systems - Installation, 4.5 Installation and testing, 4.5.6 Downpipes, which states: "The following applies to the installation of downpipes: a. Locations – Downpipes shall be located – iv. so that they are protected from mechanical damage; " In addition, the failure to provide adequate protection to the hydraulic stormwater pipes contravenes Australian/New Zealand Standard 2890.1:2004 Parking facilities, Park 1: Off-street car parking, Section 2 Design of parking modules, circulation roadways and ramps, 2.4 Design of parking modules, 2.4.5 Physical controls, 2.4.5.5 Other protective devices, which states: "Protective devices shall be provided as necessary to protect parts of the building or other fixed objects or equipment from damage by vehicles. Such protection shall include devices to prevent vehicle encroachment into pedestrian ways, stairs, doorways, lifts and the like. Appropriately located bollards are suitable for these purposes. Protective devices shall be clearly visible to drivers when in their normal driving position" As some PVC have been damaged and there is no visible protection to the PVC pipes the requirements of the Australian Standard has not been achieved.	The failure to prote pipes if hit by a veh carpark filling with flooding resulting i conditions.

mp and weatherproofing, s: nings around windows and vater that could cause- r loss of amenity for puilding elements."	Undue dampness or deterioration of building elements
Amenity, Part F1 Damp and ements, nings around windows and vater that could cause- r loss of amenity for puilding elements."	Unhealthy and dangerous conditions
0.3-2018 Plumbing and on 4 Roof drainage systems g, 4.5.6 Downpipes, which of downpipes: ocated –	The failure to protect the stormwater pipes if hit by a vehicle could result in the carpark filling with stormwater and flooding resulting in dangerous conditions.
nechanical damage; ate protection to the s Australian/New Zealand s, Park 1: Off-street car odules, circulation roadways les, 2.4.5 Physical controls, states:	
s necessary to protect parts equipment from damage by evices to prevent vehicle rs, doorways, lifts and the uitable for these purposes. to drivers when in their here is no visible protection he Australian Standard has	

Consideration of written representations

- 5. On 24 July 2023, 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 14 August 2023. On 4 August 2023, an extension of time was granted, at the request of the Owners Corporation, to provide submissions in response to the order. The only submission received was from the Owners Corporation, who provided submissions on 22 August 2023, confirming that the 6. Order should be finalised.
- 7. I am satisfied that the Developer has been given an opportunity to provide representations concerning the Order. In circumstances no submissions have been made in response to the draft, I am satisfied that it is appropriate to give the Order.

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

- 8. I am of the view that the periods above for Defect 1 through 11 (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.
- 9. Considering the potential 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 AS 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.
- 10. 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.

Section 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.

Section 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.

Section 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.

Section 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).