

Attn: Proper Officer Knightsbridge Development Group Pty Ltd (ACN 603 240 080) SE 105 L 1 50 Clarence Street SYDNEY NSW 2000

Service: By registered post and by email

CAS Ref: 11055902

22 November 2023

# **Building Work Rectification Order**

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

Knightsbridge Development Group Pty Ltd (ACN 603 240 080) is being given this Building Work Rectification Order (Order) in relation to address 433 – 439 Princes Hwy, Rockdale, 2216 (Lot 1 DP331780, Lot 1 DP965327, Lots 1 & 2 DP 955627 & Lot 1 DP752134) (the Development).

Knightsbridge Development Group Pty Ltd (ACN 603 240 080) (Knightsbridge Development) 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 NSW Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
- 5. Knightsbridge Development Group Pty Ltd (ACN 603 240 080) **(Knightsbridge Development)** is the developer of the residential apartment building known as '*Anew Rockdale*' at 433 439 Princes Hwy, Rockdale, 2216 (Lot 1 DP331780, Lot 1 DP965327, Lots 1 & 2 DP 955627 & Lot 1 DP752134) (the **Development**) for the purposes of section 4(a) of the Act.
- 6. The Development is a Class 2/6/7a building, comprising of a 12-storey mixed use building containing 86 apartments, 3 commercial units, basement parking and rooftop terrace.
- 7. On 16 February 2023, 18 May 2023 and 8 September 2023 authorised officers conducted a lawful inspection of the Development.
- 8. On 2 November 2023, a notice of intention to issue the Order and draft copy of the Order was issued to Knightsbridge Development in relation to the Development.
  - a. Knightsbridge Development were invited to provide written representations relating to the Order to the Department by 20 November 2023.
  - b. No submissions were received as at the date of this Order from Knightsbridge Development.

- 9. On 2 November 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier.
  - a. The Developer, Local Council, Owners Corporation and Certifier were invited to provide written representations relating to the Order to the Department by 20 November 2023.
  - b. No submissions were received as at the date of this Order from the Developer, Local Council, Owners Corporation and Certifier.

#### **Requirements in relation to Serious Defects**

10. I, Stewart Scarlett, under section 33 of the Act, require you **Knightsbridge Development** to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each respective serious defect described in columns 1, 2 and 3 of Table 1. Each requirement must be complied with by the time set out in column 5 of Table 1:

Serious Defect Reference No.	Location of Serious Defect	General description of Serious Defect	Requirement under section 33(2)(a) to carry out the following specified building work	Time for compliance with Requirement (commencing from the date this order is given)
1	Ground Floor, car park	The car park exhaust fan	Step 1	2 months
	basement - car park	is incorrectly connected	Connect car park exhaust fan to ductwork and	
	exhaust located adjacent	to the ductwork.	provide a sealed connection to car park exhaust	
	to commercial car space 5	5	and ductwork.	
	and backs onto Fire Stair		Step 2:	
	1.		Make good any resultant consequential damage.	
			Step 3:	
			Demonstrate compliance of remediation works by	
			submitting evidence to the OC Audit team via	
			email to ocaudits@customerservice.nsw.gov.au	
			including photographs of work in progress,	

			installer compliance certificates and third party reports.	
2	<ul> <li>Riser shafts of the building.</li> <li>Dampers on all levels between Ground and Level 11.</li> </ul>	Smoke and Fire Dampers incorrectly installed, with dampers requiring flanges and fire rated mastic to correctly fire rate the dampers inside the riser shaft.	Step 1Correctly install smoke and fire dampers, which require flanges and fire rated mastic inside the riser shaft, in accordance with the manufacturer's installation instructions in order to comply with BCA Volume One 2015, Clause E2.2 and AS 1682.2, Fire, smoke and air dampers Installation: Clause 6.1.Step 2: Make good any resultant consequential damage. Step 3: Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au including photographs of work in progress, installer compliance certificates and third party reports.	2 months

9. I, Stewart Scarlett, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that **Knightsbridge Development** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

 Table 2: Requirement in relation to specified standard.

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work	Requirement	Time for compliance with Requirement from the date of issue of this order
3	<ul> <li>OSD Tank- Ground level, Eastern side of the building on Greeves Lane.</li> <li>Basement 1 oarpark walls</li> </ul>	OSD Tank not installed in accordance with the Stormwater Drainage Design plan from SGC Engineering. Construction Issue Drawing SW301. Rev	Stormwater must be connected to a public network system. Stormwater overflow must be prevented from	Within the time period specified in column 6, <b>Stage 1</b> Submit a written report to the OC Audit team via email	Stage 1: 1 month Stage 2: 2 months
	carpark walls, adjacent to visitor car space 12	<ul> <li>5 approved plan, including but not limited to missing key components: <ul> <li>Filter Chamber with 4 PSORB Cartridge 690mm by Stormwater 360</li> <li>Step Irons 300mm centres to AS 1657</li> <li>Lysaght Maximesh RH3030 Trash Screen</li> </ul> </li> <li>resulting in water ingress running down the wall into the basement carpark at 2 locations.</li> <li>Water entering via penetrations wall close to</li> </ul>	entering the building.	<ul> <li>to <u>ocaudits@customerservice.n</u> <u>sw.gov.au.</u> The written report required to be submitted must:</li> <li>i) be prepared by a suitably qualified, experienced and registered person in the subject areas of hydraulic and/or civil engineering.</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious</li> </ul>	

		the ground floor slab soffit.		<ul> <li>defect and meet the specified standard.</li> <li>Stage 2</li> <li>1. Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1,</li> <li>2. Make good any resultant consequential damage, and</li> <li>3. Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to ocaudits@customerservic e.nsw.gov.au including photographs of work in progress, installer compliance certificates and third party reports.</li> </ul>	
4	Mains Cables connecting to the Fire Stair Pressurisation System	<ul> <li>Mains power supply cables are not fire rated.</li> <li>Mains cables installed to the Stair Pressurisation System, are not fire rated cables.</li> <li>Mains power supply cables installed for</li> </ul>	Installation of fire rated and tested mains power supply cables to the Fire safety system	Within the time period specified in column 6, <b>Stage 1</b> Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.n</u> <u>sw.gov.au.</u>	Stage 1: 1 month Stage 2: 2 months

the relief air fans are	The written report required to
not fire rated cables.	be submitted must:
	i) be prepared by a suitably
	qualified, experienced
	and registered person in
	the subject areas of
	electrical engineering:
	ii) be prepared with
	consideration to this
	Order and the Reasons
	for this Order: and
	iii) detail the encoifie
	iii) detait the specific
	building work necessary
	to eliminate the serious
	defect and meet the
	specified standard.
	Stage 2
	1. Carry out the work to
	rectify the serious defect
	in accordance with the
	written report submitted
	in compliance with Stage
	1.
	2. Make good any resultant
	consequential damage.
	and
	3. Demonstrate compliance
	of remediation works by
	submitting evidence to the
	OC Audit team via email to
	e.nsw.gov.au including
	photographs of work in
	progress, installer

and third party reports.	
5       Second bedroom wall of Unit 204 (A2,04), being the common wall with Unit 203 main bathroom wall.       Water ingress at the base of the bedroom wall - water pooling in the cavity to a depth of approx. 20mm.       Wet area overflows from a bathroom must be prevented from penetrating behind fittings and into concealed spaces.       Stage 1       Submit a written report to the OC Audit team via email to ocaudits@customerservice.n sw.gov.au.         The written report required to be submitted must:       i) be prepared by a suitably qualified, experienced and registered person in the subject areas of forensic building consultant specialising in water penetration;       ii) be prepared with consideration to this Order and the specific building work necessary to eliminate the serious defect and meet the specified standard.	Stage 1: 1 month Stage 2: 2 months

	accordance with the written report submitted in compliance with Stage 1, 2. Make good any resultant consequential damage, and 3. Demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <u>ocaudits@customerservice.</u> <u>nsw.gov.au</u> including photographs of work in progress, installer compliance certificates and third party reports.
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### **Duration of this Order**

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

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

Stewart Scarlett Acting Assistant NSW 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 22 November 2023 issued to Knightsbridge Development Group Pty Ltd (ACN 603 240 080) (Knightsbridge Development) 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, have formed a reasonable belief that the Development has serious defects.
- 3. I have formed this belief after reviewing:
  - a) An inspection report dated 20 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 16 February 2023.
  - b) An updated inspection report dated 11 August 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 18 May 2023.
  - c) An updated inspection report dated 10 October 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 8 September 2023.
  - d) A notice of intention to issue the Order and draft copy of the Order was issued to Knightsbridge Development in relation to the Development.
- 4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 and 2.

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.	Those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the <i>Building Code of</i> <i>Australia</i>	The car park exhaust fan is incorrectly connected to the ductwork.	Failure to comply with performance requirements of the Building Code of Australia and the relevant Australian Standards.	<ul> <li>BCA Volume One 2015, Part F4 Light and Ventilation, F4.11 Carparks which states:</li> <li>"Every storey of a carpark, except an open-deck carpark, must have-</li> <li>a) a system of mechanical ventilation complying with AS 1668.2; or</li> <li>b) a system of natural ventilation complying with Section 4 of AS 1668.4".</li> <li>AS 1668.2 2012, The Use of Ventilation and Airconditioning in Buildings in Section 4:</li> <li>"Car parks that are not adequately naturally ventilated shall be mechanically ventilated by a combination of general exhaust with flow rates in accordance with clause 4.4.3 or 4.4.4, as applicable, and supply with flow rates as required to comply with clause 4."</li> <li>AS 4254.2, Ductwork for Air Handling Systems in Buildings, Part 2- Rigid Duct, 1.5 General Requirements, which states:</li> </ul>	The exhaust fan will not operate correctly which leads to a build- up of unsafe exhaust fume levels in the carpark basement leading to the inability to use the Ground Floor, car park basement for its intended purpose

# Table 3 – Basis of reasonable belief as to serious defects

		"A duct avotom is a structural	
		A duct system is a structurat	
		system assembly, the primary	
		function of which is to convey air	
		between specific points. To fulfil	
		this function, the duct assembly	
		has to perform satisfactorily with	
		the regard to certain	
		fundamental performance	
		characteristics."	
		AS 1251 2:2012 Ductwork for Air	
		AS 4254.2.2012 Ductwork for All-	
		Ranuling Systems in Buildings, Part 2	
		Rigid Duci, Section 2 Duci Construction	
		and Installation, Part 2.2 Duct Sealing,	
		Clause 2.2.1 General, which states in	
		part.	
		"Where sealing is a requirement	
		of this Standard. the following	
		criteria apply to the sealing of	
		ducts:	
		(a) Adhesives, mastics, gaskets,	
		or combinations 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.	
		(c) All duct surface connections	
		made on the perimeter of the	
		duct (excepting helical lock	

				seams) shall be deemed to be seams or joints. This includes. but is not limited to, seams, transverse joints, girth joints. branch and sub- branch intersections. fitting subsections, air terminal connections, access door, access panel frames and joints, duel. plenum and casing abutments to building structures. (d) Sealing shall apply equally to positive and negative pressure modes. (g) Duct shall be sealed in accordance with Table 2.2.1 AS 4254.2, Ductwork for Air Handling Systems in Buildings, Section 2 Duct Construction and Installation, 2.1 Ductwork, 2.1.1 General, which states: "All ductwork shall be installed allowing clearances for access when carrying out testing, commissioning, and maintenance routines."	
2.	The fire safety	Smoke and Fire	Failure to	BCA Volume 1, Section C Fire	Fire and smoke
	systems for a building	Dampers	comply with	Resistance, CP7 Fire protection of	could enter the
	within the meaning of	incorrectly	performance	emergency equipment which states:	building and/or
	the Building Code of	installed, with	requirements	"A building must have elements,	shaft which could
	Australia	dampers	of the Building	which will, to the degree	lead to fire or
		requiring flanges	Code of	necessary, avoid the spread of	smoke spreading

and fire rated	Australia and	fire co that omorgonov	in an
montio to	the relevent	aquipment provided in a building	upcontrolled
		equipment provided in a building	
correctly fire rate	Australian	will continue to operate for a	manner unrougn
the dampers	Standards.	period of time necessary to	the building. This
inside the riser		ensure that the intended	will endanger
shaft.		function of the equipment is	occupants and
		maintained during a fire."	the fire brigade.
		BCA Volume One 2015, Clause E2.2,	
		General requirements states:	
		"(a) A building must comply with	
		(b), (c), (d) and —	
		(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	
		(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	
		(b) An air-bandling system	
		which does not form part of a	
		smoke bazard management	
		suctom in accordance with Table	
		E2 20 or Toble E2 2b and which	
		recycles all from one fire	
		compartment to another life	
		compartment or operates in a	
		manner that may unduly	
		contribute to the spread of	
		smoke from one fire	

compartment to another fire
compartment must —
(i) be designed and installed
to operate as a smoke
control system in
accordance with AS/NZS
1668.1: or
(ii) (A) incorporate smoke
dampers where the air-
handling ducts penetrate
any elements senarating
the fire compartments
convode and
(D) be arranged such that
(B) be arranged such that
the air-handling system is
shut down and the smoke
dampers are activated to
close automatically by
smoke detectors complying
with clause 4.10 of AS/NZS
1668.1; and for the
purposes of this provision,
each sole-occupancy unit
in a Class 2 or 3 building is
treated as a separate fire
compartment.
(c) Miscellaneous air-handling
systems covered by Sections 5
and 11 of AS/NZS 1668.1 serving
more than one fire compartment
(other than a carpark ventilation
system) and not forming part of
a smoke hazard management

				system must comply with that Section of the Standard. (d) A smoke detection system must be installed in accordance with Clause 5 of Specification E2.2a to operate AS/NZS 1668.1 systems that are provided for zone smoke control and automatic air pressurisation for fire-isolated exits."	
				AS 1682.2: Fire, smoke and air dampers, Part 2: Installation -Section 6 Installation Requirements, Clause 6.1, Fire Dampers and combined fire and smoke dampers, which states; "The installation shall be in accordance with the manufacture's installation instructions, an assessment, test report or allowable installation variations in AS 1682.1".	
3.	Those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the <i>Building Code of</i> <i>Australia</i>	OSD Tank not installed in accordance with the Stormwater Drainage Design plan from SGC Engineering. Construction Issue Drawing	Failure to comply with performance requirements of the Building Code of Australia, approved plan and the relevant	<ul> <li>OSD Tank missing items which were included in the approved plans:</li> <li>Stormwater Drainage Design plan from SGC Engineering. Construction Issue Drawing SW301. Rev 5</li> <li>Stormwater Drainage Design plan from SGC Engineering. Construction Issue Drawing SW203. Rev 6.</li> </ul>	<ul> <li>Possible stormwater pollution from the OSD Tank into the public network system.</li> <li>Water overflowing onto the</li> </ul>

SW301 Rev 5	Australian	BCA Volume One 2014 Part F1 Damp	nublic
approved plan	Standards	and Weatherproofing F11 Stormwater	footnath
and missing	otanaaras.	drainaga which states:	• The water
and missing		Stormuster drainage must	
Key			ingress into
Components:		comply with A5/NZS 3500.5	the building
oFilter			can cause
Chamber		AS/NZS 3500.3 Plumbing and Drainage	unhealthy or
with 4		Part 3: Stormwater drainagePart 3,	dangerous
PSORB		Stormwater Drainage, Section 7 Surface	conditions,
Cartridge		Water and Subsoil Drainage Systems-	loss of
690mm by		Ancillaries, 7.5.5.4 Ladders Section 7	amenity for
Stormwater		Surface Water and Subsoil Drainage	occupants
360		Systems-Ancillaries 7.10 On-Site	and undue
○Step Irons		Stormwater Detention Systems, 7.10.2	dampness or
300mm		Below-Ground Systems states	deterioration
centres to		(c) Where the depth of the tank	of the
AS 1657		exceeds 1.2m. a ladder in	building.
oLvsaght		accordance with Clause 7.7.7.4	6
Maximesh		shall be installed.	
RH3030		(d) Below ground OSD systems	
Trash		shall conform to AS 2865	
Screen			
• Water ingress		BCA Volume One Part El Damp and	
• Water ingress		Weatherproofing Derformance	
the well into		Paguiramente, ED1 2 Peinwater drainage	
		Nequilements, FF1.5 Kainwater urainage	
the basement		Systems, which states;	
carpark at 2		A drainage system for the	
locations.		disposal of surface water	
Water		resulting from a storm having	
entering via		an average recurrence interval	
penetrations		ot-	
from the wall		(a) 20 years must-	
close to the		(i) Convey	
		surface water	

ground floor	to an	
slab soffit	appropriato	
Stab Soffit.		
	outrall, and	
	(II) avoid surface	
	water damaging	
	the building, and	
	(b) 100 years must avoid the	
	entry of surface water	
	into a building.	
	BCA Volume One Part F1 Damp and	
	Weatherproofing Performance	
	Poquiroments ED1 / Weatherproofing	
	which states	
	which states,	
	A root 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	
	BCA Volume One Part F1 Damp and	
	Weatherproofing Derformance	
	Paguiromanta E10 Deemed to Satisfy	
	Requirements, FI.0 Deemeu-to-Satisty	
	Provisions	
	(a) Performance Requirement	
	FPI.4, for the prevention of the	
	penetration of water through	
	external walls, must be	
	complied with.	

	<ul> <li>BCA Volume One, Part F1 Damp and Weatherproofing, Performance Requirements, F1.1 Stormwater drainage states</li> <li>Stormwater drainage must comply with AS/NZS 3500.3</li> <li>AS3500.3, Plumbing and Drainage, Part 3, Stormwater drainage, Section 5 Surface Water Drainage Systems- Design,</li> <li>5.3.1.4 Entry into buildings states Stormwater shall be prevented from entering doorways and other openings in buildings.</li> </ul>	
	<ul> <li>5.3.1.4 Entry into buildings states</li> <li>Stormwater shall be prevented from entering doorways and other openings in buildings.</li> <li>Where these are lower than adjacent ground surfaces, grated drains shall be designed and placed across ramps or entrances to intercept any flow, which would otherwise drain into the building.</li> <li>5.4 General Method, 5.4.1 General;</li> <li>Surface water systems shall be designed to provide protection against potential losses caused by any overflows, including damage to buildings and their</li> </ul>	
	nuisance to persons.	

4. The fire safety	•	Mains power	Failure to	BCA Volume 1. Section C Fire	Potential failure
systems for a building		supply cables	comply with	Resistance, CP7 Fire protection of	of the
within the meaning of		are not fire	performance	emergency equipment which states:	pressurisation
the Building Code of		rated.	requirements	"A building must have elements,	system may
Australia	•	Mains cables	of the Building	which will, to the degree	prevent the safe
		installed to	Code of	necessary, avoid the spread of	evacuation of
		the Stair	Australia and	fire so that emergency	residents using
		Pressurisation	the relevant	equipment provided in a building	the fire stairs in
		System, are	Australian	will continue to operate for a	the event of a fire
		not fire rated	Standards.	period of time necessary to	and could lead to
		cables.		ensure that the intended	fire or smoke
	•	Mains power		function of the equipment is	spreading in an
		supply cables		maintained during a fire. "	uncontrolled
		installed for			manner through
		the relief air		AS/NZS 1668.1 1998, The Use of	the building. This
		fans are not		Ventilation and Airconditioning in	will endanger
		fire rated		Buildings, Part 1: Fire and Smoke	occupants and
		cables.		Control in multi-compartment buildings,	the fire brigade.
				Section 4 Smoke Control Systems-	
				General Requirements, 4.12 Electrical	
				Installation, 4.12.2 Wiring, which states:	
				Wiring Systems required to	
				operate in fire mode shall	
				comply with AS/NZS 3013 and	
				Appendix E of AS/NZS 1668.1	
				1990. Appandix E. El Drataction	
				Appendix E, El Protection	
				"Against Exposure to Fire, states: "All wiring systems required to	
				All willing systems required to	
				avposure to fire shall have a	
				rating of not less than 120 min	
				(WS5) and shall be protected	
				against mechanical and water	

				damage as appropriate to the installation in accordance with Paragraphs E2 and E3."	
5.	Waterproofing	Water ingress at the base of the bedroom wall - water pooling in the cavity to a depth of approx. 20mm.	Failure to comply with performance requirements of the Building Code of Australia and the relevant Australian Standards.	BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirements which states in part: 	The water ingress into the building can cause unhealthy or dangerous conditions, loss of amenity for occupants and undue dampness or deterioration of the building.

		bathrooms, laundries and the like."	

#### **Consideration of written representations**

- 5. The decision maker will consider any written representations pursuant to section 47 of the Act.
- 6. On 2 November 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier inviting written submissions by 20 November 2023.
- 7. Knightsbridge Development did not provide any submissions and/or written representation as at the date of this Order.
- 8. The Local Council, Owners Corporation and Certifier did not provide any submissions and/or written representation as at the date of this Order.

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

- 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.
- 10. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defects and I find that it is appropriate, in the exercise of my discretion, to make the Order to carry out the specified actions in the Order within the time specified in the Order.
- 11. 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.

*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).