

CAS Ref: 11116347

Attn: Proper Officer Sun Peakhurst Development Pty Ltd (ACN 608 376 165) 11 SE QG 8 Quay St HAYMARKET NSW 2000

Service: By registered post and by email

29 February 2024

Building Work Rectification Order

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

Sun Peakhurst Development Pty Ltd (ACN 608 376 165) is being given this Building Work Rectification Order (Order) in relation to 22-24 Gover Street, Peakhurst NSW 2210 (Lot 153 & 154 DP 36317, SP 92723) (the Development).

Sun Peakhurst Development Pty Ltd (ACN 608 376 165) is required to cause building work to be carried out or take other specified action to remediate the serious and/or potential serious defects as set out below in this Order.

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

Background

- 1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings* (*Compliance and Enforcement Powers*) Act 2020 (**the Act**).
- 2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious defect.
- 3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines the term "building element" by reference to the *Design and Building Practitioners Act 2020* (**DBP Act**). Section 4 of the Act defines the term "developer". Section 6 of the Act provides the building work to which the Act applies. Relevant excerpts from sections 3, 4 and 6 of the Act and section 6 of the DBP Act are **Attachment A** to this order.
- 4. I, Matt Press, Director (Building Compliance, Building Commission NSW, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
- 5. Sun Peakhurst Development Pty Ltd (ACN 608 376 165) is the developer of the residential apartment building known as 'Louie's Apartments' 22-24 Gover Street Peakhurst NSW 2210 (Lot 153 & 154 DP 36317, SP 92723) (the Development) for the purposes of section 4(a) of the Act.
- 6. The Development consists of a 3 storey residential building with one underground carpark and a roof top terrace area. There are 13 units in the building.
- 7. On 15 November 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matt Press, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 1 below and under section 34(1A) of the Act require that you **Sun Peakhurst Development Pty Ltd** (ACN 608 376 165) do the things specified in column 5 of Table 1 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 1:

Table 1: Requirement in relation to specified standard

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work (s 34(1)(a))	Requirement (s 34(1A))	Time for compliance with Requirement from the date of issue of this order (s 39(1))
1.	Rooftop	Inadequate waterproof membrane to roof top area and all planter boxes, with incomplete drainage and no turn up of membrane to parapet wall and no roll over of membrane to slab edge and drip groove.	Ensure waterproofing is sufficient to prevent the ingress of water into habitable areas of the building	 Within the time period specified in column 6, Stage 1 Submit a written report 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 appropriate to the subject areas of the building, being a third party waterproofing consultant; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. Stage 2 Developer to arrange a builder registered under the DBP Act to	Stage 1: 1 month Stage 2: 3 months Stage 3: 6 months

				undertake the building work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1. Stage 3 Make good any resultant consequential damage as a result of the serious defect or the rectification process.	
2.	Basement carpark walls and slabs	Water is entering the basement level through external walls.	Ensure water is prevented from entering into the basement.	 Within the time period specified in column 6, Stage 1 Submit a written report 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 appropriate to the subject areas of the building, being a third party waterproofing consultant; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. Stage 2 Developer to arrange a builder registered under the DBP Act to undertake the building work to rectify 	Stage 1: 1 month Stage 2: 3 months Stage 3: 6 months

				the serious defect in accordance with the written report submitted in compliance with Stage 1. Stage 3 Make good any resultant consequential damage as a result of the serious defect or the rectification process	
3.	Soffit of basement carpark slab	There are large cracks and leachate is seeping through the slabs	Ensure concrete slabs are structurally sounds and do not allow seepage or leaking	 Within the time period specified in column 6, Stage 1 Submit a written report 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 appropriate to the subject areas of the building, being a registered structural engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. Stage 2 Developer to arrange a builder registered under the DBP Act to undertake the building work to rectify the serious defect in accordance with	Stage 1: 1 month Stage 2: 3 months Stage 3: 6 months

				the written report submitted in compliance with Stage 1. Stage 3 Make good any resultant consequential damage as a result of the serious defect or the rectification process	
4.	Main electrical service cupboard in the basement	There are unprotected service penetrations in the service cupboard	Ensure all openings are protected to maintain an appropriate FRL.	 Within the time period specified in column 6, Stage 1 Submit a written report 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 appropriate to the subject areas of the building, being a registered fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. Stage 2 Developer to arrange a builder registered under the DBP Act to undertake the building work to rectify the serious defect in accordance with 	Stage 1: 1 month Stage 2: 3 months Stage 3: 6 months

				the written report submitted in compliance with Stage 1. Stage 3 Make good any resultant consequential damage as a result of the serious defect or the rectification process	
5.	Basement stair leading to street level	Inadequate cover and exposed reinforcement in a reinforced concrete element	Ensure there is sufficient concrete cover to protect the structural integrity of the building element	 Within the time period specified in column 6, Stage 1 Submit a written report 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 appropriate to the subject areas of the building, being a registered fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. Stage 2 Developer to arrange a builder registered under the DBP Act to undertake the building work to rectify the serious defect in accordance with	Stage 1: 1 month Stage 2: 3 months Stage 3: 6 months

	the written report submitted in compliance with Stage 1.	
	Stage 3 Make good any resultant consequential damage as a result of the serious defect or the rectification process	

Duration of this Order

- 9. This Order remains in force until it is revoked by the Secretary.
- 10. This Order is given on the date that is listed above in accordance with section 67 of the Act.

Matt Press Director Building Compliance Building Commission NSW Department of Customer Service

Reasons for Building Work Rectification Order

- 1. These Reasons for Order are with respect to the Order dated 29 February 2024 issued to **Sun Peakhurst Development Pty Ltd** (ACN 608 376 165) under the *Residential Apartment Buildings* (Compliance and Enforcement Powers Act 2020 (the Order). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
- 2. I, Matt Press, have formed a reasonable belief that the Development has serious defects.
- 3. I have formed this belief after reviewing:
 - (a) A visual report completed 15 November 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 15 November 2023.
- 4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.

Table 2 – Basis of reasonable belief as to serious defects

Serious Defect Reference No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1.	Waterproofing	Inadequate waterproof membrane to roof top area and all planter boxes, with incomplete	Inadequate waterproofing has caused water ingress to Unit 2, as well as evidence of water, leachate and efflorescence on all planter boxes.	The evidence of water damage inside the building demonstrates that the building has failed to achieve compliance with the performance requirement of the NCC 2016, Part F1 Damp	Water has entered into habitable areas of the building, causing loss of amenity, unhealth or dangerous conditions, and undue dampness.

drainage and	and Weatherproofing EP14
no turn un of	Weatherproofing which
membrane to	states.
	States.
	"A reaf and external wall
and no roll	A root and external wall
over of	(including openings around
membrane to	windows and doors) must
slab edge and	prevent the penetration of
drip groove.	water that could cause —
	(a)unhealthy or dangerous
	conditions, or loss of amenity
	for occupants; and
	(b)undue dampness or
	deterioration of building
	elements."
	And
	"F1 4 External above ground
	membranes
	Waterpreafing membranes for
	waterplooning membranes for
	must comply with AS 4654
	Parts I & 2."
	The relevant parts of AS
	4654.1 and 2 state:
	"Substrate
	2.5.2 Falls
	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.	
		Note: falls for surface	
		drainage should be no flatter	
		than 1:100.	
		2.7 Fillets	
		Fillets shall be used when a	
		membrane changes from a	
		horizontal to vertical or	
		vertical to vertical plane	
		The cove should be	
		dimensioned as 15mm v 15mm	
		fillet/hond breaker for liquid	
		membranes	
		282 Vertical downward	
		2921 Poofe and beloopies	
		2.0.2.1 ROOIS and Datcomes	
		For parconnes with a fully	
		bonded membrane, the	
		membrane may be terminated	
		at the drip groove.	
		2.8.3 Doors and windows onto	
		external waterproofed areas.	
		For doors and windows onto	
		external waterproofed areas,	
		the following apply:	
		(b) where the internal and	
		external finished floor levels	
		do not allow an upturn, the	
		membranes shall be fixed	
		under the sill and terminate in	
		the stormwater system.	
		2.10 Drains	

			The membrane shall be connected to the stormwater drainage system through a turn down of the membrane into the inlet of the system as shown in Figure 2.15."	
2. Waterproofi	ng Water is entering the basement level through external walls.	Walls in the basement are wet and drainage at wall base appears not to work. Leachate has penetrated through the walls and slabs.	All buildings are required to comply with the performance requirements of NCC Volume 1. NCC Volume has specific requirements for the water tightness of internal wet areas of the building. NCC 2016, Part F1 Damp and Weatherproofing, FP1.4 and 1.5 state: "FP1.4 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. FP1.5 Moisture from the ground must be prevented from causing –	Water has penetrated into the basement area of the building, causing loss of amenity, unhealth or dangerous conditions, and undue dampness.

				-	
				 a. Undue dampness or deterioration of building elements; and b. Unhealthy or dangerous conditions, or loss of amenity for occupants. " The evidence of water damage inside the building demonstrates that the building has failed to achieve appliance with the 	
				compliance with the performance requirement of the NCC.	
3.	An internal load-bearing component of a building that is essential to the stability of the building or part of it	There are large cracks in the basement carpark soffit.	Cracks are uncontrolled and water is leaking through the soffit into the basement causing leachate damage.	The evidence of cracking and water leakage through the soffit demonstrates a failure to comply with the NCC Volume 1 2016 which provides: "BP1 Structural Provisions BP1.1 a. A building or structure, during construction and use, with appropriate degrees of reliability, must - i. Perform adequately under all reasonably expected design actions and	Uncontrolled cracks risk the structural integrity of the building element. Damage has occurred through leachate and the penetration of water into the basement.

ii. Withstand extreme or	
frequently repeated	
design actions and	
iii. 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	
and	
iv Avoid coucing domago	
IV. Avoid causing damage	
to other properties, by	
resisting the actions to	
which it may	
reasonably expect to	
be subjected."	
And AS 3600-2009, which	
states -	
"9.4 Crack control of slabs,	
9.4.1 Crack control for flexure	
in reinforced Slabs:	
Cracking in reinforced slabs	
subject to flexure shall be	
deemed to be controlled if the	
appropriate requirements in	
items (a), (b), (c), and (d) are	
satisfied. For areas of slabs	
fully enclosed within a	
building except for a brief	
period of weather exposure	
during construction and	
where it is assessed that	

				crack control is not required, only items(a) and (b) need be satisfied. a. The minimum area of reinforcement in a tensile zone of a slab shall comply with Clause 9.1.1 b. The centre to centre spacing of bars in each direction shall not exceed the lessor of 2.0Dsor 300mm. Bars with a diameter less than half the diameter of the largest bar in cross section shall be ignored."	
4.	The fire safety systems for a building within the meaning of the Building Code of Australia	There are unprotected service penetrations in the service cupboard	The unprotected service penetrations mean the service cupboard is unable to maintain the required FRL for the building element.	The unprotected penetrations demonstrates a failure to comply with the NCC Volume 1 2016, which provides: "CP8 Fire protection of openings and penetrations Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained—	The failure to adequately protect openings could lead to fire or smoke spreading in an uncontrolled manner through the building.

	a where energings	
	a. where openings,	
	construction joints and	
	the like occur; and	
	b. where penetrations	
	occur for building	
	services."	
	In the absence of a	
	documented performance	
	solution, the pathway to	
	satisfy CP8 is via satisfying	
	the Deemed-to-Satisfy	
	provisions. The applicable	
	Deemed-to-Satisfy provision	
	is BCA Clause C3.12	
	Openings in floors and	
	ceilings for services, which	
	state:	
	"C3.12 Openings in floors	
	and ceilings for services	
	a Where a service	
	passes through -	
	i. a noor that is required	
	to nave an FRL with	
	respect to integrity	
	and insulation; or	
	ii. a ceiling required to	
	have a resistance to	
	the incipient spread of	
	fire, the service must	
	be installed in	
	accordance with (b).	
	b. A service must be	
	nrotected -	
	i in a building of Type A	
	i. In a building of Type A	
	construction, by a	

			shaft complying with	
			Spacification C11: or	
			specification C1.1, of	
		11.	па вилинд от туре в	
			or C construction, by a	
			shaft that will not	
			reduce the fire	
			performance of the	
			building elements it	
			penetrates; or	
		iii.	in accordance with	
			C3.15.	
		c.	Where a service passes	
			through a floor which	
			is required to be	
			protected by a fire-	
			protective covering	
			the popetration must	
			not roduce the fire	
			performance of the	
			covering.	
		In the	absence of a	
		docum	nented performance	
		solutio	on, the pathway to	
		satisfy	/ CP8 is via satisfying	
		the De	emed-to-Satisfy	
		provis	ions. The applicable	
		Deeme	ed-to-Satisfy provision	
		for a s	ervice not through a	
		floor o	r ceiling (i.e., through a	
		wall) is	s C3.15 Openings for	
		servic	e installations. which	
		states	:	
		"C3.1	5 Openings for service	
		install	ations	
		Whoro	an electrical	
		alactro	an electrical,	
		the De provis Deema for a s floor o wall) is service states "C3.1 install Where electro	eemed-to-Satisfy ions. The applicable ed-to-Satisfy provision ervice not through a or ceiling (i.e., through a s C3.15 Openings for e installations, which : 5 Openings for service fations an electrical, ponic, plumbing,	

		machanical vantilation air	
		mechanical ventilation, alr-	
		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 incinient	
		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 —	
		A. are identical with a	
		prototype assembly of	
		the service, building	
		element and	
		protection method	
		which has been tested	
		in accordance with AS	
		4072.1 and AS 1530.4	
		and has achieved the	
		required FRL or	
		resistance to the	
		incinient spread of fire:	
		or	
		D differ from a protecture	
		b. uniter nom a prototype	
		service, building	
		element and	
		protection method in	
		accordance with	

		Section 4 of AS	
		40721	
		4072.1.	
	11.	n complies with (i)	
		except for the	
		insulation criteria	
		relating to the service	
		if —	
	A.	the service is a pipe	
		system comprised	
		entirely of metal	
		(excluding pipe seals	
		or the like); and	
	B.	any combustible	
		building element is not	
		located within 100 mm	
		of the service for a	
		distance of 2 m from	
		the penetration: and	
	C	combustible material	
	0.	is not able to be	
		located within 100 mm	
		of the service for a	
		distance of 2 m from	
		the period	
	U.	It is not located in a	
		requirea exit.	
	111.	The determination of	
		the required FRL must	
		be confirmed in a	
		report from an	
		Accredited Testing	
		Laboratory in	
		accordance with	
		Schedule 5.	
	b.	Ventilation and air-	
		conditioning — In the	

		1		
			case of ventilating or	
			air-conditioning ducts	
			or equipment, the	
			installation is in	
			accordance with AS	
			1668 1	
			Compliance with	
		C.		
			Specification C3.15	
		l.	The service is a pipe	
			system comprised	
			entirely of metal	
			(excluding pipe seals	
			or the like) and is	
			installed in accordance	
			with Specification	
			C315 and it —	
		Δ	penetrates a wall floor	
		/	or ceiling but not a	
			colling required to	
			the incipient spread of	
			fire; and	
		B.	connects not more	
			than 2 fire	
			compartments in	
			addition to any fire-	
			resisting service	
			shafts: and	
		C.	does not contain a	
			flammable or	
			combustible liquid or	
			gas. The complete is considered	
		11.	The service is sanitary	
			plumbing installed in	
			accordance with	

			Specification C3 15	
			and it _	
		•	is of motal or LIDV/C	
			nino: and	
		п	pipe, and	
		В.		
			of a Class 5, 6, 7, 8 or	
		_	9b building; and	
		C.	is in a sanitary	
			compartment	
			separated from other	
			parts of the building by	
			walls with the FRL	
			required by	
			Specification C1.1 for a	
			stair shaft in the	
			building and a self-	
			closing -/60/30 fire	
			door.	
		iii.	The service is a wire or	
			cable, or a cluster of	
			wires or cables	
			installed in accordance	
			with Specification	
			C3 15 and it	
		•	popotratos a wall floor	
		A.	or opiling but pot o	
			or certifig, but not a	
			ceiling required to	
			nave a resistance to	
			the incipient spread of	
		_	fire; and	
		B.	connects not more	
			than 2 fire	
			compartments in	
			addition to any fire-	
			resisting service	
			shafts.	

				The service is an electrical switch, outlet, or the like, and it is installed in accordance with Specification C3.15."	
5.	An internal load-bearing component of a building that is essential to the stability of the building or part of it	Inadequate cover and exposed reinforcement in a reinforced concrete element	Reinforcements in concrete must be sufficiently covered to prevent corrosion and deterioration of building elements.	The exposed reinforcements demonstrate a failure to comply with the NCC Volume 1 2016 Section D Access and Egress – DP1 & DP2. Australian Standard AS3600 – 2009 is a relevant Australian Standard for reinforced concrete structures. AS 3600 - 2009 Section 17 Material and Construction Requirements, Subsection 17.1 Material and Construction Requirements for Concrete and Grout, Clause 17.1.3 Handling, placing and compacting of concret, states: "Concrete shall be handled, placed and compacted so as to – (a) limit segregation or loss of materials; (b) limit premature stiffening; (c) produce a monolithic mass between planned joints or the extremities of members, or both;	The reduced cover will cause the embedded steel reinforcement to corrode at an accelerated rate, reducing the life span of the building and compromising its structural integrity.

(d) completely fill the formwork to the intended level, expel entrapped air, and closely surround all reinforcement, tendons, ducts, anchorages, embedments and fixings; (e) provide the specified finish to the formed surfaces of the member"	
--	--

Consideration of written representations

- 5. On 20 December 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, and Certifier.
- 6. 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 5pm on 15 January 2024.
- 7. To date, no submissions have been received from any of the served parties.
- 8. In circumstances where no submissions have been received, I am satisfied it is appropriate to issue the Order.

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

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

11. I am of the view that the periods above for Defect 1 through 5 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.

Attachment A

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

3 Definitions

(1) In this Act -

approved plans, in relation to building work, means the following -

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

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

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

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

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

building work – see section 5.

building work rectification order – see section 33.

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

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

Department means the Department of Customer Service.

developer – see section 4.

expected completion amendment notice - see section 8.

expected completion notice – see section 7.

expected date – see section 7(2).

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

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

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 -

- (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).