Attn: Proper Officer
HIFU INVESTMENT PTY LTD (ACN 150 040 350)
Suite 87, 26-32 Pirrama Road
Pyrmont NSW 2009

CAS Ref: 11089315

Service: By registered post and by email

28 July 2023

Building Work Rectification Order

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

Hifu Investment Pty Ltd (ACN 150 040 350) is being given this Building Work Rectification Order (Order) in relation to address 1 & 5 Link Road, Zetland NSW 2017 (SP95733, Lot 2 of DP1234006) (the Development).

Hifu Investment Pty Ltd (ACN 150 040 350) is required to cause building work to be carried out to remediate the serious defects and/or 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 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.

4. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.

5. **Hifu Investment Pty Ltd (ACN 150 040 350)** is the developer of the residential apartment building known as “Paragon Tower B & C” **1 & 5 Link Road, Zetland NSW 2017 (SP 95733, Lot 2 of DP1234006)** (the Development) for the purposes of section 4(a) of the Act.

6. The Development consists of 2 buildings with total of 118 apartment units: Building B being an 11 storey mixed-use building with 86 apartments and Building C being a 5 storey building with 32 units, commercial retail space and underground carparks. The Act applies to building work at the Development because it is a Class 2 Development, is currently occupied and is less than 10 years old.

7. On 22 March 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

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 you **Hifu Investment Pty Ltd (ACN 150 040 350)** 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	Basement 1 Basement 2	Uncontrolled water is entering the basement in a number of locations and ponding on the floor	Identify the source of the water penetration and control the entry of water to 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 hydraulic engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration of drainage design and installation specifications, and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. **Stage 2** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party hydraulic engineer reports.	Stage 1 - 1 month Stage 2 – 3 months
2	Building C Unit C-607 Unit C-608	Water is entering unit C-608 from the Unit C-607 ensuite bathroom due to inadequate waterproofing system termination details in the shower area and bath seal in Unit C-607	Ensure waterproofing membrane is installed properly.	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:	Stage 1 - 1 month Stage 2 – 3 months

				i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a registered hydraulic engineer and waterproofing specialist; 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** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party hydraulic and/or waterproofing reports.	
3	Fire Pump room Basement 1 Basement 1 – Main Switch room Basement 1 Residential waste Buildings B and C Electrical and Communication shafts Buildings B Fire stair Basement Mechanical Plant room Building B Rooftop level gas meter room Main Switchboard	There are unprotected penetrations and openings between compartments	Ensure that penetrations are protected from fire and appropriately fire sealed	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 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** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety reports.	Stage 1 - 1 month Stage 2 – 2 months

4	Basements	Fire sprinklers are obstructed by pipes	Ensure that sprinklers are not obstructed	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 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** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety reports.	Stage 1 - 1 month Stage 2 – 2 months
5	Building B common corridors	No ventilation is provided to the internal common corridor/ lobbies on all upper levels	Ensure natural or mechanical ventilation to 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 registered mechanical engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. **Stage 2** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to	Stage 1 - 1 month Stage 2 – 3 months

				ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party mechanical engineering reports.	
6	Building B Fire stairs	The relief fan for the stair pressurisation system is undersized.	Ensure the installation of new fan sufficient to control pressure and airflow with a sustained average air velocity of 1m/s	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 engineer and/or mechanical engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. **Stage 2** Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire safety reports.	Stage 1 - 1 month Stage 2 – 4 months
7	Building B Rooftop level - Gas meter room	No ventilation is provided to the Gas meter room	Ensure natural or mechanical ventilation	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 plumber; 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** Carry out the work to rectify the serious defect in accordance with the written report submitted in	Stage 1 - 1 month Stage 2 – 2 months

				compliance with Stage 1 and make good any resultant consequential damage. Developer is to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party plumbing reports.	

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.

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 28 July 2023 issued to Hifu Investment Pty Ltd (ACN 150 040 350) 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:

    a. An inspection report dated 22 March 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 22 March 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 Column 2 of Table 1 of the Order.

Table 2– basis of reasonable belief as to serious defects

Serious Defect Reference	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1	Waterproofing	Uncontrolled water is entering the basement in a number of locations and ponding on the floor	The construction of the building should adequately prevent the penetration of water	The uncontrolled entry of water into the basement demonstrates a failure to comply with BCA Volume One, Section F Health and Amenity, Part F1 Damp and weatherproofing and the following performance requirements, FP1.3 Rainwater drainage systems, FP1.4 Weatherproofing and FP1.5 Rising damp. FP1.3 Rainwater drainage systems, states: *"A drainage system for the disposal of surface water resulting from a storm having an average recurrence interval of —* (a) 20 years must — (i) convey surface water to an appropriate outfall; and (ii) avoid surface water damaging the building; and (b) 100 years must avoid the entry of surface water into a building." FP1.4 Weatherproofing 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."* FP1.5 Rising damp states: *"Moisture from the ground must be prevented from causing —* (a) undue dampness or deterioration of building elements; (b) unhealthy or dangerous conditions, or loss of amenity for occupants."	The uncontrolled water entry is ponding, and may crack the basement walls, degrading the structure of the Building.

2	Waterproofing	Water is entering unit C-608 from the Unit C-607 ensuite bathroom due to inadequate waterproofing system termination details in the shower area and bath seal in Unit C-607	The waterproofing termination details in the shower and bath seal in the ensuite of Unit C-607 do not prevent the escape of water into adjacent dry areas	The water penetration into the adjacent unit demonstrates a failure to comply with the BCA Volume 1, Section 3 Acceptable construction, Part 3.8 Health and Amenity, 3.8.1 Wet areas and external waterproofing, **3.8.1.2 Wet** Areas, which states: *"Building elements in wet areas within a building must —* (a) *be waterproof or water resistant in accordance with Table 3.8.1.1; and* (b) *comply with AS 3740."* BCA Volume 1, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing, which states: *"A roof and external wall (including openings around windows and doors) must prevent the penetration of to prevent 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."*	The main consequence of water run from one unit to the other unit is the potential for structural damage. Water entering through gaps between walls can cause damage to the surrounding walls and flooring. This can lead to mould which can cause health problems and weaken the structure as well as damage finishes and furniture.
3	Fire Safety System	Penetrations are not installed with a tested system	Service penetrations that penetrate a building element which is required to have an FRL needs to be a tested system. In the building the service penetrations in the garbage room have been installed with no system.	The absence of protections around penetrations demonstrates a failure to comply with the BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Deemed-to-Satisfy provisionsC3.12 Openings in floors and ceilings for services, which states: " (a) *Where a service passes through —* (i) *a floor that is required to have 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 protected* (i) *...* (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 penetration must not reduce the fire performance of the covering."* C3.15 Openings for service installations, which states: *"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:*	The absence of fire protection increases the risk of spread of fire and smoke, leading to more extensive damage and potential loss of life. Fire protection systems help to slow the passage of fire and smoke, which can help to contain the fire, reduce the spread of smoke, and buy more time for people to escape the building safely.

				(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.* ... (c) *Compliance with Specification C3.15…"* Deemed-to-Satisfy provisions C3.15 and C3.16 are pathways that can satisfy the BCA Volume One, Section C Fire Resistance, Part C3 Protection of openings, Performance Requirement CP8 Fire protection of openings and penetrations, which states: *"Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained —* (a) *where openings, construction joints and the like occur; and* (b) *where penetrations occur for building services."* CP2 Spread of fire, which states: " (a) *A building must have elements which will, to the degree necessary, avoid the spread of fire —* (i) *to exits; and* (ii) *to sole-occupancy units and public corridors; and* (iii) *between buildings; and* (iv) *in a building."*	
4	Fire Safety System	Fire sprinklers are obstructed	Sprinklers must be located below any obstruction to allow water to reach the point of fire at sufficient pressure.	The obstructed fire sprinklers demonstrate a failure to comply with NCC volume One, E1.5 Sprinklers, which states: *"A sprinkler system must —* (a) *be installed in a building or part of a building when required by Table E1.5; and* (b) *comply with Specification E1.5 and Specification E1.5a as applicable."* Australian Standard 2118.1 - 2017 Automatic fire sprinkler systems - General systems, Section 5 Spacing and location of sprinklers, 5.4 Minimum distance from walls, which states: *"Sprinklers other than sidewall sprinklers shall be installed a minimum of 100 mm from walls."* 5.5 Location of sprinklers (other than sidewall sprinklers), 5.5.1 General, which states:	In case of fire, the obstructions will cause the water from the sprinkler head to be blown away and not reach the intended area. This can result in uneven coverage, inefficient fighting of fire and water waste.

				“In addition to limitations specified for the maximum area coverage per sprinkler and the maximum distance between sprinklers (see Clauses 5.1 and 5.2). sprinklers shall be located so that the interference to the discharge pattern by structural members is in accordance with Clause 5.7) or any other obstructing feature such as ducting, piping. cable trays or light fittings. Sprinklers shall also be located at the distance below ceiling and beams. specified in Clause 5.5.3. *NOTE: Sprinkler listings should be used to achieve objectives equivalent to the requirements of Clause 5.5.”* 5.7 Obstruction to sprinkler discharge, 5.7.1 General, which states: *"Structural members such as beams, joists and columns, together with other features of the building such as ductwork, pipes, cable trays, light fittings and bulkheads in close proximity to the ceiling shall be treated as obstructions to sprinkler discharge. Unless specifically varied by other parts of this Standard, the requirements of Clauses 5.7.2 to 5.7.9 shall apply."* 5.7.7 Clear space below sprinklers, which states: *"Except as provided in Clause 5.7.9 and Sections 11, 12 and 13, a clear space shall be maintained below the level of the sprinkler deflectors throughout the compartment of not less than-* (a) *for High Hazard storage, 900 mm;* (b) *for rolling storage cabinets, 100 mm, provided the maximum area coverage is reduced to 9 m2 per sprinkler; and* (c) *for washrooms and toilet cubicles, 250 mm; and* (d) *in all other cases, 500 mm, except in rooms not higher than 3 m where-* (i) *bookcases, cupboards and moveable furniture may be positioned against a wall, provided sprinklers are not located directly above the furniture and are spaced to spray to the wall; and* (ii) *bookcases, cupboards and other moveable furniture may be positioned within a room, provided sprinklers are not located directly above the furniture and sprinklers are positioned on either side of the furniture within half the design spacing."* 5.7.8 Obstructions in clear space, which states: *"Where there are obstructions such as girders, ducting, cable trays, pipe racks and continuous lighting less than 800 mm and more than 300 mm wide that are either wholly or partly within the required clear space specified in Clause 5.7.7, there shall be a line of sprinklers located on both sides of the centre-line of the obstruction and at not more than half the allowable design spacing from the centre-line of the obstruction. Where the obstruction is less than 300 mm wide, the radial distance from the sprinkler deflector to the nearest point of the obstruction shall be not less than 4 times the height or width of the obstruction, whichever is the greater."* 5.7.9 Obstruction under sprinkler, 5.7.9.1 General, which states: *"Where obstructions below sprinklers are such that the operation of sprinklers could be delayed or effective distribution of water from the sprinklers could be impaired, additional sprinklers shall*	

				be mounted below such obstructions in accordance with Clauses 5.7.9 .2 to 5.7.9.7. *NOTE: Sprinkler protection may be required for work tables, the undersides of which are used for the housing of motive power, or under which process waste of combustible nature may accumulate."*	
5	Fire Safety System	No ventilation is provided to the internal common corridor/ lobbies on all upper levels	Lack of air renewal in the environment.	The lack of ventilation demonstrates a failure to comply with the BCA Volume One BCA, Part F4 Light and Ventilation, F4.5 Ventilation of rooms, which states: *"'A habitable room, office, shop, factory, workroom, sanitary compartment, bathroom, shower room, laundry and any other room occupied by a person for any purpose must have —* (a) *natural ventilation complying with F4.6; or NSW F4.5(b)* (b) *a mechanical ventilation or air-conditioning system complying with AS 1668.2-2012 and AS/NZS 3666.1."*	It can create an uncomfortable environment due to poor air circulation and a building of odours. It can also lead to excessive moisture, leading to mould and an increased risk of allergies and respiratory problems. In addition, the lack of ventilation can cause the temperature of the corridor/lobby to become too warm or too cold, making it uncomfortable for occupants.
6	Fire Safety System	The relief fan for the stair pressurisation system is undersized	The system will not be able to provide the necessary airflow to prevent a build-up of pressure. This can put the system under strain, leading to a decrease in efficiency, increased wear and tear on the components, and a potential safety hazard if the system were to fail.	The installation of an undersized relief fan demonstrates a failure to comply with the BCA Volume One, Section E, Part E2 – Smoke Hazard Management, E2.3 Provision for special hazards, Table E2.2 General requirements, which states in part – ***"…*** (b) *An air-handling system which does not form part of a smoke hazard management system in accordance with TableE2.2a or Table E2.2b and which recycles air from one fire compartment to another fire compartment or operates ina manner that may unduly contribute to the spread of smoke from one fire compartment to another fire compartment must— …"* And Table E2.2a General provisions, which states: *required—* (a) *fire-isolated stairway, including any associated fire-isolated passageway or fire-isolated ramp serving—* (b) *(b)fire-isolated passageway or fire-isolated ramp with a length of travel more than 60 m to a road or open space, must be provided with—* (c) *an automatic air pressurisation system for fire-isolated exits in accordance with AS 1668.1; or …* *Notes:*	1. Poor air circulation: An undersized relief fan will not be able to adequately circulate air throughout the stairwell and the pressurization system will not be able to maintain the desired pressure differential. This could lead to inadequate and inefficient air circulation, creating an uncomfortable working environment. 2. Increased risk of fire and smoke spread: An undersized relief fan will not be able to move enough air out of the stairwell, which can lead to a build-up of smoke and heat. This increases the risk of a fire spreading and can make it difficult for people to evacuate the building in the event of an emergency. 3. Poor air quality: An undersized relief fan will not be able to adequately filter, humidify, and dehumidify the air, leading to poor air quality, which can cause respiratory problems and other health issues. 4. Increased energy costs: An undersized relief fan will need to work harder to circulate air throughout the stairwell, leading to increased energy costs.

				1. An automatic air pressurisation system for fire-isolated exits applies to the entire exit. *2. Refer D1.7(d) for pressurisation of a fire-isolated exit having more than 2 access doorways from within the same storey.*	
7	Essential Services System	No ventilation is provided to the Gas meter room	Without ventilation, the gases can accumulate, leading to a hazardous and dangerous situation. In addition, without proper ventilation, the room may become too hot, creating an unsafe environment for anyone who needs to enter the room.	The lack of ventilation in the gas meter room demonstrates a failure to comply with the BCA Volume One, Section F Health and Amenity, Part F4 Light and Ventilation, Deemed-to-Satisfy Provision, Clause F4.5 Ventilation of Rooms, which states in part - *"A habitable room, office, shop, factory, workroom, sanitary compartment, bathroom, shower room, laundry and any other room occupied by a person for any purpose must have —* *(a) natural ventilation complying with F4.6; or NSW F4.5(b)* *(b) a mechanical ventilation or air-conditioning system complying with AS 1668.2 and AS/NZS 3666.1."*	1. Poor air quality: Without adequate ventilation, the air in the gas meter room can become stagnant and full of pollutants, such as carbon dioxide, which can be hazardous to the health of anyone in the room. 2. Fire and explosion hazard: Without proper ventilation, gas meter rooms can become a fire hazard due to the build-up of combustible gases. If these gases reach a certain concentration, it can create an explosive atmosphere that can lead to a fire or explosion. 3. Damage to equipment: Without adequate ventilation, the gas meter and other equipment in the room can become damaged due to the build-up of humidity and temperature. 4. Health risks: Prolonged exposure to high levels of carbon dioxide can lead to headaches, nausea, dizziness, and other health risks.

Consideration of written representations

5. On 3 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, Owners Corporation and Certifier. The served parties were invited to provide written representations relating to the Order to the Department by 24 July 2023. No submissions were received from any of the parties.

6. 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?

7. I am of the view that the periods above for Defect 1 through 7 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.

8. Considering the consequences as outlined in my reasons, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the BCA/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.

9. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.

Attachment A

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

3 Definitions

(1) In this Act—

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

(a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,

(b) regulated designs under the *Design and Building Practitioners Act 2020*,

(c) any other plans prescribed by the regulations for the purposes of this definition.

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

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

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

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

building work — see section 5.

building work rectification order — see section 33.

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

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

Department means the Department of Customer Service.

developer — see section 4.

expected completion amendment notice — see section 8.

expected completion notice — see section 7.

expected date — see section 7(2).

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

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

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

prohibition order — see section 9.

rectification bond — see section 28.

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

Secretary means the Secretary of the Department.

serious defect, in relation to a building, means—

(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).