

Attn. the Proper Officer
JKN Field Pty Ltd (ACN 165 165 775)
121 Majors Bay Road
CONCORD NSW 2137

CAS Ref: 11111681

Service: By email

4 August 2023

Building Work Rectification Order

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

JKN Field Pty Ltd (ACN 165 165 775) is being given this Building Work Rectification Order (Order) in relation to address 11-15 Charles St Canterbury (Lots 9 & 10 DP 578249, Lot 10 DP 828270) (the Development).

JKN Field Pty Ltd (ACN 165 165 775) 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. Matthew Whitton, Assistant Building Commissioner (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. JKN Field Pty Ltd (ACN 165 165 775) is the developer of the residential apartment building known as **11-15 Charles St Canterbury (Lots 9 & 10 DP 578249, Lot 10 DP 828270) (the Development)** for the purposes of section 4(b) of the Act.
6. The Development comprises of a 11 storey mixed-use building consisting of 276 apartment units, and underground car parks. The Act applies to building work at the Development.
7. On 21 February 2023, authorised officers conducted a lawful inspection of the Development.
8. I, Matthew Whitton, under section 34(1)(a) of the Act, specify in column 4 of Table 1 below, 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 JKN Field Pty Ltd (ACN 165 165 775) do the things specified in column 5 of Table 1 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 1:

Table 1: Requirement in relation to specified standard

Serious Defect Reference Number	Location of Serious Defect	Description of Serious Defect	Specified standard of building work	Requirement	Time for compliance with Requirement (time commences from the date this Order is given in accordance with s67 of the Act)
1	Basement car park Levels B2, B1	Inadequate perimeter drains, subsurface and stormwater drainage resulting in uncontrolled water entering the carpark	Ensure drainage of water from the basement wet walls to prevent unhealthy or dangerous conditions, loss of amenity for occupants, and undue dampness or deterioration of building elements	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for perimeter drains, subsurface and stormwater drainage measure to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist, being a registered hydraulic engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration to drainage design and installation specifications; and iv) detail the specific building work necessary to meet the specified standard. <p>Stage 2 – Provide the drainage provision in accordance with the report and drawings provided at the stage 1.</p>	<p>Stage 1 must be completed by 1 month after the day on which this Order is given.</p> <p>Stage 2 must be completed by 2 months after the day on which this Order is given.</p>
2	Building B Level 1, 2 and Roof Slab	Building B Level 1, 2 and Roof Slabs are under-reinforced	<p>Ensure the slabs are reinforced to support the current and future anticipated loads.</p> <p>Ensure the slabs are reinforced such that they do not deflect so much that it causes consequential damage such as the ponding of water or cracking of barriers.</p>	<p>Within the time period specified in column 6,</p> <p>Submit a written report and drawings prepared for the level 1, 2 and roof slabs to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced structural/remedial engineer ii) identify the slabs current serviceability and strength limit in accordance with AS3600. iii) rely on site specific and as-built data. Do not assume that the design drawings are accurate without verification. iv) take into consideration future remedial works and its impacts. For example, if a topping 	3 months

				<p>screed is applied over the roof to reinstate falls, the slab must be able to support the additional load.</p> <ul style="list-style-type: none"> v) be prepared with consideration to this Order and the Reasons for this Order; and vi) detail the specific building work necessary to eliminate the serious defect; vii) identify the slabs serviceability and strength limit in accordance with AS3600 once the above specific building work is completed 	
3	Level 1-10 common hallway, next to stair C1	Balustrade not adequately secured and deforms under pressure	Ensure balustrades are secure and do not deform under pressure	<p>Within the time period specified in column 6,</p> <p>Submit a written report and drawings prepared for the level 1, 2 and roof slabs to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced structural/remedial engineer ii) assess whether the balustrades meet the serviceability and strength limit states in accordance with AS1170.0 and AS1170.1 for a barrier. iii) rely on site specific and as-built data, i.e., cannot assume that the design drawings are accurate without verification. iv) be prepared with consideration to this Order and the Reasons for this Order; and v) detail the specific building work necessary to eliminate the serious defect. 	1 month
4	<p>All fire compartments:</p> <p>Basement 1</p> <p>Basement 2</p> <p>Fire stairs</p> <p>Shafts</p>	Penetrations are not installed with a tested system	Ensure that penetrations are protected from fire	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report prepared for a fire specialist company, covering all penetrations throughout the building to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist, 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 meet the specified standard. <p>Stage 2 – Rectify the fire penetrations in accordance with the report in stage 1.</p>	<p>Stage 1 must be completed by 1 month after the day on which this Order is given.</p> <p>Stage 2 must be completed by 2 months after the day on which this Order is given.</p>

5	Basement Levels	Fire sprinklers are obstructed by pipes	Ensure that sprinklers are not obstructed	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report prepared for a fire specialist company, covering all sprinkler obstructions throughout the basement levels to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist, being a registered fire engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration to drainage design and installation specifications; and iv) detail the specific building work necessary to meet the specified standard. <p>Stage 2 - Provide the fire report provision in accordance with the report provided at the stage 1.</p>	<p>Stage 1 must be completed by 1 month after the day on which this Order is given.</p> <p>Stage 2 must be completed by 2 months after the day on which this Order is given.</p>
6	South eastern site boundary and the south eastern car park entry ramp.	Inadequate or no fall protection	Ensure that there is a barrier that is at least 1 metre high providing protection to adults and kids from falls.	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for fall prevention to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist, being a registered access consultant; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration to fall prevention and installation specifications; and iv) detail the specific building work necessary to meet the specified standard. <p>Stage 2 - Install fall prevention in accordance with the report and drawings provided at stage 1.</p>	<p>Stage 1 must be completed by 1 month after the day on which this Order is given.</p> <p>Stage 2 must be completed by 2 months after the day on which this Order is given.</p>

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 & 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 4 August issued to JKN Field Pty Ltd (ACN 165 165 775) 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 preliminary inspection report dated 3 March 2023 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act on 21 February 2023.
 - b. The Expert Opinion Report titled "Expert Opinion Stage 1 Report 11-15 Charles St Canterbury" (211377), revision: 1, dated 16-11-2021 by TTW (**TTW Report 1**).
 - c. The Expert Opinion Report titled "Expert Opinion Stage 2 Report 11-15 Charles St Canterbury" (211377), revision: 1, dated 13-01-2022 by TTW (**TTW Report 2**).
 - d. The Expert Report titled "Structural Condition & Pathology" (181991-EXPT-RPT-003), revision: 1, dated 10-10-2021 by Rothshire (**Rothshire Report**).
 - e. A Building Work Rectification Order issued to Toplace Pty Limited (ACN 135 918 491) in relation to the Development on 17 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	Water is entering the carpark area	External walls must prevent the penetration of water that could cause unhealthy and dangerous conditions. In the Building water is penetrating the external walls and entering the Building.	<p>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.</p> <p>FP1.3 Rainwater drainage systems, which states: <i>"A drainage system for the disposal of surface water resulting from a storm having an average recurrence interval of –</i> <i>(a) 20 years must –</i> <i>(i) convey surface water to an appropriate outfall; and</i> <i>(ii) avoid surface water damaging the building; and</i> <i>(b) 100 years must avoid the entry of surface water into a building."</i></p> <p>FP1.4 A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</p>	Dangerous conditions for residents accessing the basement which could result in injury

				<p>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</p> <p>(b) Undue dampness or deterioration of building elements.</p>	
2	Internal load bearing component	Building B Level 1, 2 and Roof Slabs are under-reinforced	A Building is required to perform adequately under all reasonable design action. In the Building B Level 1, 2 and Roof Slabs are deflecting beyond reasonable design actions.	<p>NCC Volume 1 Section B Structure B1 Structural Provisions BP1.1 states:</p> <p><i>“(a) A building or structure, during construction and use, with appropriate degrees of reliability, must –</i></p> <p><i>(i) perform adequately under all reasonably expected design actions; and</i></p> <p><i>(ii) withstand extreme or frequently repeated design actions; and</i></p> <p><i>(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</i></p> <p><i>(iv) avoid causing damage to other properties,</i></p> <p><i>by resisting the actions to which it may reasonably expect to be subjected.”</i></p> <p>Deemed-to-Satisfy clause B1.4 Determination of structural resistance of materials and forms of construction is a pathway to satisfy BP1.1. B1.4 states:</p> <p><i>“The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate:</i></p> <p><i>(a) Masonry (including masonry-veneer, unreinforced masonry and reinforced masonry): AS 3700.</i></p> <p><i>(b) Concrete construction (including reinforced and prestressed concrete): AS 3600.”</i></p> <p>Australian Standard AS3600:2009 Concrete Structures, Section 2 Design Procedures, Actions and Loads, 2.3 Design for Serviceability, 2.3.2 Deflection, states:</p> <p><i>“The deflection of beams and slabs under service conditions shall be controlled as follows:</i></p> <p><i>(a) A limit for the calculated deflection of the member shall be chosen and shall be appropriate to the structure and its intended use. The chosen value shall be not greater than the value calculated from the appropriate deflection-to-span ratio given in Table 2.3.2.”</i></p> <p>I consider a deflection limit of 1/125 to be appropriate (last column, first row of Table 2.3.2) where the slab is not supporting masonry partitions but a more stringent deflection limit of 1/250 (last column, second row of Table 2.3.2) should be adopted where the slab is supporting masonry partitions.</p> <p>The Rothshire report calculated deflections on the roof exceeding 50mm where the limit in accordance with AS3600 is between 21 and 22mm. The Rothshire report calculated the deflection on Level 2 to be 43mm where the limit in accordance</p>	A risk that the slabs may result in cracking which will degrade the structure of the Building.

				<p>with AS3600 is between 20 and 21mm. The Rothshire report calculated the maximum deflection on Level 1 to be 36mm where the limit in accordance with AS3600 is between 21 and 22mm.</p> <p>The Rothshire report states that the roof slab is deficient in strength on Page 43:</p> <p><i>“The assessment identified strength issues of the Roof Floor slab in both negative and positive 2 bending as a result of insufficient reinforcement.”</i></p> <p>TTW Report 2 states that it agrees with the statements in the Rothshire report regarding the slabs in building B:</p> <p><i>“I agree that the cantilevered slab areas highlighted by Rothshire have calculated deflections that exceed AS3600 limits.”</i></p> <p>TTW Report 2 report disagrees with the Rothshire report that the slabs have insufficient reinforcement:</p> <p><i>“My calculations show none of the locations highlighted in the Rothshire Report in Building B L1, L2 & Roof slabs have insufficient moment capacity.”</i></p> <p>In summary, both TTW and Rothshire agree that the slabs have deflected past the allowable limits of AS3600. However, TTW does not agree with Rothshire that the slab has insufficient reinforcement. I am of the view that since the structure has already experienced structural distress in the form of excessive cracking it has failed to meet performance requirement BP1.1 of the NCC.</p>	
3	Building enclosure	Balustrade not adequately secured and deflects under pressure	A balustrade is required to perform adequately under all reasonable design actions. The balustrade can have a maximum deflection of 30mm. In the Building the balustrade has a deflection of 48mm.	<p>NCC Volume 1 Section B Structure B1 Structural Provisions BP1.1 states:</p> <p><i>“(a) A building or structure, during construction and use, with appropriate degrees of reliability, must –</i></p> <ul style="list-style-type: none"> <i>(i) perform adequately under all reasonably expected design actions; and</i> <i>(ii) withstand extreme or frequently repeated design actions; and</i> <i>(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</i> <i>(iv) avoid causing damage to other properties,</i> <p><i>by resisting the actions to which it may reasonably expect to be subjected.”</i></p> <p>Deemed-to-Satisfy clause B1.1 Resistance to actions is a pathway to satisfy BP1.1. B1.1 states:</p> <p><i>“The resistance of a building or structure must be greater than the most critical action effect resulting from different combinations of actions, where –</i></p> <ul style="list-style-type: none"> <i>(a) The most critical action effect on a building or structure is determined in accordance with B1.2 and the general design procedures contained in AS/NZS 1170.0;”</i> 	The barrier collapsing could cause death or injury due to an occupant falling

				Australian Standard AS/NZS 1170.0:2002 Structural design actions – general principles, Appendix C – Guidelines for Serviceability limit states, Table C1 Suggested serviceability limit state criteria, states the suggested deflection limit is height divided by 60. The height of the balustrade is 1.8m. Applying the suggested limit to the balustrade means the maximum deflection is 30mm. The measured deflection is 48mm under light hand pressure and not the full barrier load.	
4	<p>All fire compartments:</p> <p>Basement 1</p> <p>Basement 2</p> <p>Fire stairs</p> <p>Shafts</p> <p>Fire Safety System</p>	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.	<p>BCA Volume One, Section 3 Fire resistance, Part C3 Protection of openings, Deemed-to-satisfy provision C3.15 Openings for service installations, which states:</p> <p>“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:</p> <p>(a) Tested systems</p> <p>(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”.</p> <p>Deemed-to-satisfy provision C3.15 Openings for service installations is a pathway that can satisfy the BCA Volume One, Section C Fire resistance, Performance Requirement CP8, which states:</p> <p>“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 —</p> <p>(a) where openings, construction joints and the like occur;</p> <p>(b) where penetrations occur for building services”.</p>	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.
5	<p>Basement Levels</p> <p>Fire Safety System</p>	Fire sprinklers are obstructed	Sprinklers must be located below any obstruction. In the Building the sprinklers are obstructed.	<p>And 5.7.9 Obstruction under sprinkler, 5.7.9.1 General, which states:</p> <p><i>"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.</i></p> <p><i>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."</i></p>	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 and water waste.
6	Building Enclosure	Inadequate or no fall protection	Fall protection is required to prevent persons from	BCA Volume One, Section D Access and Egress Performance Requirements:	Falling from a height could result in injury or death.

			falling of a height of greater than 1 metre. In the Building there is inadequate or no fall protection from heights greater than 1 metre.	DP3 Fall prevention barriers Where people could fall — (a) 1 m or more — (i) from a floor or roof or through an opening (other than through an openable window) in the external wall of a building; or (ii) due to a sudden change of level within or associated with a building; or (b) 2 m or more from a floor through an openable window — (i) in a bedroom in a Class 2 or 3 building or a Class 4 part of a building; or (ii) in a Class 9b early childhood centre; or (c) 4 m or more from a floor through an openable window not covered by (b), a barrier must be provided which must be — (d) continuous and extend for the full extent of the hazard; and (e) of a height to protect people from accidentally falling from the floor or roof or through the opening or openable window; and (f) constructed to prevent people from falling through the barrier; and (g) capable of restricting the passage of children; and (h) of strength and rigidity to withstand — (i) the foreseeable impact of people; and (ii) where appropriate, the static pressure of people pressing against it.	
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Consideration of written representations

5. On 14 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, and Owners Corporation. The Certifier for the Development had his accreditation cancelled on 28 November 2019. The Department has made reasonable inquiries as to the identity of the Certifier for the Development and has been unable to ascertain the identity of that person.
6. The served parties were invited to provide written representations relating to the Order to the Department by 19 July 2023. No submissions have been received from any of the parties as of the date of this Order.
7. I am satisfied that the Developer has been given an opportunity to provide representations concerning the Order. In circumstances no submissions have been made in response to the draft, I am satisfied that it is appropriate to give the Order.

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

8. I am of the view that the periods above for Defect 1 through 6 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.
9. Considering the 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.
10. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.

Attachment A

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

3 Definitions

(1) In this Act —

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

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

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

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

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

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

building work — see section 5.

building work rectification order — see section 33.

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

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

Department means the Department of Customer Service.

developer — see section 4.

expected completion amendment notice — see section 8.

expected completion notice — see section 7.

expected date — see section 7(2).

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

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

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

prohibition order — see section 9.

rectification bond — see section 28.

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

Secretary means the Secretary of the Department.

serious defect, in relation to a building, means —

- 1) a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
- 2) a defect in a building product or building element that —
 - a. is attributable to defective design, defective or faulty workmanship or defective materials, and

- b. causes or is likely to cause —
 - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
- 3) a defect of a kind that is prescribed by the regulations as a serious defect, or
- 4) the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

stop work order — see section 29.

strata building means a building containing a lot or part of a lot that is the subject of a strata scheme.

strata plan has the same meaning as in the *Strata Schemes Development Act 2015*.

strata scheme has the same meaning as in the *Strata Schemes Development Act 2015*.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

4 Meaning of “developer”

For the purposes of this Act, a **developer**, in relation to building work, means any of the following persons, but does not include any person excluded from this definition by the regulations —

- (a) the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out,
- (b) if the building work is the erection or construction of a building or part of a building — the owner of the land on which the building work is carried out at the time the building work is carried out,
- (c) the principal contractor for the building work within the meaning of the *Environmental Planning and Assessment Act 1979*,
- (d) in relation to building work for a strata scheme — the developer of the strata scheme within the meaning of the *Strata Schemes Management Act 2015*,
- (e) any other person prescribed by the regulations for the purposes of this definition.

6 Act applies only to residential apartment building work

- (1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that —
 - a. is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, or is required to be authorised by a construction certificate or complying development certificate, and
 - b. has not been completed or has been completed within the period of 10 years before the exercise of that function.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the *Building Code of Australia*).

6 Building elements

(1) For the purposes of this Act, ***building element*** means any of the following —

- (a) the fire safety systems for a building within the meaning of the *Building Code of Australia*,
- (b) waterproofing,
- (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
- (d) a component of a building that is part of the building enclosure,
- (e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the *Building Code of Australia*,
- (f) other things prescribed by the regulations for the purposes of this section.

(2) The regulations may exclude things from being building elements for the purposes of this Act.

(3) In this section —

above grade wall means a wall above the level of the ground surrounding a building.

below grade wall means a wall below the level of the ground surrounding a building.

building enclosure means the part of the building that physically separates the interior environment of the building from the exterior environment, including roof systems, above grade and below grade walls (including windows and doors).