

Attn: Proper Officer  
Maroubra ND Pty Ltd (ACN 641 410 513)  
Level 3, 8-10 King Street  
Rockdale NSW 2216

Service: By registered post and by email

15 November 2023

## Building Work Rectification Order

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

**Maroubra ND Pty Ltd (ACN 641 410 513) is being given this Building Work Rectification Order (Order) in relation to address 908-910 Anzac Parade Maroubra NSW 2035 (Lot A DP 390142) (the Development).  
Maroubra ND Pty Ltd (ACN 641 410 513) is required to cause building work to be carried out 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. Stewart Scarlett, Acting 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. **Maroubra ND Pty Ltd (ACN 641 410 513)** is the developer of the residential apartment building at **908-910 Anzac Parade Maroubra NSW 2035 (Lot A DP 390142) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development consists of a mixed use building with 15 residential apartments over four floors above two commercial tenancies with one basement level of parking.
7. On 12 September 2023, authorised officers conducted a lawful inspection of the Development.

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

8. I, Stewart Scarlett, under section 33 of the Act, require you **Maroubra ND Pty Ltd (ACN 641 410 513)** to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each respective serious defect described in columns 1, 2 and 3 of Table 1. Each requirement must be complied with by the time set out in column 5 of Table 1:

**Table 1: Requirements in respect of Serious Defects**

| <b>Serious Defect Reference No.</b> | <b>Location of Serious Defect</b>  | <b>General description of Serious Defect</b>           | <b>Requirement to ensure the following specified building work is carried out (s 33(2)(a))</b>  | <b>Time for compliance with Requirement from the date this order is given (s 39(1))</b> |
|-------------------------------------|--|--|---|---|
| 1.                                  | Perimeter face brickwork, between the underside of the first floor to the fourth floor | Shelf angle is exposed and is missing fire protection. | <p>Developer is to ensure the following building work is carried out to rectify the serious defect in compliance with the BCA Volume 1:</p> <ol style="list-style-type: none"> <li>1. Appropriate fire protection is installed to the shelf angle in consultation with the structural engineer.</li> <li>2. Rectify any consequential damage.</li> </ol> <p>Developer is to demonstrate compliance of remediation works by submitting evidence to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a> Including photographs of work in progress, installer compliance certificates and third party structural engineer reports.</p> | 2 months  |

9. I, Stewart Scarlett, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you **Maroubra ND Pty Ltd (ACN 641 410 513)** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

**Table 2: Requirement in relation to specified standard**

| Serious Defect Reference No. | Location of Serious Defect   | Description of Serious Defect                     | Specified standard of building work (s 34(1)(a))    | Requirement (s 34(1A))   | Time for compliance with Requirement from the date of issue of this order (s 39(1)) |
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| 2.                           | In the fire isolated stairway from Building B to the ground floor and in Building A basement garbage room ceiling to fire isolated stairway. | There is no separation between fire compartments. | Ensure the building elements meet required the FRL. | <p>Within the time period specified in column 6,</p> <p><b>Stage 1</b><br/>Submit regulated designs and compliance declaration on the NSW Planning Portal and to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The regulated designs required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a registered design practitioner (fire safety engineer);</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) indicate the location of the required fire dampers.</li> </ul> <p><b>Stage 2</b><br/>Carry out the work to rectify the serious defect in accordance with the regulated design submitted in compliance with Stage 1</p> | <p>Stage 1:<br/>1 month</p> <p>Stage 2:<br/>2 months</p>                            |

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|    |   |  |   | and make good any resultant consequential damage.  |  |
| 3. | Columns between grid 6 and 7 on the ground floor as indicated on Architectural drawing titled "Basement + Ground Floor Plan" - CD 2100, revision 34, dated 13/03/2023 by KA Design Studio Pty Ltd | There are distinct cracks in two columns between 0.9mm to 1.2mm. | Ensure the columns are structurally adequate to withstands upper floor loads. | <p>Within the time period specified in column 6,</p> <p><b>Stage 1</b><br/>Submit two written reports to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written reports required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by two independent and suitably qualified and experienced persons or specialists appropriate to the subject areas of the building, being structural engineers;</li> <li>ii) investigate the source of cracking;</li> <li>iii) confirm the reason for cracking, and the impact of cracking on the structural adequacy of the columns and building;</li> <li>iv) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>v) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b><br/>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.</p> | <p>Stage 1:<br/>1 month</p> <p>Stage 2:<br/>3 months</p> |

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| 4. | Lift shaft from basement to the roof                              | Approved plans provide for in-situ concrete walls. The walls of the lift shaft have been constructed with permanent formwork. | Ensure that the as-built lift shaft walls are structurally adequate to withstand exerted loads.   | <p>Within the time period specified in column 6, the Developer is to submit a written report to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a structural engineer;</li> <li>ii) demonstrate that the permanent formwork is capable of withstanding the exerted loads, and</li> <li>iii) be prepared with consideration to this Order and the Reasons for this Order.</li> <li>iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> | 1 month  |
| 5. | Windows W1.15, W1.09, W2.15, W2.09, W3.15, W3.09, W4.15 and W4.09 | There are penetration gaps between windows. These require spandrel protection between the window and external wall.           | Ensure there are no gaps between the windows and external walls in compliance with the BCA Volume One and the approved Fire Engineering Report. | <p>Within the time period specified in column 6,</p> <p><b>Stage 1</b><br/>Submit a written report to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>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;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> </ul>  | <p>Stage 1:<br/>1 month</p> <p>Stage 2:<br/>2.5 months</p> |

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|    |  |   |  | <p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p><b>Stage 2</b><br/>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.</p>   |  |
| 6. | Ground floor, retail tenancy 1 at the mechanical services riser on the northern boundary | Mechanical services penetrations are passing through walls that are required to have a FRL without a method of protection to maintain the fire integrity of the building element. | Ensure that penetrations are protected so as to maintain the required FRL of the wall. | <p>Within the time period specified in column 6,</p> <p><b>Stage 1</b><br/>Submit regulated designs and compliance declaration on the NSW Planning Portal and to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The regulated designs required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a registered design practitioner (mechanical engineer);</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) indicate the location of the required fire dampers.</li> </ul> <p><b>Stage 2</b><br/>Carry out the work to rectify the serious defect in accordance with the regulated design submitted in compliance with Stage 1</p> | <p>Stage 1:<br/>1 month</p> <p>Stage 2:<br/>2 months</p> |

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|  |  |  |  | and make good any resultant consequential damage. |  |
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### Persons subject of this Order

10. This Order is given to **Maroubra ND Pty Ltd (ACN 641 410 513)**. **Maroubra ND Pty Ltd (ACN 641 410 513)** is a co-developer of the Development in conjunction with the following other persons:
- (a) Flinders BL Pty Ltd (ACN 640 929 040),
  - (b) Flinders RF Pty Ltd (ACN 640 929 504),
  - (c) Flinders 3 Pty Ltd (ACN 640 930 123), and
  - (d) Maroubra DM Pty Ltd (ACN 641 410 871).
11. I consider it appropriate in the circumstances to direct the above persons to do the things specified in the Order jointly in accordance with s 54 of the Act. Each of the above persons has also been served with an Order, directing them to undertake the things specified in the same terms as this Order.

### Duration of this Order

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



Stewart Scarlett  
**Acting 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 13 November 2023 issued to **Maroubra ND Pty Ltd (ACN 641 410 513)** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Stewart Scarlett, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
  - (a) An inspection report dated 25 September 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 12 September 2023.
4. Under s 54 of the Act, if it is appropriate in the circumstances, an Order may direct two or more people to do the things specified in the Order jointly. I have formed a view that there are multiple Developers within the meaning of s 4 of the Act for the Development, on the basis of the following material:
  - (a) The Major Works Contract for Housing in New South Wales between the five identified Developers and contractor.
5. In the circumstances I am satisfied that it is appropriate to make a direction under s 54 of the Act on the Developers named at [10].
6. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

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

| <b>Serious Defect Ref No.</b> | <b>Building element in which serious defect has been identified</b>   | <b>Defect</b>   | <b>Reason why defect is a serious defect</b>   | <b>Applicable approved plan, Code or Australian Standard</b>  | <b>Consequences of serious defect</b>   |
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| 1.                            | An internal load-bearing component of a building that is essential to the stability of a building or part of it | Shelf angle is exposed and is missing fire protection. It does not meet the required FRL. | The failure to achieve the minimum FRL means that the building element will not be able to perform (structural stability) in a fire. This could endanger occupants and the public. | The exposed shelf angle and missing fire protection is a defect in a building element that is attributable to failure to comply with the BCA Volume one, Section C Fire resistance, Specification C1.1 – Fire- resisting construction Table 3 Type A construction :FRL of building elements Which requires other loadbearing internal beams to be of FRL 90/-/- | This issue compromises structural performance and structural adequacy of the shelf angle in case of fire. As a result, it is likely to cause inability of the shelf angle to withstand the facade load in case of fire. |
| 2.                            | Fire safety systems   | There is no separation between fire compartments.   | Fire compartments should be separated to help prevent incipient spread of fire and smoke during a fire.  | The inadequate separation compartments in the fire stairs does not provide adequate fire resistance level and demonstrates a failure to comply with BCA Volume one, Section C Fire resistance, performance Requirement CP2 Spread of fire which states:   | Reduces the tenable conditions during occupant evacuation. Increases the spread of fire and the generation of smoke and heat, and toxic gases. This is likely to hinder evacuation.                                     |

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|  |  |  |  | <p><i>“(a) A building must have elements which will, to the degree necessary, avoid the spread of fire —</i></p> <ul style="list-style-type: none"> <li><i>(i) to exits; and</i></li> <li><i>(ii) to sole-occupancy units and public corridors; and</i></li> <li><i>(iii) between buildings; and</i></li> <li><i>(iv) in a building.</i></li> </ul> <p><i>(b) Avoidance of the spread of fire referred to in (a) must be appropriate to —</i></p> <ul style="list-style-type: none"> <li><i>(i) the function or use of the building; and</i></li> <li><i>(ii) the fire load; and</i></li> <li><i>(iii) the potential fire intensity; and</i></li> <li><i>(iv) the fire hazard; and</i></li> <li><i>(v) the number of storeys in the building; and</i></li> <li><i>(vi) its proximity to other property; and</i></li> <li><i>(ix) any active fire safety systems installed in the building; and</i></li> <li><i>(x) the size of any fire compartment; and</i></li> <li><i>(xi) fire brigade intervention; and</i></li> <li><i>(xii) other elements they support; and</i></li> <li><i>(xiii) the evacuation time.”</i> <p>And</p> </li></ul> |  |
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|    |   |  |   | <p>C3.9 Service penetrations in fire-isolated exits which provides:</p> <p><i>“Fire-isolated exits must not be penetrated by any services other than — (a) electrical wiring permitted by D2.7(e) to be installed within the exit; or (b) ducting associated with a pressurisation system if it — (i) is constructed of material having an FRL of not less than -/120/60 where it passes through any other part of the building; and (ii) does not open into any other part of the building; or (c) water supply pipes for fire services.”</i></p> |   |
| 3. | An internal load-bearing component of a building that is essential to the stability of the building or part of it | There are distinct cracks in two columns between 0.9mm to 1.2mm.         | Columns should be uniform without evidence of significant cracking to ensure structural adequacy. | The cracked columns are a defect in a building element that is attributable to defective design and defective or fault materials that is likely to cause the destruction of a part of the building or a threat of collapse of the building.  | This issue compromises the structural performance and structural adequacy of the concrete columns. As a result, it is likely to cause inability of the concrete columns to withstand the upper loads. |
| 4. | An internal load-bearing component of a building that   | Approved plans provide for in-situ concrete walls. The walls of the lift | Building elements should be constructed in  | The following approved plans by Mark Lindsay provide for in-situ concrete walls, whereas permanent   | This issue compromises structural performance and structural adequacy of the lift shaft. As a   |

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|    | is essential to the stability of the building or part of it | shaft have been constructed with permanent formwork.  | accordance with approved plans.  | <p>formwork has been used in construction:</p> <ul style="list-style-type: none"> <li>• Basement slab layout ref no 21206-S02 dated 08/04/22 rev 02</li> <li>• Ground floor slab layout ref no 21206-S20 dated 17/05/22 rev 03</li> <li>• Level 1 slab layout ref no 21206-S30 dated 17/03/22 rev 01</li> <li>• Level 2 slab layout ref no 21206-S40 dated 17/03/22 rev 01</li> <li>• Level 3 slab layout ref no 21206-S50 dated 17/03/22 rev 01</li> <li>• Level 4 slab layout ref no 21206-S60 dated 17/03/22 rev 01</li> </ul> | result, it is likely to cause inability of the lift shaft to withstand the building lateral load. |
| 5. | Fire safety systems   | There are penetration gaps between windows. These require spandrel protection between the window and external wall. | Large gaps should be fire protected to prevent incipient spread of fire. | <p>The large gaps and absence of spandrel protection demonstrates a failure to comply with the BCA Volume 1 C2.6 Vertical separation of openings in external walls which provides:</p> <p><i>“(a) If in a building of Type A construction, any part of a</i></p>  | Fire can easily spread between lower and upper levels.  |

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|  |  |  |  | <p><i>window or other opening in an external wall is above another opening in the storey next below and its vertical projection falls no further than 450 mm outside the lower opening (measured horizontally), the openings must be separated by —</i></p> <p><i>(i) a spandrel which —</i></p> <p><i>(A) is not less than 900 mm in height; and</i></p> <p><i>(B) extends not less than 600 mm above the upper surface of the intervening floor; and</i></p> <p><i>(C) is of non-combustible material having an FRL of not less than 60/60/60; or</i></p> <p><i>(ii) part of a curtain wall or panel wall that complies with (i); or</i></p> <p><i>(iii) construction that complies with (i) behind a curtain wall or panel wall and has any gaps packed with a non-combustible material that will withstand thermal expansion and structural movement of the walling without the loss of seal against fire and smoke; or</i></p> <p><i>(iv) a slab or other horizontal construction that —</i></p> |  |
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|  |  |  |  | <p>(A) projects outwards from the external face of the wall not less than 1100 mm; and</p> <p>(B) extends along the wall not less than 450 mm beyond the openings concerned; and</p> <p>(C) is non-combustible and has an FRL of not less than 60/60/60.</p> <p>(b) The requirements of (a) do not apply to —</p> <p>(i) an open-deck carpark; or</p> <p>(ii) an open spectator stand; or</p> <p>(iii) a building which has a sprinkler system (other than a FPAA101D or FPAA101H system) complying with Specification E1.5 installed throughout; or</p> <p>(iv) openings within the same stairway; or</p> <p>(v) openings in external walls where the floor separating the storeys does not require an FRL with respect to integrity and insulation.</p> <p>(c) For the purposes of C2.6, window or other opening means that part of the external wall of a building that does not have an FRL of 60/60/60 or greater”</p> |  |
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|    |                     |   |  | And approved plan titled Fire Engineering Report ref no PRO-07601-M6P3 dated 5/6/23 rev 9 by BCA Innovations Pty Ltd  |  |
| 6. | Fire safety systems | Mechanical services penetrations are passing through walls that are required to have a FRL without a method of protection to maintain the fire integrity of the building element. | Penetrations should be properly protected to prevent the spread of fire. | <p>The inadequate design of the mechanical ventilation where passing through a building element required to maintain an FRL (Fire Resistance Level) demonstrates a failure to comply with Australian Standard 1668.1:2015 The use of ventilation and air conditioning in buildings, Part 1 Fire and smoke control in buildings, Section 3 Fire Protection Of Openings In Fire-Resistant Elements, Clause 3.2.1 General Requirements, which states:</p> <p><i>“Except where excluded or exempt by Clauses 3.3.2 and 3.3.3, opening in building elements that are required to have an FRL shall be protected with fire dampers, such that the required FRL of the building element is maintained as follows:</i></p> <p><i>(a) The structural adequacy component of the FRL for the building element shall be</i></p> | The failure to adequately protect openings could lead to fire or smoke spreading in an uncontrolled manner through the building. |



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|  |  |  |  | <p><i>maintained by the building element, independent of the fire damper.</i></p> <p><i>(b) The integrity component of the FRL for the building element shall be maintained by providing a fire damper that has an integrity performance equal to that required of the building element.</i></p> <p><i>(c) The insulation component of the FRL for the building element shall comply with Clause 3.2.3.”</i></p> <p>Australian Standard 1668.1:2015 appears as a standard referenced in the BCA Volume One, Section C Fire resistance, C3.15 Openings for service installations, which state in part:</p> <p><b>“C3.15 Openings for service installations</b></p> <p><i>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</i></p> |  |
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|  |  |  |  | <p><i>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:</i></p> <ul style="list-style-type: none"> <li><i>a) ...</i></li> <li><i>b) Ventilation and air-conditioning — In the case of ventilating or air-conditioning ducts or equipment, the installation is in accordance with AS 1668.1.</i></li> <li><i>c) ...</i></li> </ul> <p>Deemed-to-satisfy provision C3.15 Openings for service installations, is a pathway that can satisfy the BCA Volume One, Performance Requirement CP8 Fire protection of openings and penetrations, which states:</p> <p><i>“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 —</i></p> |  |
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|  |  |  |  | <p>a) <i>where openings, construction joints and the like occur; and</i><br/> b) <i>where penetrations occur for building services.”</i></p> <p>Therefore, because the design does not comply with Deemed-to-satisfy provision C3.15 Openings for service installations, the BCA Volume One Performance Requirement cannot be shown to have been satisfied.</p> |  |
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### Consideration of written representations

7. On 19 October 2023 a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developers, Local Council, Office of the Registrar General, and Certifier.
8. The served parties were invited to provide written representations relating to the Order to the Department by 26 October 2023. As of the date of this Order, no submissions have been received from any of the served parties.
9. 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?

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

11. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.
12. 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.

## **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).