

Attn: Proper Officer
Kingsway Garden Developments Pty Ltd (ACN 601 316 527)
Central Accounting
Suite 105, L 1 50 Clarence St
SYDNEY NSW 2000

Service: By registered post and by email

18 April 2024

Building Work Rectification Order

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

Kingsway Garden Developments Pty Ltd (ACN 601 316 527) is being given this Building Work Rectification Order (Order) in relation to address 404-406 Kingsway, CARINGBAH NSW 2229 (DP1/1269086) (the Development).

Kingsway Garden Developments Pty Ltd (ACN 601 316 527) 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. I, Matt Press, Director (Building Compliance, Building Commission NSW, Department of Customer Service), am an authorised delegate of the Secretary of the Department.
5. **Kingsway Garden Developments Pty Ltd (ACN 601 316 527)** is the developer of the residential apartment building at **404-406 Kingsway, CARINGBAH NSW 2229 (Lot 1 DP 12690861269086) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development contains class 2, 6 and 7a components. The Development comprises a mixed-use building consisting of a residential building of six storeys, containing 42 units apartments, a commercial retail space and underground car parking.
7. On 5 October 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matt Press, under section 33 of the Act, require you **Kingsway Garden Developments Pty Ltd (ACN 601 316 527)** 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

Serious Defect Reference No.	Location of Serious Defect	General description of Serious Defect	Requirement under section 33(2)(a) to carry out the following specified building work	Time for compliance with Requirement (commencing from the date this order is given)
1.	Basement 1, above ramp to Basement 2 and on ground floor carpark entrance.	There are unsealed gaps comprising the fire rating of walls.	<p>The Developer is to take the following steps to rectify the serious defect to comply with NCC Volume 1, Section C Fire Resistance, CP1 Structural stability during a fire, and CP2 Spread of fire:</p> <ol style="list-style-type: none"> 1. Ensure there are no unsealed gaps so as to achieve the required FRL and prevent the spread of fire and smoke between adjoining fire compartments. 2. Rectify any consequential damage. 3. On completion of rectification work a fire engineer/practitioner is to provide a certificate detailing how the rectification satisfies the BCA and Australian Standards or Approved Plans. 4. Developer to demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au of comprehensive photographs of work in progress, compliance certificates and any third-party inspection reports provided by a fire safety consultant. 	3 months
2.	Basement level 2 – spoon drain.	Concrete has been poured over the spoon-drain	The Developer is to take the following steps to rectify the serious defect to	1 month

		Agline drainage pipes in lieu of 150 blue metal as provided for in the approved plans.	<p>comply with approved plan Stormwater plans titled "Stormwater layout plan basement level 2 sheet 2 of 2" no. 102 dated 09/12/2021 by Civil & Stormwater Engineering Services Pty Ltd:</p> <ol style="list-style-type: none"> 1. Remove the concrete within the spoon drains; 2. Construct spoon drain in accordance with the approved plan; 3. Rectify any consequential damage; 4. Developer to demonstrate compliance by providing evidence to ocaudits@customerservice.nsw.gov.au. 	
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9. I, Matt Press, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you **Kingsway Garden Developments Pty Ltd (ACN 601 316 527)** 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 Ref No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work	Requirement	Time for compliance with Requirement from the date of issue of this order
3.	Lower ground floor internal walls and perimeter walls.	Permanent plastic formwork walls have been constructed within the upper ground level as an internal wall and perimeter walls.	Ensure construction of structural elements is in accordance with approved plans	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the 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 appropriate to the subject areas of the building namely, a structural engineer or a fire safety/systems engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	<p>Stage 1 1 months</p> <p>Stage 2 4 months</p>

				<p>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.</p>	
4.	Floors and column beams throughout the B2 basement car park, B1 basement car park, lower ground floor and ground floor.	Inadequate cover and/or exposure of reinforcement, honeycombing, and segregation in a reinforced concrete element.	Ensure the reinforced concrete structural elements are suitably durable and adequately protect the embedded structural reinforcement from corrosion.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the 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 appropriate to the subject areas of the building namely, a structural engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	<p>Stage 1 1 month</p> <p>Stage 2 3 months</p>

				<p>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.</p>	
5.	Basement 2 level between grids E to F and 5 to 6.	Deformation of concrete column during placement due to partial failure of the formwork likely causing displacement of the embedded steel reinforcement.	Ensure the correct location of embedded structural reinforcing steel in accordance with the structural load paths in accordance with the approved plans.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the 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 appropriate to the subject areas of the building namely, a structural engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with</p>	<p>Stage 1 1 month</p> <p>Stage 2 3 months</p>

				Stage 1 and make good any resultant consequential damage.	
6.	Ground floor at grids C and 5.	Cracking and the exposed reinforcement to the top of the cylinder column.	Ensure the structural stability of the structural reinforced concrete elements.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the 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 appropriate to the subject areas of the building namely, a structural engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>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.</p>	<p>Stage 1 1 month</p> <p>Stage 2 2 months</p>
7.	Level 1 slab - pour 1 (between	Steel reinforcement in a reinforced	Ensure the structural element is reinforced such that it is	Within the time period specified in column 6,	Stage 1

	grids E to D and 8 to 9).	concrete structure has been cut.	structurally adequate, able to support the intended load, and protects the embedded structural reinforcing steel against environmental effects.	<p>Stage 1 Submit a written report to the 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 appropriate to the subject areas of the building namely, a structural engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>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.</p>	1 month Stage 2 3 months
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Duration of this Order

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

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



Matt Press
Director Building Compliance
Building Commission NSW

Date: 18/04/2024

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 18 April 2024 issued to **Kingsway Garden Developments Pty Ltd (ACN 601 316 527)** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Matt Press, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - a) An inspection report dated 13 October 2023 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act in the Building on 5 October 2023.
4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

Table 3 – Basis of reasonable belief as to serious defects

Serious Defect Ref No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1.	The fire safety systems for a building	Unsealed gaps observed comprising fire rating of wall.	Inadequate fire-resistance of the wall affects its	The unsealed gaps demonstrate a failure to comply with NCC Volume 1, Section C Fire Resistance, CP1 Structural stability during a fire, which states:	In case of fire there may be uncontrolled spread of fire

	within the meaning of the BCA.		ability to resist the spread of fire.	<p><i>“CP1 Structural stability during a fire A building must have elements which will, to the degree necessary, maintain structural stability during a fire appropriate to –</i></p> <p><i>(a)the function or use of the building; and (b)the fire load; and (c)the potential fire intensity; and (d)the fire hazard; and (e)the height of the building; and (f)its proximity to other property; and (g)any active fire safety systems installed in the building; and (h)the size of any fire compartment; and (i)fire brigade intervention; and (j)other elements they support; and (k)the evacuation time.”</i></p> <p>And CP2 Spread of fire, which states:</p> <p><i>“CP2 Spread of fire (a)A building must have elements which will, to the degree necessary, avoid the spread of fire –</i></p> <p><i>(i)to exits; and (ii)to sole-occupancy units and public corridors; and (iii)between buildings; and (iv)in a building.”</i></p>	throughout the building, causing damage and compromising the integrity of building elements.
2.	Those aspects of services for a building that are required to achieve	Failure to construct in accordance with declared designs/approved plans.	The concrete poured over the spoon-drain Agline drainage pipes in lieu of “150 BLUE METAL”	The improper construction of the spoon drain demonstrates a failure to comply with "Stormwater layout plan basement level 2 sheet 2 of 2" no. 102 dated 09/12/2021 by Civil & Stormwater Engineering Services Pty Ltd.	Penetration of water through the basement perimeter walls will be uncontrolled which could

	compliance with the BCA, specifically, plumbing.		is a departure from the approved plans.		cause unhealthy or dangerous conditions, or loss of amenity for occupants, and undue dampness or deterioration of building elements.
3.	The fire safety systems for a building within the meaning of the BCA.	Permanent plastic formwork walls have been constructed within the upper ground level as an internal wall and perimeter walls which does not form part of a performance solution from a fire engineer, nor is it subject of a performance solution at the construction certificate stage of the development.	The permanent plastic formwork walls do not form part of a performance solution from a fire engineer, nor is it subject of a performance solution at the construction certificate stage of the development.	<p>The use of permanent plastic formwork in the absence of a performance solution demonstrates a failure to comply with the NCC Volume 1, Section C Fire Resistance, CP1 Structural stability during a fire, which states:</p> <p><i>“CP1 Structural stability during a fire A building must have elements which will, to the degree necessary, maintain structural stability during a fire appropriate to –</i></p> <ul style="list-style-type: none"> <i>(a)the function or use of the building; and</i> <i>(b)the fire load; and</i> <i>(c)the potential fire intensity; and</i> <i>(d)the fire hazard; and</i> <i>(e)the height of the building; and</i> <i>(f)its proximity to other property; and</i> <i>(g)any active fire safety systems installed in the building; and</i> <i>(h)the size of any fire compartment; and</i> <i>(i)fire brigade intervention; and</i> <i>(j)other elements they support; and</i> 	In case of fire there may be uncontrolled spread of fire throughout the building, causing damage and compromising the integrity of building elements

				<p><i>(k)the evacuation time.”</i></p> <p>And CP2 Spread of fire, which states:</p> <p><i>“CP2 Spread of fire</i> <i>(a)A building must have elements which will, to the degree necessary, avoid the spread of fire —</i> <i>(i)to exits; and</i> <i>(ii)to sole-occupancy units and public corridors; and</i> <i>(iii)between buildings; and</i> <i>(iv)in a building.”</i></p> <p><i>In the absence of a documented performance solution, the pathway to satisfy CP1 and CP2 is via satisfying the Deemed-to-Satisfy provisions. The applicable Deemed-to-Satisfy provision is Specification C1.1 Fire-resisting construction, 3. Type A Fire-Resisting Construction, 3.1 Fire-resistance of building elements, which states:</i></p> <p><i>“In a building required to be of Type A construction —</i> <i>(a) each building element listed in Table 3 and any beam or column incorporated in it, must have an FRL not less than that listed in the Table for the particular Class of building concerned;”</i></p>	
4.	An internal and/or external load-bearing component of a building that is	Inadequate cover and/or exposure of reinforcement, honeycombing, and segregation in a reinforced concrete element.	Embedded structural reinforcement is not adequately protected from corrosion. The reinforced	The poor quality concrete demonstrates a failure to comply with the BCA Volume One Section B – Structural Provisions, Part B1 Structural Provisions, B1.4 Determination of structural resistance of materials and forms of construction, which states:	The reduced cover will cause the embedded steel reinforcement to corrode at an accelerated rate, reducing

	<p>essential to the stability of the building or part of, specifically, floors and column beams.</p>		<p>concrete structural elements durability may be compromised, and the required FRL has not been achieved.</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) Concrete:</i></p> <p><i>(i) Concrete construction (including reinforced and prestressed concrete): AS 3600.</i></p> <p>AS 3600 Section 17 Material and construction requirements, 17.1 Material and construction requirements for concrete and grout, 17.1.3 Handling, placing, and compacting of concrete, which states:</p> <p><i>“Concrete shall be handled, placed and compacted so as to –</i></p> <p><i>...</i></p> <p><i>(a) limit segregation or loss of materials;</i></p> <p><i>(b) limit premature stiffening;</i></p> <p><i>(c) produce a monolithic mass between planned joints or the extremities of members, or both;</i></p> <p><i>(d) completely fill the formwork to the intended level, expel entrapped air, and closely surround all reinforcement, tendons, ducts, anchorages, embedment and fixings”</i></p> <p>And</p> <p>The unprotected reinforcement is a defect in a building element that is attributable to a failure to comply with the AS 3600, Concrete structures, Section 4, Design for durability 4.10 Requirements</p>	<p>the life span of the building and compromising its structural integrity. Without adequate cover the required FRL will not be able to be achieved.</p>
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				<p>for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection,</p> <p>10.4.3.1 General which states: <i>“For corrosion protection, the cover shall be not less than the value given in accordance with Clauses 4.10.3.2 to 4.10.3.7.”</i></p> <p>In accordance with clauses 4.10.3.2 to 4.10.3.7 depending on exposure classification and concrete characteristic strength, required cover varies between 20mm to 70 mm.</p> <p>And The inadequate minimum cover to steel has been compromised which in-turn compromises fire protection in accordance with AS3600, Section 5 Design for fire resistance, clause 5.5 Fire resistance periods (FRPs) for slabs, 5.5.2 Structural adequacy for slabs, which states: <i>“(d) For two-way ribbed slabs, see Table 5.5.2(C) or Table 5.5.2(D) as appropriate for the support conditions. The slabs shall be proportioned so the width and the average axis distance to the longitudinal bottom reinforcement in the ribs, and the axis distance to the bottom reinforcement in the slab between the ribs, and the axis distance of the corner bar to the side face of the rib, is not less than that value plus 10 mm.”</i></p>	
5.	An internal and/or external load-bearing component	Deformation of concrete column during placement due to partial failure of the formwork likely	Failure of the formwork and possible displacement of the embedded	The deformed concrete column demonstrates a failure to comply with the BCA Volume One Section B – Structural Provisions, Part B1 Structural Provisions:	The partial failure of the formwork may lead to failure in the performance

	<p>of a building that is essential to the stability of the building or part of, specifically column beams.</p>	<p>causing displacement of the embedded steel reinforcement.</p>	<p>steel reinforcement may compromise the durability of the reinforced concrete structural elements.</p>	<p>B1.4 Determination of structural resistance of materials and forms of construction, which states: <i>“The structural resistance of materials and forms of construction must be determined in accordance with the following, as appropriate:</i> <i>(a) Concrete:</i> <i>(i) Concrete construction (including reinforced and prestressed concrete): AS 3600.”</i></p> <p>And</p> <p>AS 3600 Section 17 Material and construction requirements, 17.1 Material and construction requirements for concrete and grout, 17.1.3 Handling, placing and compacting of concrete, which states: <i>“Concrete shall be handled, placed and compacted so as to –</i> ... <i>(a) limit segregation or loss of materials;</i> <i>(b) limit premature stiffening;</i> <i>(c) produce a monolithic mass between planned joints or the extremities of members, or both;</i> <i>(d) completely fill the formwork to the intended level, expel entrapped air, and closely surround all reinforcement, tendons, ducts, anchorages, embedments and fixings”</i></p> <p>And</p> <p>Extract from the approved plan being structural drawing title “Basement 1 slab layout” drawing no. 19256-S12 revision 01 dated 29.11.2021 by Lindsay &</p>	<p>of the concrete structure and the instability of the building.</p>
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				Associates Civil and Structural Consulting Engineers demonstrating the designed column dimensions.	
6.	An internal and/or external load-bearing component of a building that is essential to the stability of the building or part of, specifically column beams.	Cracking and the exposed reinforcement to the top of the cylinder column.	The cracking and exposed reinforcement demonstrate that the structural performance and durability of the structure are compromised.	<p>The cracking and exposed reinforcement demonstrates a failure to comply with Australian Standard 3600 Concrete structures, Section 2 Design procedures, actions and loads, 2.3, Design for serviceability 2.3.3, Cracking which states:</p> <p><i>“2.3.3.1 General Cracking in concrete structures shall be controlled so that structural performance, durability and appearance of the structure are not compromised.”</i></p> <p>Australian Standard AS3600 appears as a standard referenced in BCA Volume One Section B – Structural Provisions, Part B1 Structural Provisions, B1.4 Determination of structural resistance of materials and forms of construction, which 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) Concrete:</i></p> <p><i>(i) Concrete construction (including reinforced and prestressed concrete): AS 3600.”</i></p>	This may lead to failure in the performance of the concrete structure and the instability of the building.
7.	An internal and/or external load-bearing	Steel reinforcement in a reinforced concrete	The concrete structure has no tensile strength to resist tensile	Cut reinforcement demonstrates a failure to comply with AS3600-2018 Section 8 Design of beams for strength and serviceability, 8.1 Strength of beams in bending, 8.1.2 Basis of strength calculations, Clause (c) which states:	The cutting of reinforcement compromises the element's

	component of a building that is essential to the stability of the building or part of, specifically floors and column beams.	structure has been cut.	stresses due to the cutting of the steel reinforcement.	<p><i>“The concrete has no tensile strength.”</i></p> <p>And</p> <p>9.1 Strength of slabs in bending, 9.1.1 General which states:</p> <p><i>“The strength of a slab in bending shall be determined in accordance with Clauses 8.1.1 to 8.1.8...”</i></p> <p>And</p> <p>Section 10 Design of columns for strength and serviceability, 10.6 Strength of columns in combined bending and compression, 10.6.1 Basis of strength calculations, Clause (b) states:</p> <p><i>“The concrete has no tensile strength.”</i></p>	structural integrity.
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Consideration of written representations

5. On the 01 March 2024 a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier. The parties were invited to provide submissions to the Department relating to the Order by 08 March 2024.
 - (i) On 18 March 2024 the Developer submitted an email requesting an extension of time of three weeks to make submissions. No submissions have been received at the time of issue of this Order.
 - (a) **Defects 1 through 7 inclusive:**
 - i. The Developer has made no submissions.

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

6. 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.
7. 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.
8. 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.

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).

Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this Order within 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.
- You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.
- The Secretary has given the following persons notice of the making of this building work rectification order:
 - o the relevant local council,
 - o if the local council is not the certifier in relation to the building work—the principal certifier,
 - o if you are not the owner of the land concerned—the owner of the land concerned,
 - o if the order relates to a strata building—the relevant owners corporation,
 - o any other person prescribed by the regulations.
- This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.