

CAS Ref: 11086159

Attn: Proper Officer **RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) trading as Palomar Bellevue Hill (ABN 76 648 386 542)** 44A New South Head Road Vaucluse, NSW, 2030

Service: By registered post and by email

02 August 2023

Building Work Rectification Order

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

RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) trading as Palomar Bellevue Hill (ABN 76 648 386 542) is being given this Building Work Rectification Order (Order) in relation to "Palomar" 49 Drumalbyn Road, Bellevue Hill, NSW, 2023 (Lot 5 DP316390 & SP 98137) (the Development). RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) trading as Palomar Bellevue Hill (ABN 76 648 386 542) is required to cause building work to be carried out to remediate the serious defects and/or potential serious defects as set out in below in this Order.

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

Background

- 1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings* (*Compliance and Enforcement Powers*) Act 2020 (**the Act**).
- 2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious defect.
- 3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines 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 included as **Attachment A** to this order.
- 4. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
- 5. RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) trading as Palomar Bellevue Hill (ABN 76 648 386 542) is the developer of the residential apartment building known as the "Palomar" at 49 Drumalbyn Road, Bellevue Hill, NSW, 2023 (Lot 5 DP316390 & SP 98137) (the Development) for the purposes of section 4(a) of the Act.
- 6. The Development comprises of the construction of a new residential flat building consisting of 8 apartments and basement carparking over 6 storeys.
- 7. On 8 March 2023, 4 April 2023 and the 2 May 2023 authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matthew Whitton, under section 33 of the Act, require you **RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) trading as Palomar Bellevue Hill (ABN 76 648 386 542)** 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:

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.	The room in the basement signposted as "SWITCHBOARD ROOM" and labelled as "ST.01" near the intersection of horizontal grid line B and vertical grid line 2 on the approved drawings prepared by CDArchitects with drawing number A1101 Revision C6 dated 28 April 2020.	The car park ventilation fans are on a motor control centre shared with other services that are not required to operate in fire mode. These other services are not isolated in fire mode.	Rectify the installation of the car park ventilation fans to comply with AS1668.1:2015. Particular attention to be given, but not limited to the following areas: 1. The car park ventilation fans are to be separately switched. 2. The main switch for the fans is to be clearly labelled. 3. Rectify any consequential damage. 4. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party fire engineering report .	3 months
2.	Balcony overflow outlets on all balconies	I he balcony waterproofing membrane does not extend into the	The Developer is required to rectify the installation of the waterproof membrane at the interface with all overflows to	3 months

Table 1: Requirements in respect of Serious Defects

balcony overflow outlets to prevent moisture from tracking under the	comply with clause 2.11 of AS 4654.2- 2012.	
membrane	Particular attention to be given, but not limited to the following areas:	
	 The continuation of waterproofing membrane into overflow slots as detailed in fig 2.16(c) of AS 4654.2- 2012 as shown. 	
	2. The provision of suitable fall in the substrate.	
	3. Ensure compatibility of any membrane extension.	
	4. Rectify any consequential damage.	
	5. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party inspection reports from a waterproofing specialist.	

			Membrane Preformed outlet with face flange Finished floor level to not reduce design flow of outlet	
3.	Lift shaft and lift overrun	Lift shaft is not	Fig 2.16(c) from AS4654.2 The Developer is required to rectify the	3 months
		adequately constructed	installation of the lift shaft and lift overrun	
		to prevent the spread of	to comply with the performance	
		fire in the following ways:	requirement of clause CP8 of the Building	
		1. The penetration	Code of Australia.	
		around the subduct is		
		not adequately sealed	Particular attention to be given, but not	
		to maintain the fire	limited to the following areas:	
		resistance level of the	1 The energings around the subdust are	
		2 Thoro are gaps in the	required to be seeled in accordance	
		lift shaft exhaust	with CP8 of the Building Code of	
		nlenum		
		3. There is an	2. The gaps in the lift shaft plenum are to	
		unprotected opening	be sealed and certification provided to	
		into the lift shaft from	confirm that the construction achieves	
		Unit 5 roof space.	the required fire resistance level.	

 3. The unprotected opening in the lift shaft overrun is required to be fire- stopped in accordance with CP8 of the Building Code of Australia. 4. Rectify any consequential damage. 	
shaft overrun is required to be fire- stopped in accordance with CP8 of the Building Code of Australia. 4. Rectify any consequential damage.	l l
stopped in accordance with CP8 of the Building Code of Australia. 4. Rectify any consequential damage.	
Building Code of Australia. 4. Rectify any consequential damage.	
4. Rectify any consequential damage.	
5. Demonstrate compliance of	
remediation works by providing	
evidence to	
ocaudits@customerservice.nsw.gov.au	
including but not limited to	
nhotographs of work in progress	
installer compliance certificates and	
any third-party inspection report from	
a fire anginoer	
<i>A</i> lift shaft and lift overrup Exhaust fans are not The Developer is required to rectify the 2 menths	
4. Ent shart and the overrun Exhaust rans are not interprete beveloper is required to recting the Simonth's	
operational. The fails did installation of the exhaust fails to comply	
not energise when with clause CP2, DP3 and EP2.2 of the	
Switched to manual mode. Duitding Code of Australia 2010 Volume	
Une Amendment I and the approved fire	
engineering report prepared by Design	
Confidence with issue date 28 April 2020.	
Particular attention to be given, but not	
limited to the following areas:	
1. Smoke exhaust fans are to be	
installed correctly so that when	
switched to manual they will operate.	
2. Rectify any consequential damage	
3. Demonstrate compliance of	
remediation works by providing	
evidence to	
ocaudits@customerservice.nsw.gov.au	
including but not limited to	

			photographs of work in progress, installer compliance certificates and any third-party inspection reports from a mechanical engineer.	
5.	Unit 6 Kitchen Exhaust	An inferior flexible duct product for the kitchen exhaust has been installed which has already failed before the unit has been occupied. The outer foil covering is ripped, and steel wire has punctured the covering. This defect is likely to exist in all 8 units.	Flexible duct specified in the mechanical document titled MEC 000 Revision 8 is to be installed at the kitchen exhaust in all apartments.	3 months

9. I, Matthew Whitton, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) trading as Palomar Bellevue Hill (ABN 76 648 386 542) 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	Requirement	Time for compliance with Requirement from the date of issue of this order

6.	Level 3 Lobby electrical	Electrical and NBN cabling are	All service penetrations that	Within the time period specified in column 6,	Stage 1 – 1 month
	cupboard and	reticulating	penetrate the fire-		Store 2 2
	associated	through a wall and	resisting walls must	Stage 1	Slage Z - S
	ducting through	slab are required	be fire-stopped.	Submit a written report to the OC Audit	months
	the lower ceiling	to have a fire-		team via email to	
	of Unit 8.	resistance level.		ocaudits@customerservice.nsw.gov.au	
		There is no fire		-	
		rating system for		The written report required to be	
		the penetrations.		submitted must:	
				i) be prepared by a suitably qualified	
				and experienced person or	
				areas of the building being a	
				registered fire sefety practitioner	
				ii) be prepared with consideration to	
				this Order and the Reasons for this	
				Order: and	
				iii) detail the specific building work	
				necessary to eliminate the serious	
				defect and meet the specified	
				standard.	
				Stage 2	
				Carry out the work to rectify the serious	
				defect in accordance with the written	
				report submitted in compliance with	
				Stage 1 and make good any resultant	
				consequential damage.	
7.	The room in the	Services such as	All service	Within the time period specified in	
	basement	PVC pipes and	penetrations that	column 6,	
	signposted as	electrical conduits	penetrate the fire-		
	"SWITCHBOARD	that penetrate the	resisting walls must	Stage 1	
	ROOM" and	fire-resisting walls	be fire-stopped.		

	labelled as	of the switchboard		Submit a written report to the OC Audit	
	"ST 01" near the	room have not		team via email to	
	intersection of	been fire-stopped		ocaudits@customerservice.nsw.gov.au	
	horizontal grid				
	lino B and			The written report required to be	
	vortical grid ling			submitted must	
				i) be prepared by a suitably sublified	
	2 on the			i) be prepared by a suitably qualified	
	approved			and experienced person or	
	drawings			specialist appropriate to the subject	
	prepared by			areas of the building being a	
	CDArchitects			registered fire safety practitioner;	
	with drawing			ii) be prepared with consideration to	
	number A1101			this Order and the Reasons for this	
	Revision C6			Order; and	
	dated 28 April			iii) detail the specific building work	
	2020			necessary to eliminate the serious	
				defect and meet the specified	
				standard.	
				Stage 2	
				Carry out the work to rectify the serious	
				defect in accordance with the written	
				report submitted in compliance with	
				Stage 1 and make good any resultant	
				consequential damage.	
8.	The room in the	The intumescent	Intumescent fire	Within the time period specified in	
	basement	fire dampers in the	dampers must be	column 6,	
	signposted as	duct work near the	strictly in a duct-to-		
	"SWITCHBOARD	ceiling are not	duct arrangement	Stage 1	
	ROOM" and	strictly in a duct-	with a damper casing	Submit a written report to the OC Audit	
	labelled as	to-duct	for the attachment of	team via email to	
	"ST.01" near the	arrangement.	the duct.	ocaudits@customerservice.nsw.gov.au	
	intersection of	There is no damper			
	horizontal grid	casing for the			

	line B and vertical grid line 2 on the approved drawings prepared by CDArchitects with drawing number A1101 Revision C6 dated 28 April 2020	attachment of the duct, rather the duct is fixed to the wall. Therefore, the intumescent fire damper may not achieve the minimum FRL for the insulation component.		 The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a registered fire safety practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	
				Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.	
9.	The fire hydrant pump room located at the street frontage and labelled as "FIRE SERVICES" on the approved modified drawings prepared by Nominated Architect	The unobstructed width within the pump room is less than 1 metre between the pump set and the opposing walls which does not allow for the safe evacuation of this part of the building.	A room should provide a safe route for evacuation.	 Within the time period specified in column 6, Stage 1 Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject 	Stage 1 – 1 month Stage 2 - 3 months

	Maxine Scalabrino-Fine from RNB Property Group with drawing number CC 02 Revision A dated 28 June 2021.			 areas of the building being a registered fire safety engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	
				Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 after all necessary regulatory approvals have been obtained and make good any resultant consequential damage	
10.	The lift opening directly into Unit 8 and labelled as "Lift" on the approved drawings prepared by CDArchitects with drawing number A1106 and Revision C5 dated 28 April 2020.	The lift doors provide access from a sole occupancy unit, but the lift doors that have been installed only achieve a fire- resistance level of /60/	The lift opening must be protected with self-closing fire doors having a fire- resistance level of /60/30.	 Within the time period specified in column 6, Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a registered fire safety engineer; 	Stage 1 – 1 month Stage 2 - 3 months

				 ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	
				Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 after all necessary regulatory approvals have been obtained and make good any resultant consequential damage.	
11.	The external walls, loadbearing internal columns incorporated within internal loadbearing walls and the external columns of Unit 8.	The external walls do not have a fire- resistance level on both sides and only have a fire resistance level on the outside only. Internal columns incorporated within internal loadbearing walls do not achieve a fire-resistance level and external loadbearing columns do not	Ensure all walls and columns achieve the appropriate fire resistance level.	 Within the time period specified in column 6, Stage 1 Submit a written report to the OC Audit team via email to <u>ocaudits@customerservice.nsw.gov.au</u> The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a registered fire safety engineer; ii) be prepared with consideration to this Order and the Reasons for this Order; and 	Stage 1 – 1 month Stage 2 - 3 months

		achieve a fire resistance level.		 iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	
				Stage 2	
				Carry out the work to rectify the serious	
				defect in accordance with the written	
				report submitted in compliance with	
				Stage 1 after all necessary regulatory	
				approvals have been obtained and make	
				good any resultant consequential	
10	The content of	T he sector should be a line of the	F orte and a local design of the second second	damage.	04
12.	The external	The external walls	External walls should	within the time period specified in	Stage I – I
			combustible	column 6,	monun
	levels.	combustible	components	Stage 1	Stage 2 - 3
		components	components.	Submit a written report to the OC Audit	months
		consisting of		team via email to	
		timber backings		ocaudits@customerservice.nsw.gov.au	
		and noggins which			
		form part of the		The written report required to be	
		external build up.		submitted must:	
				 be prepared by a suitably qualified and experienced person or 	
				specialist appropriate to the subject	
				areas of the building being a	
				registered fire safety engineer;	
				II) be prepared with consideration to	
				this Order and the Reasons for this	
				Uruer; and iii) datail the chooific building work	
				ni) detait the specific building WOFK	
				necessary to etiminate the sellous	

				defect and meet the specified standard. Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 after all necessary regulatory approvals have been obtained and make good any resultant consequential damage.	
13.	Services penetrating fire- resisting building elements throughout the building.	 Penetrations throughout the building have not been adequately fire-stopped, including: Openings for ductwork / exhaust fans within external walls, inspection points in fire dampers (internal walls), Services associated with the air handling systems, specifically penetrating external walls which had been 	Penetrations are to be fire-stopped.	 Within the time period specified in column 6, Stage 1 Submit a written report to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au The written report required to be submitted must: i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a registered fire safety practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard, or 	Stage 1 – 1 month Stage 2 – 3 months

		lined with fire		iv) alternatively confirm that they are	
		rated plaster		satisfied with these issues as	
		board,		highlighted in the report titled	
		• Use of flexible		"Consultants Advice with job	
		ductwork for		number P218_189" dated 14	
		services when		February 2023 issued by Design	
		located within		Confidence.	
		3m of a side /			
		rear boundary,		Stage 2	
		 Protection of pex 		Carry out the work to rectify the serious	
		pipes (no collars		defect in accordance with the written	
		installed, just		report submitted in compliance with	
		sealant).		Stage 1 after all necessary regulatory	
				approvals have been obtained and make	
				good any resultant consequential	
				damage.	
14.	Level 3 Lobby	The design of the	Exhaust system must	Within the time period specified in	Stage 1 – 1
	electrical	exhaust system	be installed in	column 6.	month
	cupboard and	has been altered	accordance with the		
	associated	during	BCA and approved	Stage 1	Stage 2 – 3
	ducting through	construction so	plans	Submit a written report to the OC Audit	months
	the lower ceiling	that the		team via email to	
	of Unit 8	installation no		ocaudits@customerservice.nsw.gov.au	
		longer complies			
		with the approved		The written report required to be	
		nlane		submitted must	
		plans.		i) be propared by a suitably gualified	
				and experienced person or	
				enocialist appropriate to the subject	
				specialist appropriate to the subject	
				areas of the building being a	
				registered life safety practitioner;	
				ii) be prepared with consideration to	
				this Urder and the Reasons for this	
				Urder; and	

	iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.
	Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 after all necessary regulatory approvals have been obtained and make good any resultant consequential damage.

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.

Matthew Whitton NSW 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 02 August 2023 issued to RNB 49 Drumalbyn Pty. Ltd. (ACN 616 250 385) & RNB Drumalbyn 49 Pty. Ltd. (ACN 616 250 661) under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
- 2. I, Matthew Whitton, have formed a reasonable belief that the Development has serious defects.
- 3. I have formed this belief after reviewing:
 - a) An inspection report dated 24 May 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 8 March 2023, 4 April 2023 and the 2 May 2023,
 - b) Construction Certificate number 180259/01 dated 16 December 2019 issued by registered certifier Ivan Boulle,
 - c) Construction Certificate number 180259/02 dated 18 July 2020 issued by registered certifier Ivan Boulle,
 - d) Construction Certificate number 180259/03 dated 19 June 2021 issued by registered certifier Ivan Boulle,
 - e) Construction Certificate number 180259/04 dated 19 June 2021issued by registered certifier Ivan Boulle,
 - f) Occupation Certificate number 180259/05 dated 28 February 2023 issued by registered certifier Ivan Boulle,
 - g) Fire Safety Engineering Report with reference number P218_198-5 (FER) LS dated 01 September 2022 issued by Design Confidence,
 - h) Consultants Advice with job number P218_198 dated 14 February 2023 issued by Design Confidence.
- 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.

Serious Defect Reference No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect
1. Fire safety C systems v f s	Car park ventilation fans are not separately switched.	The car park ventilation fans are required to operate in fire mode. Other services share the switch and are not isolated.	Failure to comply with the requirements of clause 5.5.1 and Table 4.1 of AS/NZS 1668.1:2015 which states: <i>"Clause 5.5.1</i>	In case of fire, the car park ventilation fans could fail causing further spread of fire.	
			ly share the switch and are not . isolated.	Each motor control centre that provides power and/or control to car park ventilation fans required to run in fire mode shall be provided with electrical supply from a clearly labelled dedicated main switch on the main switchboard. The power to all equipment connected to this motor control centre, other can the car park ventilation fans, shall be isolated within the motor control centre in fire mode.	
				1 able 4.1 states – 11 Car park exhaust fans	
				wiring systems shall	

Table 3 – Basis of reasonable belief as to serious defects

					-
				originate at a motor control centre that is supplied from a clearly labelled dedicated main switch, separate from those used to control the remainder of the electrical installation, but need not include fire resistant cabling.	
				12 Car park supply fans	
				Wiring systems shall originate at a motor control centre that is supplied from a clearly labelled dedicated main switch, separate from those used to control the remainder of the electrical installation, but need not include fire resistant cabling."	
2.	Waterproofing	Balcony waterproofing membrane does not extend into the balcony overflow outlets.	Moisture is not prevented from tracking under the waterproofing membrane.	Failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One Amendment 1, clause FP1.4 which states: "A roof and external wall (including openings around windows and doors) must prevent the penetration of to prevent penetration of water that could cause-	Water could penetrate under the membrane, causing degradation of the membrane and structure and enter into the units.

				 (a) Unhealthy or dangerous conditions, or loss of amenity for occupants: and (b) Undue dampness or deterioration of building elements." Clause 2.11 of AS 4654.2- 2012 which states: "The membrane shall be turned into the overflow, to prevent moisture from tracking behind the membrane." 	
3.	Fire safety systems	Lift shafts are not adequately constructed to prevent spread of fire.	There are inadequately sealed penetrations, gaps in the lift shaft exhaust plenum and an unprotected opening into the lift shaft, allowing the spread of fire from the lift shaft into other areas of the building.	There has been a failure to comply with the performance requirement of CP8 of the Building Code of Australia, which states: "Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an adequate level of performance is maintained- (a) Where openings, construction joints and the like occur; and (b) Where penetrations occur building services."	Fire could spread to adjoining areas, cause damage, injury or death.

4	Fire safety	Exhaust fans	The exhaust fails failed to	There has been a failure to	In case of fire, exhaust
	systems	are not	energise when switched to	comply with the approved	fans could fail, causing
		operational.	manual mode.	document Fire Safety	further spread of fire.
				Engineering Report	
				P218_198-5 which requires a	
				antisfy performance	
				requirements CD2 DD5 and	
				EP2 2 of the Building Code of	
				Australia which states	
				Australia, which states.	
				"CP2	
				(a) A building must have	
				elements which will, to the	
				degree necessary, avoid the	
				spread of fire —	
				(i) to exits; and	
				(ii) to sole-occupancy units	
				and public corridors; and	
				(iii) between buildings; and	
				(IV) IN a building	
				DP5	
				To protect evacuating	
				occupants from a fire in the	
				building exits must be fire-	
				isolated, to the degree	
				necessary, appropriate to —	
				(a) the number of storeys	
				connected by the exits; and	
				(D) the fire safety system	
				instatted in the building; and	
				building: and	
				bulluing, and	

	(d) the number of storeys	
	passed through by the exits;	
	and	
	(e) fire brigade intervention.	
	EP2.2	
	(a) In the event of a fire in a	
	building the conditions in any	
	evacuation route must be	
	maintained for the period of	
	time occupants take to	
	evacuate the part of the	
	building so that -	
	(i) the temperature will not	
	endanger human life: and	
	(ii) the level of visibility will	
	(ii) the level of visibility with enable the evecuation route	
	to be determined; and	
	(iii) the level of toxicity will	
	(iii) the level of toxicity with	
	(b) The partial of time	
	(D) The period of time	
	referred to in (a) must be	
	appropriate to —	
	(I) the number, mobility and	
	other characteristics of the	
	occupants; and	
	(ii) the function or use of the	
	building; and	
	(iii) the travel distance and	
	other characteristics of the	
	building; and	
	(iv) the fire load; and	

				(v) the potential fire intensity; and (vi) the fire hazard; and (vii) any active fire safety systems installed in the building; and (viii) fire brigade intervention."	
5.	Essential services	An inferior product for kitchen exhaust has been installed.	The exhaust has failed before the unit is occupied.	There has been a failure to comply with the approved plans as specified in the mechanical document titled MEC 000 Revision 8 by installing a substandard product.	Loss of amenity and use of the unit.
6.	Fire safety systems	Electrical and NBN cables are reticulating through a wall and slab without a fire rating system for the penetrations.	Penetrations must be fire stopped.	There has been a failure to comply with C3.15 of the Building Code of Australia, which states: "Where an electrical, electronic, plumbing, mechanical ventilation, air- conditioning or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with any one of	Fire could spread through the unsealed penetrations causing damage, injury or death.

				the following:	
				 (a) (b) Ventilation and air- conditioning – in the case of ventilating or air-conditioning ducts or equipment, the installation is in accordance with AS/NZS 1668.1." 	
7.	Fire safety systems	Service penetrations have not been fire-stopped.	Penetrations through fire- resisting walls must be appropriately fire-stopped.	There has been a failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One C3.15 which states: "Where an electrical, electronic, plumbing, mechanical ventilation, air- conditioning or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with any one of the following: (a) Tested systems (i) The service, building element and any protection	Fire could spread through the unsealed penetrations causing damage, injury or death.

	m	nethod at the penetration	
	ai	re identical with a	
	рі	rototype assembly of the	
	Se	ervice, building element	
	ai	nd protection method	
	W	hich has been tested in	
	a	ccordance with AS 4072.1	
	ai	nd AS 1530 4 and has	
	a	chieved the required FRI	
		r resistance to the	
		n resistance to the	
		i) It as multice with (i)	
	(1)	I) It complies with (I)	
	e	xcept for the insulation	
	CI	riteria relating to the	
	Se	ervice if —	
		(A) the service is a pipe	
		system comprised	
		entirely of metal	
		(excluding pipe seals or	
		the like); and	
		(B) any combustible	
		building element is not	
		located within 100 mm of	
		the service for a distance	
		of 2 m from the	
		nenetration: and	
		(C) combustible material	
		is not able to be located	
		within 100 mm of the	
		corvice for a distance of 2	
		m from the popetration	
		and	
		anu (D) it is not long to li	
		(D) It is not located in a	
		required exit.	

	(b) Ventilation and air-	
	conditioning — In the ca	se of
	ventilating or air-conditi	oning
	ducts or equipment the	
	installation is in accorda	nce
	with AS/N7S 1668 1	
	(a) Compliance with	
	(c) compliance with	
	Specification C3.15	
	(i) The service is a pip	e
	system comprised en	tirely
	of metal (excluding p	ipe
	seals or the like) and	is
	installed in accordan	ce
	with Specification C3	.15
	and it —	
	(A) penetrates a wa	l,
	floor or ceiling, but	not a
	ceiling required to h	ave a
	resistance to the inc	cipient
	spread of fire: and	
	(B) connects not mo	re
	than 2 fire compart	mente
	in addition to any fi	
	resisting service sha	1115;
	and (O) descent sector	
	(C) does not contair	а
	flammable or	
	combustible liquid o	or gas.
	(ii) The service is san	tary
	plumbing installed in	
	accordance with	
	Specification C3.15 a	nd
	it —	

	(A) is of metal or UPVC	
	pipe; and	
	(B) penetrates the floors	
	of a Class 5. 6. 7. 8 or 9b	
	building: and	
	(C) is in a sanitary	
	compartment separated	
	from other parts of the	
	huilding by wells with the	
	FRL required by	
	Specification C1.1 for a	
	stair shaft in the building	
	and a self-closing –	
	/60/30 fire door.	
	(iii) The service is a wire or	
	cable, or a cluster of wires	
	or cables installed in	
	accordance with	
	Specification C3.15 and	
	it—	
	(A) penetrates a wall.	
	floor or ceiling, but not a	
	ceiling required to have a	
	resistance to the incipient	
	spread of fire; and	
	(B) connects not more	
	than 2 fire compartments	
	in addition to any fire-	
	resisting service shafts	
	(iv) The cervice is an	
	aloctrical ewitch outlot or	
	the like and it is installed	
	in eccordance with	
	In accordance with	
	Specification C3.15"	

8	Fire safety	Intumescent	Intumescent fire dampers	There has been a failure to	Fire could spread
0.	systems	fire dampers	may not achieve the	comply with the performance	through the incorrectly
	oyotomo	have not been	minimum FRI for the	requirements of the Building	installed dampers
		installed in a	insulation component	Code of Australia 2016	causing damage injury
		duct-to-duct	insutation component.	Volume One C3 15 which	or death
		arrangement		states	
		and without a			
		damper		"Where an electrical	
		casing		electronic nlumbing	
		cuong.		mechanical ventilation air-	
				conditioning or other service	
				nenetrates a building element	
				(other than an external wall or	
				roof) that is required to have	
				an FRI with respect to	
				integrity or insulation or a	
				resistance to the incinient	
				spread of fire, that installation	
				must comply with any one of	
				the following:	
				(a) Tested systems	
				(i) The service, building	
				element and any protection	
				method at the penetration	
				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.	

		(ii) It complies with (i)	
		(ii) it complies with (i)	
		criteria relating to the	
		service if —	
		(A) the service is a pipe	
		system comprised	
		entirely of metal	
		(excluding pipe seals or	
		the like): and	
		(B) any combustible	
		huilding element is not	
		located within 100 mm of	
		the service for a distance	
		of 2 m from the	
		of 2 m from the	
		penetration; and	
		(C) combustible material	
		is not able to be located	
		within 100 mm of the	
		service for a distance of 2	
		m from the penetration;	
		and	
		(D) it is not located in a	
		required exit.	
		(b) Ventilation and air-	
		conditioning — In the case of	
		ventilating or air-conditioning	
		ducto or equipment the	
		installation is in accordance	
		with AS/NZS 1668.1.	
		(c) Compliance with	
		Specification C3.15	
		(i) The service is a pipe	
		system comprised entirely	
		of metal (excluding pipe	

0			T
		seals or the like) and is	
		installed in accordance	
		with Specification C3.15	
		and it —	
		(Δ) penetrates a wall	
		floor or ceiling but not a	
		coiling required to have a	
		ceiling required to have a	
		spread of fire; and	
		(B) connects not more	
		than 2 fire compartments	
		in addition to any fire-	
		resisting service shafts;	
		and	
		(C) does not contain a	
		flammable or	
		combustible liquid or gas.	
		(ii) The service is sanitary	
		plumbing installed in	
		accordance with	
		Specification C3 15 and	
		it _	
		(A) is of metal or LIPVC	
		nine: and	
		(B) populations the floors	
		(b) penetrates the noors	
		building and	
		(C) is in a conitant	
		(C) is in a same events of	
		compartment separated	
		trom other parts of the	
		building by walls with the	
		FRL required by	
		Specification C1.1 for a	
		stair shaft in the building	

				and a self-closing – /60/30 fire door. (iii) The service is a wire or cable, or a cluster of wires or cables installed in accordance with Specification C3.15 and it — (A) penetrates a wall, floor or ceiling, but not a ceiling required to have a resistance to the incipient spread of fire; and (B) connects not more than 2 fire compartments in addition to any fire- resisting service shafts. (iv) The service is an electrical switch, outlet, or the like, and it is installed in accordance with Specification C3.15"	
9.	Fire safety systems	Construction of the fire pump room does not allow safe evacuation of this part of the building.	The fire pump room should be constructed in such a way as to allow a safe route for evacuation.	There has been a failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One D1.6(b) and E1.3 which state: <i>"D1.6</i> (b) the unobstructed width of each exit or path of travel to an exit, except for doorways, must be not less than — (i) 1m;	In case of fire, safe evacuation may not be available.

				E1.3 (b) The fire hydrant system — (i) must be installed in accordance with AS 2419.1, except a Class 8 electricity network substation need not comply with clause 4.2 of AS 2419.1"	
10.	Fire safety systems	Lift doors only achieve a fire resistance level of/60/- -	The lift opening must be protected with self-closing fire doors having a fire- resistance level of/60/30.	There has been a failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One CP2 and CP8 which state: "CP2 (a) A building must have elements which will, to the degree necessary, avoid the spread of fire — (i) to exits; and (ii) to sole-occupancy units and public corridors; and (iii) between buildings; and (iv) in a building CP8 Any building element provided to resist the spread of fire must be protected, to the degree necessary, so that an	In case of fire, lift doors are inadequate to prevent the spread of fire, causing damage, injury or death.

				adequate level of performance is maintained — (a) where openings, construction joints and the like occur; and (b) where penetrations occur for building services."	
11.	Fire safety systems	All walls and columns do not achieve the appropriate fire resistance level.	The external walls do not have a fire-resistance level on both sides and only have a fire resistance level on the outside. Internal columns incorporated within internal loadbearing walls do not achieve a fire-resistance level and external loadbearing columns do not achieve a fire resistance level.	There has been a failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One CP1 and CP2 which state: "CP1 A building must have elements which will, to the degree necessary, maintain structural stability during a fire appropriate to — (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	Insufficient fire resistance fails to prevent the spread of fire, causing damage, injury or death.

				(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.	
				CP2 (a) A building must have elements which will, to the degree necessary, avoid the spread of fire — (i) to exits; and (ii) to sole-occupancy units and public corridors; and (iii) between buildings; and (iv) in a building"	
12.	Fire safety systems	External walls contain combustible components.	Combustible components in external walls should not contain combustible components to prevent the spread of fire.	There has been a failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One CP2 which states: "CP2 (a) A building must have elements which will, to the degree necessary, avoid the spread of fire—	Combustible components in external walls could hasten the spread of fire, causing damage, injury or death.

				(i) to exits; and (ii) to sole-occupancy units and public corridors; and (iii) between buildings; and (iv) in a building"	
13.	Fire safety systems	Penetrations have not been adequately fire-stopped.	Penetrations must be fire- stopped to prevent the spread of fire.	There has been a failure to comply with the performance requirements of the Building Code of Australia 2016 Volume One C3.15 which states: "Where an electrical, electronic, plumbing, mechanical ventilation, air- conditioning or other service penetrates a building element (other than an external wall or roof) that is required to have an FRL with respect to integrity or insulation or a resistance to the incipient spread of fire, that installation must comply with any one of the following: (a) Tested systems (i) The service, building element and any protection method at the penetration are identical with a prototype assembly of the service, building element and protection method	Fire could spread through the unsealed penetrations causing damage, injury or death.

	147	biab bas been tested in	
	vv		
	ac	ccordance with AS 4072.1	
	ar	nd AS 1530.4 and has	
	ac	chieved the required FRL	
	or	r resistance to the	
	in	cipient spread of fire.	
	(ii	i) It complies with (i)	
	e	xcept for the insulation	
	Cr	riteria relating to the	
		arvice if	
	36	(Λ) the convice is a pipe	
		(A) the service is a pipe	
		system comprised	
		entirely of metal	
		(excluding pipe seals or	
	1	the like); and	
		(B) any combustible	
		building element is not	
		located within 100 mm of	
	1	the service for a distance	
		of 2 m from the	
		penetration: and	
		(C) combustible material	
		is not able to be located	
		within 100 mm of the	
		service for a distance of 2	
		m from the popetration:	
		and	
		anu (D) it is not located in a	
		(D) It is not located in a	
		required exit.	
	(b) Ve	entilation and air-	
	cond	litioning — In the case of	
	venti	ilating or air-conditioning	
	ducts	s or equipment, the	

		installation is in accordance	
		with AS/NZS 1668.1.	
		(c) Compliance with	
		Specification C3.15	
		(i) The service is a pipe	
		system comprised entirely	
		of metal (excluding pipe	
		seals or the like) and is	
		installed in accordance	
		with Specification C3.15	
		and it —	
		(A) penetrates a wall	
		floor or ceiling but not a	
		ceiling required to have a	
		resistance to the incinient	
		sproad of fire; and	
		(P) connects not more	
		(b) connects not more than 2 fire compartments	
		in addition to any fire	
		madultion to any me-	
		resisting service sharts,	
		and (C) de se met comtain e	
		(C) does not contain a	
		flammable or	
		combustible liquid or gas.	
		(II) The service is sanitary	
		plumbing installed in	
		accordance with	
		Specification C3.15 and	
		it —	
		(A) is of metal or UPVC	
		pipe; and	
		(B) penetrates the floors	
		of a Class 5, 6, 7, 8 or 9b	
		building; and	

				 (C) is in a sanitary compartment separated from other parts of the building by walls with the FRL required by Specification C1.1 for a stair shaft in the building and a self-closing – /60/30 fire door. (iii) The service is a wire or cable, or a cluster of wires or cables installed in accordance with Specification C3.15 and it – (A) penetrates a wall, floor or ceiling, but not a ceiling required to have a resistance to the incipient spread of fire; and (B) connects not more than 2 fire compartments in addition to any fire- resisting service shafts. (iv) The service is an electrical switch, outlet, or the like, and it is installed in accordance with Specification C3.15" 	
14.	Fire safety	The installed	Exhaust system must be	There has been a failure to	In case of fire, exhaust
	systems	exhaust system no longer complies with	installed in accordance with the BCA and approved plans.	comply with the performance requirements of the Building Code of Australia 2016	fans could fail, causing further spread of fire.

	ducts or equipment, the installation is in accordance with AS/NZS 1668.1."
	And the relevant approved plans being drawings prepared by PTC Consulting Engineers titled "Mechanical Services" Revision 3 dated 30 March 2020 with drawing numbers 000, 001, 101, 102, 103, 104, 105, 106, 107.

Consideration of written representations

- 5. On 5 June 2023, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Owners Corporation and Certifier. The served parties were invited to provide written representations relating to the Order to the Department by 26 June 2023. The following documents were received:
 - a) The Developer made representations on 7 June 2023 and 23 June 2023;
 - b) Michael Hay, architect made representations on 7 June 2023, and
 - c) Ivan Boulle, Certifier for the development made representations on 6 June 2023.
- 6. The representations of the architect and Certifier were that the Developer was committed to completing the works and is working actively with trades and engineers to facilitate resolution of the items on the list.
- 7. The Developer's representations attach a schedule with reference to the defects identified in the Audit Report and corresponding item in the draft Order. The schedule makes representations about the serious defects identified, on each occasion providing an item status.

- 8. The Developer has also attached evidence in relation a number of the serious defects, including reports provided by relevant thirdparty providers. I have considered those reports as part of my considerations under s 47 of the RAB Act.
- 9. Following issue of the draft Order, I am satisfied five serious defects included on the draft Order have been rectified. Accordingly, the final Order does not include those items. The below table sets out the representations made by the developer and my consideration of those representations. The item numbering corresponds with the numbering in Tables 1, 2 and 3 of the final Order, rather than the draft Order previously served.

Table 4 – Consideration of written representations

Serious defect reference No.	Representation	Consideration
1.	The Developer has clarified the correct operation of the system with a description provided by the mechanical engineer.	The defect has not been rectified. The car park ventilation is not separate from the remainder of the electrical installation.
2.	The Developer has instructed the Builder to rectify. Developer submits that this has occurred but has not provided certification.	There is insufficient evidence that the defect has been rectified. Accordingly, I am not satisfied the serious defect has been rectified.
3.	Geminair have indicated that full rectification cannot be completed until the non-return damper has been replaced.	This has been partly satisfied but works remain to be completed at the date of this Order. Accordingly, I am not satisfied that the defect has not been rectified.

4.	During inspection by Geminair, it was found that the isolator for the fan was turned to the off position by the lift contractor.	The representations have not rectified the serious defect. Turning on the fan does not rectify the serious defect as set out. If the fan can be easily turned off, the installation is in breach of AS 1668.1:2015 clause 4.10.4 Isolation Switches which provides: "Any switch that is capable of isolating power in fire mode associated with fans required to operate during a fire shall be lockable and shall be fitted with a prominent warning label as follows: WARNING: THIS SWITCH SHALL BE LOCKED IN THE 'ON' POSITION AS THE FAN IS REQUIRED TO OPERATE DURING A FIRE."
5.	The Developer submits that the flexible ductwork has been replaced with semi-rigid ductwork. However, the Geminair report dated 6 June 2023 states "Repair the flexible duct, however, it is recommended that the flexible duct specified in mechanical document MEC 000 Revision 8 is installed in all apartments. Flexible duct has been repaired".	The flexible duct has been repaired but the installation of ductwork is not in accordance with the approved plans. Accordingly, I am not satisfied that this serious defect has been rectified.
6.	The Developer indicates that the services have been provided with dampers or fire seals as required, and has attached evidence in support.	I have considered the evidence provided and note that the fire dampers are not visible in the photos, the break away joint is not visible on FD-L3-102 and on inspection, the damper casings and break away joints are not visible on FD-L3-101. It is also noted that the fire safety practitioner will be reinspecting at the request of the Developer. On this basis I do not have sufficient evidence that the serious defect has been rectified.
7.	The Developer submits that the requested information relating to wall penetrations in the switchboard room has been provided, and copies will be uploaded to the NSW	I have not yet received sufficient evidence that this serious defect is rectified.

	Planning Portal. The fire safety practitioner has been requested to conduct a reinspection.	
8.	 The Developer indicates they have provided documentation and will upload same to the NSW Planning Portal. The following documents were included and reviewed: Geminair report dated 6 June 2023 Schedule of photographs provided by Geminair, undated Warrington Fire fire assessment report IFD44-LL and IFD44C-LL intumescent dampers, report no FAS2000229 rev R1.1 dated 25 June 2021 CSIRO report Fire resistance of the Kilargo IFD44-LL damper range in accordance with AS1530.4-204 and AS4072.1-2005 dated 17 May 2022 Approved Plans showing location of fire dampers last edited 6 June 2023 Invoice from Airfoil Manufacturing P/L dated 11 April 2022 indicating purchase of intumescent fire dampers. 	The serious defect identifies that the fire damper is not installed in the duct and may not achieve the required insulation fire resistance level. The supporting documents provided by the contractor do not address this issue and in fact support the conclusion reached. The CSIRO report does not consider the dampers as a single cell installation without ductwork, but rather is applicable to dampers installed within ducts (see "6 Direct Field of Application of Results" which states "The results of this report are applicable to dampers within ducts"). The Warrington Fire Report further supports this as there has not been a type tested installation in the report matching how the damper has been installed on site.
9.	Developer submits performance solution was lodged as a Building Information Certificate with Woollahra Council on 2 June 2023 and is ongoing.	As the serious defect is marked as ongoing, it has not yet been rectified.
10.	Developer submits performance solution was lodged as a Building Information Certificate with Woollahra Council on 2 June 2023 and is ongoing.	As the serious defect is marked as ongoing, it has not yet been rectified.

11.	Developer submits performance solution was lodged as a Building Information Certificate with Woollahra Council on 2 June 2023 and is ongoing.	As the serious defect is marked as ongoing, it has not yet been rectified.
12.	Developer submits performance solution was lodged as a Building Information Certificate with Woollahra Council on 2 June 2023 and is ongoing.	As the serious defect is marked as ongoing, it has not yet been rectified.
13.	The Developer submits that all items in the fire engineer (Design Confidence) report dated 14 February 2023 have been attended to. The fire engineer has agreed to reinspect.	Based on their response to this serious defect, the fire penetrations are still not adequately installed. There is no access for maintenance other than inspecting from the external wall at height, the damper labels do not indicate the model of fire damper installed, and there appears to be a spigot plenum attached to the fire damper without a break away joint. These are not in accordance with AS1682.2:2015 clauses 6.1(d), 7.6.2(e) and Appendix A (f). Accordingly, I am not satisfied this serious defect has been rectified.
14.	The Developer submits that the Builder has been instructed to rectify and will install a fire-rated separation to the riser. The Developer further submits that the ceilings are not required to be fire-rated and the services penetrating the fire-rated walls have been provided with dampers or fire seals as required.	The Developer's representations were not accompanied by evidence as set out. Accordingly I cannot be satisfied that the serious defect has been rectified.

10. For the above reasons, I am satisfied that five serious defects identified in the draft Order have been rectified and these serious defects have not been included.

11. For the above reasons, I am not satisfied that the serious defects set out in Tables 1, 2 and 3 have not been rectified for the reasons provided in Table 4. Accordingly, I have a reasonable belief that the building has serious defects and am satisfied that it is appropriate to issue the Order.

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

- 12. 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.
- 13. 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.
- 14. I am of the view that the periods above for Defect 1 through 14 (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*).

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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).