

Attn: Proper Officer
19 Ralph Street Pty Ltd (ACN 617 368 886)
321 Riley St
Surry Hills NSW 2010

Service: By registered post and by email

21 March 2023

Building Work Rectification Order

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

19 Ralph Street Pty Ltd (ACN 617 368 886) is being given this Building Work Rectification Order (Order) in relation to 19 Ralph St Alexandria (Lot 1 DP 80272) (the Development).

19 Ralph Street Pty Ltd (ACN 617 368 886) is required to cause building work to be carried out to remediate the potential serious defects as set out in below in this Order.

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

Background

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department or their authorised delegate has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential 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. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.
5. **19 Ralph Street Pty Ltd (ACN 617 368 886)** is the developer of the residential apartment building known as **19 Ralph St Alexandria (Lot 1 DP 80272) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development comprises of 6 stories of residential apartments with the bottom storey being of mixed use commercial and car parking. The Act applies to building work at the Development.
7. On 14 June 2022, 20 October 2022 and 1 December 2022, authorised officers conducted a lawful inspection of the Development.
8. On 31 January 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier. The Developer, Local Council and Certifier were invited to provide written representations relating to the Order to the Department by 7 February 2023. The Owners Corporation was invited to provide written representations relating to the Order to the Department by 21 February 2023.
 - a. On 14 February 2023 written submissions were received from the Developer.
 - b. On 14 February 2023 written submissions were received from the representative of the Owners Corporation.

Requirements in relation to Serious Defects

9. I, Mr Matthew Whitton, under section 33 of the Act, require you **19 Ralph Street Pty Ltd (ACN 617 368 886)** 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 Number | 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 from the date of issue of this order |
|---------------------------------|------------------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| 1 | Unit 501R, Unit 502R and Unit 102S balconies | Pooling of water on waterproofing membrane and delamination of membrane | <ul style="list-style-type: none"> i. Adjust plant, equipment and ancillary fittings to ensure continued operation throughout the remedial works. ii. Survey the roof top substrates to determine high / low spots. iii. Prepare the substrate by abrasive means to remove contaminants and promote a compliant surface for adhesion. iv. Top low spots and locally grind to ensure the substrate directs surface water to drainage outlets. v. Remove sliding door and subsills and add termination angle along the back face. vi. Prepare the substrate and apply new waterproofing system including all termination detailing, angles, flashings, capping, etc. vii. Re – position and secure the roof top plant, equipment and ancillary fittings and re-commission to original condition. viii. Make good any consequential damage. <p>Rectification of the waterproofing defects in accordance with the BCA Volume One and Australian Standard 4654.2 Waterproofing membranes for external above ground use.</p> | 2 months |
| 2 | Fire pump room | Fire pumpset baseplate extends beyond the concrete plinth | <ul style="list-style-type: none"> i. Protect adjoining areas and pump set. ii. Scabble the side of the plinth to create a mechanical key for the new mortar. iii. Dowel in reinforcement. iv. Place non-shrink mortar with a f'c of 32MPa or above to extend the dimension of the plinths to achieve the minimum requirements. v. Make good any consequential damage. <p>Rectification in accordance with the BCA Volume One, Australian Standard AS2941-2013 Fixed fire protection installations – Pumpsets systems and Australian Standard AS3600 Concrete structures.</p> | 1 month |
| 3 | Unit 502R external wall living room bounding balcony | External cladding removed | <ul style="list-style-type: none"> i. Remove temporary cladding. | 1 month |

| | | | | |
|---|-----------|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| | | | ii. Reinstall weatherproofing and affix cladding panels as per the manufacturer's specifications. iii. Make good any consequential damage. Rectification in accordance with the approved plans. | |
| 4 | All units | Gas installation does not have an accessible gas isolation valve | i. Protect adjoining areas. ii. Create an opening in the plasterboard enclosing the fire place installation and install a service opening such that the isolation valve can be readily accessed. iii. Inspect the isolation valve, and ensure it is operational. iv. Reinstall and make good any consequential damage. Rectification in accordance with the BCA Volume One and Australian Standard AS/NZS 5601.1:2013 Gas installations, Part 1: General Installations. | 2 months |

10. I, Mr 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 **19 Ralph Street Pty Ltd (ACN 617 368 886)** 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 Number | Location of Serious Defect | Description of Serious Defect | Specified standard of building work | Requirement | Time for compliance with Requirement from the date of issue of this order |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| 5 | 501R, 501S, 502R, 502S, 301S All windows Note: 501S and 502S are known as 5.3 and 5.4 on the approved plans. | Water entry via windows | Rectify the windows such that they do not allow the entry of water | i. Undertake intrusive investigations to determine the cause of the leak. ii. Provide a report by a façade engineer which outlines the findings of the investigations and the recommended repair methodology. | 3 months |
| 6 | 501R above the Juliette balcony | Water leak through the structural slab | Rectify the rooftop waterproof membrane such that it no longer allows the entry of water | i. Undertake intrusive investigations to determine the cause and location of the leak. Investigations to include a flood test of the roof and planter boxes in accordance with Australian Standard AS4654.2 Waterproofing membranes for external above ground use. ii. Provide a report by a suitably qualified expert which outlines the findings of the investigations and the recommended repair methodology. | 2 months |
| 7 | 102R Bedroom | Water entry through external façade. | Rectify the external facades such that they no longer allow the entry of water | i. Undertake intrusive investigations to determine the cause of the leak. | 1 month |

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| | | | | ii. Provide a report by a façade engineer which outlines the findings of the investigations and the recommended repair methodology. | |
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Duration of this Order

- 11. This Order remains in force until it is revoked by the Secretary
- 12. 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 Building Work Rectification Order ("Reasons for Order") are with respect to the Order dated 15 March 2023 issued to **19 Ralph Street Pty Ltd (ACN 617 368 886)** 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 12 January 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 1 December 2022;
 - b. The report titled "RE: Apt 1.02/2 Shirley Street Alexandria NSW 2015", dated 1 December 2022 by Wardell Building Pty Ltd;
 - c. Architectural Drawing titled "Wall Types" - A-0005, revision: G, dated 17-07-2020 by SJB Architects;
 - d. Architectural Drawing titled "Elevations - East & West" (A-0502), revision: G, dated 24-08-2020 by SJB Architects.
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 &2 of the Order.

Table 3 – basis of reasonable belief as to serious defects

| Serious Defect Reference | Location | Building element | Defect | Reason why defect is a serious defect | Applicable approved plan, Code or Australian Standard | Consequences of serious defect |
|--------------------------|----------------------------------------------|------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| 1 | Unit 501R, Unit 502R and Unit 102S balconies | Waterproofing | Insufficient fall to permit water to drain and non-compliant vertical termination of membrane | <p>The failure to provide adequate falls and insufficient vertical termination demonstrates a failure to construct in accordance with Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, Section 2 Design and installation, 2.5.2 Falls which states:</p> <p><i>"Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be retained on the finished surface with the exception of residual water remaining due to surface tension.</i></p> <p><i>The fall shall be in the structural substrate, or formed by a screed over the structural substrate.</i></p> <p><i>NOTE: Falls for surface drainage should be no flatter than 1 in 100."</i></p> <p>And Section 2 Design and installation, 2.8 Termination of Membranes, 2.8.1 Upward terminations, 2.8.1.1 Height which states:</p> <p><i>"Where the membrane termination is to prevent water entry, the finished height of the membrane above the finished surface level shall be sufficient to prevent water,</i></p> | <ol style="list-style-type: none"> i. Australian Standard 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation. ii. National Construction Code, Volume 1, 2019 Amendment 1 FP1.4 Weatherproofing | Water entry into the Building can result in degradation of the structure of the Building |

| | | | | | | |
|---|------------------------------------------------------|--------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | | <i>including wind driven, flowing over the top of the membrane.”</i> | | |
| 2 | Fire pump room | Fire Safety System | Fire pumpset baseplate extends beyond the concrete plinth | <p>The installation of the fire pump baseplate which extends past the plinth demonstrates a failure to comply with the Australian Standard AS2941-2013 Fixed fire protection installations – Pumpsets systems, Section 11 Sitting and installation, 11.7 Plinths, which states:</p> <p><i>“For fixing purposes, the concrete plinth shall extend 150 mm past the edge of the baseplate on all four sides.</i></p> | i. Australian Standard AS2941-2013 Fixed fire protection installations | The pump may not work efficiently to operate the sprinkler system in the event of a fire. |
| 3 | Unit 502R external wall living room bounding balcony | Building enclosure | External cladding removed and replaced with temporary covering | <p>The failure to reinstate the cladding demonstrates a failure to construct in accordance with the approved Architectural Drawing titled "Elevations - East & West" (A-0502), revision: G, dated 24-08-2020 by SJB Architects, which shows that the external walls of Unit 502 are to be clad with façade type “CL1” which is the lightweight faux timber cladding</p> | <p>i. National Construction Code, Volume 1, 2019 Amendment 1 FP1.4 Weatherproofing</p> <p>ii. the approved Architectural Drawing titled "Elevations - East & West" (A-0502), revision: G, dated 24-08-2020 by SJB Architects, which shows that the external walls of Unit 502 are to be clad with façade type “CL1”</p> | Water entry into the Building can result in degradation of the structure of the Building |
| 4 | All units | Plumbing | Gas isolation valve is inaccessible | <p>The omission of an accessible isolation gas valve to the fireplaces demonstrates a failure to comply with Australian Standard AS/NZS 5601.1:2013 Gas installations, Part 1: General Installations, Section 6 Means of compliance – installing gas appliances, 6.6 Gas appliance connection, clause 6.6.3 Means of isolation which states:</p> <p><i>“A means of isolation shall be provided on the inlet connection of an appliance, in accordance with Table 6.4.</i></p> <p><i>The means of isolation shall be accessible for operation...”</i></p> | i. Australian Standard AS/NZS 5601.1:2013 Gas installations, Part 1: General Installations, | No access to gas isolation valve will result in the inability to turn off the gas should it be required in an emergency or maintenance. |
| 5 | 501R, 501S, 502R, 502S, 301S All windows | Building enclosure | Water entry into habitable space | <p>Water entering a habitable space demonstrates a failure to comply with Performance Requirement FP1.4 under Section F Health and Amenity, Part F1 Damp and Weatherproofing, FP1.4 which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> | i. National Construction Code, Volume 1, 2019 Amendment 1 FP1.4 Weatherproofing | The absence of measures to exclude water from the habitable spaces has caused unhealthy and dangerous conditions for the residents as the habitable space is not designed to be wet |

| | | | | | | |
|---|-----------------------------|--------------------|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | | <i>(b) undue dampness of deterioration of building elements.”</i> | | |
| 6 | 501R above Juliette balcony | Waterproofing | Water leak through the structural roof slab | <p>Water entering a habitable space demonstrates a failure to comply with Performance Requirement FP1.4 under Section F Health and Amenity, Part F1 Damp and Weatherproofing, FP1.4 which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) undue dampness of deterioration of building elements.”</i></p> | i. National Construction Code, Volume 1, 2019 Amendment 1 FP1.4 Weatherproofing | The absence of measures to exclude water from the balconies has caused unhealthy and dangerous conditions for the residents as the balcony space is not designed to be wet |
| 7 | 102R Bedroom | Building enclosure | Water entry through external façade. | <p>Water entering a habitable space demonstrates a failure to comply with Performance Requirement FP1.4 under Section F Health and Amenity, Part F1 Damp and Weatherproofing, FP1.4 which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) undue dampness of deterioration of building elements.”</i></p> | i. National Construction Code, Volume 1, 2019 Amendment 1 FP1.4 Weatherproofing | The absence of measures to exclude water from the bedroom has caused unhealthy and dangerous conditions for the resident as the bedroom is not designed to be wet |

Consideration of written representations

13. On 31 January 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Owners Corporation and Certifier. The Developer, Local Council and Certifier were invited to provide written representations relating to the Order to the Department by 7 February 2023. The Owners Corporation was invited to provide written representations relating to the Order to the Department by 21 February 2023.

- a. On 14 February 2023 written submissions were received from the Developer.
- b. On 14 February 2023 written submissions were received from the representative of the Owners Corporation.

14. The Developer provided me with a written submission dated 14 February 2023 which included the following information **(Developer Representations)**.

- a. The Developer acknowledges that there are several outstanding defects including those included in the Order
- b. The principal contractor, engaged as the builder of the Development was placed into administration in June 2022 after being paid in full and was at the time was attending to Defects at the Development

- c. A contractor was engaged by the Developer to attend and assess the outstanding defects at the Development
- d. A cost estimate was provided by the contractor to rectify the Defects. The value of the rectification of the Defects was \$256,000.00
- e. On 2 February 2023 the Owners Corporation consented to the release of the Strata Bond to a value of \$288,583.00
- f. The Developer has suffered a massive financial loss as a result of the Development and the release of the bond will allow the Building Work to be undertaken to fix the defects.

15. I have reviewed the Developer representations. In relation to the issues raised in the Developer representations, I make the following observations:

- a. I acknowledge the Strata Bond has been released to Owners Corporation to undertake Building Works to rectify the Defects in the Building
- b. I have considered the total bond value of \$288,583.00 to undertake the building work contained within the Order
- c. I am of the view that \$288,583.00 is not sufficient amount to undertake the Building work along with the requirement to provide particulars of Building Work required to meet a standard.

16. The Owners Corporation provided me with a written submission dated 14 February 2023 which included the following information **(Owner Corporation Representations)**.

- a. There are defects in the common property of the Development
- b. The Owners Corporation and the Developer have agreed that the whole of the Bond is to be released pursuant to Section 209(1)(b) of the *Strata Schemes Management Act 2015*

17. I have reviewed the Owners Corporation representations. In relation to the issues raised in the Owners Corporation representations, I make the following observations

- a. I have considered the fact that there was consent to release the Strata Bond by the Owners Corporation
- b. I am of the view that \$288,583.00 is not sufficient to undertake the Building work along with the requirement to provide particulars of Building Work required to meet a standard.

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

- 18. I am of the view that the periods of time listed above for Defect 1 through 7 (inclusive) is a reasonable period 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.
- 19. 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/Australian Standards 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.
- 20. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defects.

Attachment A

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

3 Definitions

(1) In this Act—

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

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

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

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

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

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

building work—see section 5.

building work rectification order—see section 33.

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

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

Department means the Department of Customer Service.

developer—see section 4.

expected completion amendment notice—see section 8.

expected completion notice—see section 7.

expected date—see section 7(2).

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

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

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

prohibition order—see section 9.

rectification bond—see section 28.

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

Secretary means the Secretary of the Department.

serious defect, in relation to a building, means—

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

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

stop work order—see section 29.

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

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

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

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

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

4 Meaning of “developer”

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

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

6 Act applies only to residential apartment building work

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

6 Building elements

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

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

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

(3) In this section—

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

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

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