



Attn: Proper Officer
Mentmore 313 Pty Limited (ACN 606 784 267)
Suite 204, 460 Church Street
Parramatta NSW 2150

Service: By registered post and by email

21 June 2023

Building Work Rectification Order

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

Mentmore 313 Pty Limited (ACN 606 784 267) is being given this Building Work Rectification Order (Order) in relation to address 33-37 Mentmore Ave Rosebery NSW 2018 (Lot 3337 DP 628724).
Mentmore 313 Pty Limited (ACN 606 784 267) is required to cause building work to be carried out to remediate the serious defects as set out in below in this Order.

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

Background

1. The Department of Customer Service (**the Department**) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (**the Act**).
2. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious defect.
3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines the term “building element” by reference to the *Design and Building Practitioners Act 2020* (**DBP Act**). Section 4 of the Act defines the term “developer”. Section 6 of the Act provides the building work to which the Act applies. Relevant excerpts from sections 3, 4 and 6 of the Act and section 6 of the DBP Act are **Attachment A** to this order.
4. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. **Mentmore 313 Pty Limited (ACN 606 784 267)** is the developer of the residential apartment building known as ‘**The Laneways**’ **33-37 Mentmore Ave Rosebery NSW 2018 (Lot 3337 DP 628724) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development is a class 2 and class 7a 5-storey residential apartment building consisting of 4 separate buildings of 118 units with underground carparking. The Act applies to building work at the Development.
7. On 17 February 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in respect of Serious Defects

8. 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 **Mentmore 313 Pty Limited (ACN 606 784 267)** do the things specified in column 5 of Table 1 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 1:

Table1: 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
1.	Ground floor masonry wall and slab junctions in Blocks 1, 2, 3 and 4. Ground floor planter box to floor junctions.	Inadequate substrate preparation causing cracks in the waterproof membrane	Ensure the slab does not allow water to enter the building.	Rectify the building in accordance with the “Membrane Inspection & Rectification Report” by Waterproofing Assurance, dated 25 April 2023 and drawings. Rectify any consequential damage. All works to comply with the BCA Volume One and AS 4654.1 & AS4654.2.	3 months
2.	Rooftop terrace hot water services enclosure on Block 1	Mechanical fixings penetrating the waterproof membrane are not sealed	Ensure mechanical fixings that penetrate the membrane are sealed	Stage 1 - Submit a written report and drawings prepared for waterproofing to metal fixture to 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, being a waterproofing expert;	Stage 1 – 1 month Stage 2 - 2 months

				<ul style="list-style-type: none"> iii. be prepared with consideration to this Order and the Reasons for this Order; iv. be prepared with consideration to waterproofing design and installation specifications; and v. detail the specific building work necessary to meet the specified standard. <p>Stage 2 – Provide waterproof membrane in accordance with the report and drawings provided at stage 1. Rectify any consequential damage.</p> <p>All works to comply with the BCA Volume One and AS 4654.1 & AS4654.2.</p>	
3.	Masonry walls throughout whole of property	No visible flashing protruding or flush with the masonry wall	Ensure flashing is installed throughout masonry walls	<p>Stage 1 - Submit a written report and drawings prepared for cavity wall flashing to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced person or specialist, being a waterproofing expert and façade engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; 	<p>Stage 1 – 1 month</p> <p>Stage 2 – 6 months</p>

				<ul style="list-style-type: none"> iii. be prepared with consideration to cavity wall flashing design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. <p>Stage 2 – Provide the cavity wall flashing in accordance with the report and drawings provided at stage 1. Rectify any consequential damage.</p> <p>All works to comply with the BCA Volume One and AS 4654.1, AS4654.2 and AS3700.</p>	
4.	Basement car park ramp masonry wall on ground level	Brick wall is overhanging from the slab edge	Ensure brick wall is adequately supported so it does not collapse or crack	<p>Stage 1: Submit a written report and drawings prepared for the basement car park ramp wall to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced structural/remedial engineer ii. assess the bearing capacity of the wall in accordance with AS3700 and compare with the required capacity. 	<p>Stage 1 – 1 month</p> <p>Stage 2 – 2 months</p>

				<ul style="list-style-type: none"> iii. be prepared with consideration to this Order and the Reasons for this Order; and iv. detail the specific building work necessary to eliminate the serious defect. <p>Stage 2: Repair the wall in accordance with the report recommendations in Stage 1. Rectify any consequential damage.</p> <p>All works to comply with the BCA Volume One and AS3700 Masonry structures.</p>	
5.	Level 2 balconies with brick balustrades	Parapet wall was constructed using 230mm clay bricks without adequate reinforcement or stiffeners	Install brick balustrade with adequate reinforcement	<p>Stage 1 - Submit a written report which assesses the existing structural capacity of the brick balustrade and the steps required to increase its capacity to meet the minimum barrier loads nominated in AS1170.1 The report must be submitted to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced person or specialist, being a structural engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; 	<p>Stage 1 – 1 month</p> <p>Stage 2 – 4 months</p>

				<ul style="list-style-type: none"> iii. be prepared with consideration to the required specifications; and iv. detail the specific building work necessary to meet the specified standard. <p>Stage 2 – Reinforce the balustrades in accordance with the stage 1 report. Rectify any consequential damage.</p> <p>All works to comply with the BCA Volume One and AS3700 Masonry structures.</p>	
6.	Staircase 4 in Block 4	The waist slab of the staircase is too thin	Ensure staircase waist thickness is sufficient to meet loads	<p>Stage 1 - Submit a written report and which investigates the existing structural capacity of the stairs and the steps required to increase its capacity to meet the loads nominated in AS1170.1 The report must be submitted to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced person or specialist, being a structural engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to the specifications; and 	<p>Stage 1 – 1 month</p> <p>Stage 2 – 3 months</p>

				<p>iv. detail the specific building work necessary to meet the specified standard.</p> <p>Stage 2 – Reinforce the stairs in accordance with the stage 1 report. Rectify any consequential damage.</p> <p>All works to comply with the BCA Volume One and AS3600 Concrete structures.</p>	
7.	Staircase 4 in block 4	Plastic formwork in the staircase wall is overhanging the wall below	Ensure there is no vertical misalignment of the wall	<p>Stage 1 - Submit a written report and which investigates the existing structural capacity of the walls and determines the magnitude of the eccentric loading on the wall below. Provide a specification to reinforce and/or rectify the wall to increase its ability to support the eccentric loading. The report must be submitted to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i. be prepared by a suitably qualified and experienced person or specialist, being a structural engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. rely on as-built information which has been verified, i.e., it cannot 	<p>Stage 1 – 1 month</p> <p>Stage 2 – 3 months</p>

				<p>assume the arrangement of the existing wall via construction issue drawings;</p> <p>iv. be prepared with consideration to the specifications; and</p> <p>v. detail the specific building work necessary to meet the specified standard.</p> <p>Stage 2 – Carry out the works in accordance with the stage 1 report. Rectify any consequential damage.</p> <p>All works to comply with the BCA Volume One and AS3600 Concrete structures.</p>	
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Duration of this Order

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

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



Matthew Whitton
Assistant Building Commissioner
Building 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 21 June 2023 issued to **Mentmore 313 Pty Limited (ACN 606 784 267)** 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 7 March 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 17 February 2023;
 - b) “Membrane Inspection & Rectification Report” by Waterproofing Assurance dated 25 April 2023.
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.

Table 2 – Basis of reasonable belief as to serious defects

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.	Waterproofing	Cracks in the waterproof membrane	The substrate was not prepared sufficiently causing cracks and voids to appear on waterproofing of external masonry.	“Membrane Inspection & Rectification Report” by Waterproofing Assurance, dated 25 April 2023. Australian Standard 4654.2-2012 Waterproofing	Water can enter the habitable areas and cause dampness and deterioration of the building.

				<p>membranes for external above-ground use, Part 2: Design and installation, Section 2 Design and Installation, Clause 2.5.3.1 Fully bonded or liquid-applied, which states:</p> <p><i>“The preparation of the substrate for fully bonded or liquid-applied membranes shall result in the surface of the substrate being smooth, without protrusions, voids or formwork distortions, and clean, dry, and free from dust and contamination.”</i></p> <p>The inadequate waterproofing to ground floor masonry wall and slab junctions demonstrates a failure to comply with the BCA Volume 1, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing, which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must</i></p>	
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				<p><i>prevent the penetration of water that could cause-</i></p> <ul style="list-style-type: none"> a. <i>Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> b. <i>Undue dampness or deterioration of building elements."</i> 	
2.	Waterproofing	Mechanical fixings penetrating the waterproof membrane are not sealed	The failure to seal the area around the penetrations allows water to penetrate the roof and enter habitable areas of the building.	<p>Australian Standard 4654.2-2012, Waterproofing Membranes for External Above Ground Use, Section 2 Design and Installation, 2.8 Termination of Membranes, 2.8.4. Penetrations, which states:</p> <p><i>"Any fixing that penetrate the membrane shall be sealed. The sealant shall be compatible with the surface material. Where backing rods are used to support the sealant, they shall be a minimum of 12mm."</i></p> <p>And</p> <p>Australian Standard 4654.2 appears as a standard</p>	A breach in the membrane will lead to water ingress into habitable areas and result in affecting the health and amenity of the occupants due to undue dampness or deterioration of building elements.

				<p>referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Deemed-to-Satisfy provision F1.4 External above ground membranes, which states:</p> <p><i>“Waterproof membranes for external above ground use must comply with AS4654 Parts 1 and 2.”</i></p> <p>And</p> <p>Deemed-to-Satisfy provision F1.4 appears as a standard referenced in the BCA Volume One, Section F Health and Amenity, Part F1 Damp and Weatherproofing, Performance Requirement FP1.4 Weatherproofing, 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 - (a) unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p>	
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				<i>(b) undue dampness or deterioration of building elements."</i>	
3.	Building enclosure	No visible flashing protruding or flush with the masonry wall	Water is not directed away from the masonry, which will cause water to migrate into the habitable areas.	<p>Australian Standard AS3700:2018 Masonry Structures, Section 12 Construction, 12.4.16 Damp-proof course and flashing (DPC), which states:</p> <p><i>"... Flashings, including overflashings, shall be built-in with projections that are of sufficient size and orientation to direct the moisture from the masonry in the required manner. "</i></p>	The lack of a DPC and failure to provide a projection in the flashing will cause water to migrate into the habitable areas causing risk to the health and amenity of the occupants and undue dampness or deterioration of building elements.
4.	External load bearing component of a building	Brick wall is overhanging from the slab edge	The amount of overhang present in a load bearing wall is excessive and means the wall is at risk of collapse.	<p>Australian Standard 3700-2018 Section 12 Construction, 12.5 Tolerance in Masonry 12.5.1 General, which states:</p> <p><i>"All masonry shall be built to the specified dimensions within the structural tolerance given in table 12.1 - Tolerance in Masonry Construction."</i></p>	The wall could collapse, causing damage to the building, structural compromise, and injury or death to occupants.

				<p>Australian Standard 3700-2018 Section 12 Construction, 12.5 Tolerance in Masonry, Table 12.1 item (b), which states:</p> <p><i>“Relative displacement between loadbearing walls in adjacent storeys intended to be in vertical alignment : +/- 10 mm”</i></p>	
5.	External load bearing component of a building	Parapet wall was constructed using 230mm clay bricks without adequate reinforcement or stiffeners	The failure to provide adequate reinforcement means that the wall may collapse when load is applied.	<p>Australian Standard AS/NZS1170.1 - 2002 - Structural design actions – Permanent, imposed, and other actions and the following:</p> <p>Section 1 - Scope and General, 1.1 Scope which states: <i>“This Standard sets out requirements for establishing the minimum dead, live, wind, and snow loads, as well as load combinations to be used in the limit state design of structures and members.”</i></p> <p>Section 2 - Loads and Load Combinations for Strength, Stability and Serviceability for Limit States Design and</p>	The wall could collapse, causing damage to the building, structural compromise, and injury or death to occupants.

				<p>the following, 2.1 Loads and Other Actions which states: <i>"The design of a structure for strength, stability and serviceability shall take account of appropriate action effects directly arising from the following loads: Dead, live and wind loads specified in AS1170.1-2002 and AS1170.2-2002."</i></p> <p>Section 3 - Imposed Actions, 3.6 Barriers which states: <i>"Barriers, including parapets, balustrades and railings, together with members and connections that provide structural support, shall be designed to sustain the imposed actions given in Table 3.3."</i></p>	
6.	Internal load bearing component of a building	The waist slab of the staircase is too thin	The staircase has not been built to specification and is in danger of collapse under load.	<p>Mance Arraj Civil and Structural engineers approved plan titled "Stair details" Sheet number S018 Issue B, issued on 12/12/2018 which depicts the thickness of the waist of the stair slab as 170 mm.</p> <p>AND</p>	The staircase could collapse, causing damage to the building, structural compromise, and injury or death to occupants.

				<p>BCA Volume One, Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 which states:</p> <p>“</p> <p>(a) A building or structure, during construction and use, with appropriate degrees of reliability, must-</p> <p>(i) Perform adequately under all reasonably expected design actions; and</p> <p>(ii) Withstand extreme or frequently repeated design actions; and</p> <p>(iii) Be designed to sustain local damage, with the structural system as a whole remaining stable and not being damaged to an extent disproportionate to the original local damage; and</p> <p>(iv) ...”</p>	
7.	Internal load bearing component of a building	Plastic formwork in the staircase wall is overhanging the wall below	The failure to construct the walls such that they vertically align means that the upper wall will impose an eccentric force onto the lower wall. The lower wall	Australian Standard 3600-2009: Concrete structures, Section 17 Material and construction requirements, Clause 17.5 Tolerance for structures and members,	

			<p>has not been designed for this eccentric force and therefore, could collapse.</p>	<p>17.5.2.2 floor-to-floor plumb, which states:</p> <p><i>“In any column or wall, the deviation from plumb, measured floor-to-floor, shall not exceed 1/200 times the dimension between the floor or 10mm, whichever is greater.”</i></p> <p>The distance between each level is approximately 3m. Applying the 1/200 rule results in an acceptable deviation of 15mm. This is less than the 30-40mm recorded on site.</p> <p>Furthermore, the installation demonstrates a failure to comply with the following sections of the BCA Volume One, Section B Structure, Part B1 Structural Provisions, Performance Requirement BP1.1 which states:</p> <p>“Structural reliability (a) A building or structure, during construction and use, with appropriate degrees of reliability, must-</p>	
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				<p>(i) <i>Perform adequately under all reasonably expected design actions; and</i></p> <p>(ii) <i>Withstand extreme or frequently repeated design actions; and</i></p> <p>(iii) <i>Be designed to sustain local damage, with the structural system as a whole remaining stable and not being damaged to an extent disproportionate to the original local damage; and</i></p> <p>(iv) <i>..."</i></p>	
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Consideration of written representations

5. On 23 May 2023, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, and Certifier.
6. The Developer, Local Council, Office of the Registrar General, and Certifier were invited to provide written representations relating to the Order to the Department by 5pm 30 May 2023. The following occurred:
 - a. The Developer provided submissions on 28 May 2023.
 - b. No other submissions were received as of 30 May 2023 from the Local Council, Office of the Registrar General, and Certifier.

Defects 1 and 2

7. In response to the waterproofing defects, previously identified to the Developer in the inspection report dated 7 March 2023, the Developer obtained a report from Waterproofing Assurance titled “Waterproofing Assurance Report” dated 25 April 2023. It is noted that that report had previously been provided to the Department and considered in issuing the draft of this Order. That report states in relation to defects 1 and 2 as numbered above:

“Waterproofing visited the site and reviewed the identified defects and also identified several other minor areas that will require additional works”.

8. The report identified 21 locations that contained waterproofing defects. The Developer’s expert has not disputed the findings in the draft Order and accordingly I am satisfied that it is appropriate to issue the Order in relation to these defects.

Defect 3

9. In response to defect 3, the report states:

“Action needed:

1. Possible destructive investigation to locate damp proof course
2. Removal of membrane to brickworks, brick face cleaned and all loose debris and sharp protrusions removed
3. Re-application of membrane with appropriate over flashing with Damp-proof course”.

10. The report obtained in relation to this defect was isolated to the podium level of Building 1. The Order identifies that masonry walls throughout the whole property are affected by this defect. I agree with the recommendation that destructive investigation is required to locate the damp proof course at all locations where there is a lack of flashing protruding from the face brick. As the report submitted by the Developer suggests that further investigations are required, which I agree with, I am satisfied that it is appropriate to issue the Order in relation to this defect.

11. I have received no further evidence that action has been taken to rectify the defects identified in the Waterproofing Assurance Report.

Defects 4-7

12. In response to defects 4-7, the Developer undertook to provide a report from a structural engineer. No report has been provided as of the date of this Order. Accordingly, I am satisfied that it is appropriate to issue the Order in relation to these defects.

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

13. I am of the view that the periods above for Defect 1 through 7 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.
14. 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.
15. 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 —

- (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant Australian Standards or the relevant approved plans, or
- (b) a defect in a building product or building element that —
 - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
 - (ii) causes or is likely to cause —
 - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
- (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (d) the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

stop work order — see section 29.

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

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

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

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

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

4 Meaning of “developer”

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

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

6 Act applies only to residential apartment building work

- (1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that —

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

Design and Building Practitioners Act 2020.

6 Building elements

- (1) For the purposes of this Act, building element means any of the following —
- (a) the fire safety systems for a building within the meaning of the Building Code of Australia,
 - (b) waterproofing,
 - (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
 - (d) a component of a building that is part of the building enclosure,
 - (e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the Building Code of Australia,
 - (f) other things prescribed by the regulations for the purposes of this section.
- (2) The regulations may exclude things from being building elements for the purposes of this Act.
- (3) In this section —
- above grade wall*** means a wall above the level of the ground surrounding a building.
- below grade wall*** means a wall below the level of the ground surrounding a building.

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