

The Strata Building Bond and Inspections Scheme

Discussion Paper

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Foreword

What?

The Strata Building Bond and Inspections Scheme came about as a result of recommendations made in the report of Professor Peter Shergold AC and Ms Bronwyn Weir titled, *“Building Confidence: effectiveness of compliance and enforcement systems for the building and construction industry across Australia”* (Oct. 2017) ([The Shergold Weir Report \(aibs.com.au\)](http://aibs.com.au)).

A subsequent Deakin and Griffith University report, titled *“An examination of building defects in residential multi-owned properties”* (Johnston and Reid, 2020), (Examining-Building-Defects-Research-Report.pdf (griffith.edu.au)) which revealed that:

- 97% of residential apartment buildings in NSW have at least 1 defect
- defects occurred across multiple locations within each building
- 50%-60% of defects attributed to design issues
- 40%-50% of defects arise due to on-site poor construction practice
- most common defects relate to cladding, fire protection, control joints/cracking, and water ingress.

In another Deakin University publication (Deakin report analyses growing number of apartment building defects | Deakin), Dr Johnstone states, *“Unfortunately, new residential buildings in Australia appear to be plagued with defects, and while the building itself can be fractured by these defects, it is the residents living there who face the impacts”*, a relevant statement in light of fires and structural defects significantly affecting residents.

Why?

The Strata Building Bond and Inspections Scheme was implemented to clean up the controversy plagued building industry and ensure the safety of residents who live and have invested in strata units by:

- Improving the quality of the medium-high density residential buildings
- Reducing insurance policy premiums for developers
- Restoring public confidence by protecting the most vulnerable customer (consumer protection)

How?

Under this scheme, developers of Class-2 buildings with a residential component and that can be strata subdivided are required to pay a Building Bond to NSW Department of Fair Trading. The bond is calculated at 2% of a project's *final development cost* thereby adding another layer of protection for strata owners by providing money to cover the cost of rectifying early defects that aren't fixed by the developer.

The scheme provides a structured program for the identification & rectification of building work defects according to a program of eight stages within two phases to be completed within a set timeline.

When?

The Strata Building Bond and Inspections Scheme came into effect 1st January 2018 and affects all residential (or part residential) building contracts entered into from that date. Occupation Certificate (and strata plan registration) will not be issued if the developer fails to:

1. give notice within the stipulated 6 months prior to an application for the occupation certificate is made
2. provide the expected completion amendment notice (if original date has changed)
3. rectify serious defects in building work
4. provide required documentation such as the “as-built” drawings
5. lodge the Building Bond under *Strata Schemes Management Act 2015*

Where?

New South Wales, under the jurisdiction of the NSW Department of Fair Trading.

Building inspectors are able to log defects and upload supporting photos and videos in real time via a downloadable app while they are on-site; the on-line system allows transparency and efficiency and all parties involved can access information and follow the process.



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The Strata Building (Defects) Bond and Inspections Scheme

Background and Formation

The Strata Building Bond and Inspections Scheme (SBBIS) came into effect on 1 January 2018 under the Strata Schemes Management Act 2015 No. 50 ([Strata Schemes Management Act 2015 No 50 - NSW Legislation](#)) with the purpose of addressing deficiencies in the controversy plagued building industry, protect consumers (purchasers & residents) and return confidence.

It was amended on 1 July 2020 under the Strata Schemes Management Amendment (Building Defects Scheme) Act 2018 No. 49 ([Strata Schemes Management Amendment \(Building Defects Scheme\) Act 2018 \(nsw.gov.au\)](#)). The operation of The Scheme was then migrated to a wholly digital process (The Planning Portal and Strata Hub) on 1 July 2021.

This latest development (as at the date of the writing of this paper) is in line with a host of changes streamlining the development, planning and approvals processes throughout NSW. The SBBIS is a structured, proactive and process driven mechanism for resolving building issues quickly, cost effectively, and transparently.

The SBBIS provides a uniform platform for the identification and controlled rectification of defective building works early in the life of new multi-storey, Class-2 strata buildings by making and keeping developers accountable and securing their commitment to quality and compliance.

This extra layer of control and scrutiny is envisaged to clean up the troubled property development industry. The scheme, in essence, involves:

- The Developer registering its project on the SBBIS (Planning Portal) and uploading project documents
- Lodgement of a Building Bond
- Appointment of a building inspector with approval of the owners' corporation
- Arranging for the rectification of identified building defects (if any)
- Agreement with the owners' corporation as to the cost of rectification of any identified defective Building Work and applying part or all of the bond, as and if required, to pay for defect rectification.

It has become an integral component of the property development process and must be complied with in order for a Developer to obtain Occupation Certificate (OC) with critical steps including:

- Notification by the Property Developer of its intent to seek an Occupation Certificate no sooner than 6 months prior to programmed project completion
- Developer to lodge the 2% building defects bond within the stipulated time frame

The SBBIS applies to *Building Work* for Building Contracts entered into from 1st January 2018 which relate to Class-2 buildings (ie; 4 storeys & higher, include a residential component, and can be strata subdivided).

Under the SBBIS, based on the assessed cost of Building Work, developers are required to lodge a *Building Bond* with NSW Fair Trading.

The quantum of the Building Bond is calculated at two percent (2.0%) of the final development cost (not the 'contract price' as noted in the Department of Fair Trading's literature, eg; Developer's Information Manual).

This cost base, relative to Building Work commenced since 1st January 2018, includes but is not limited to:

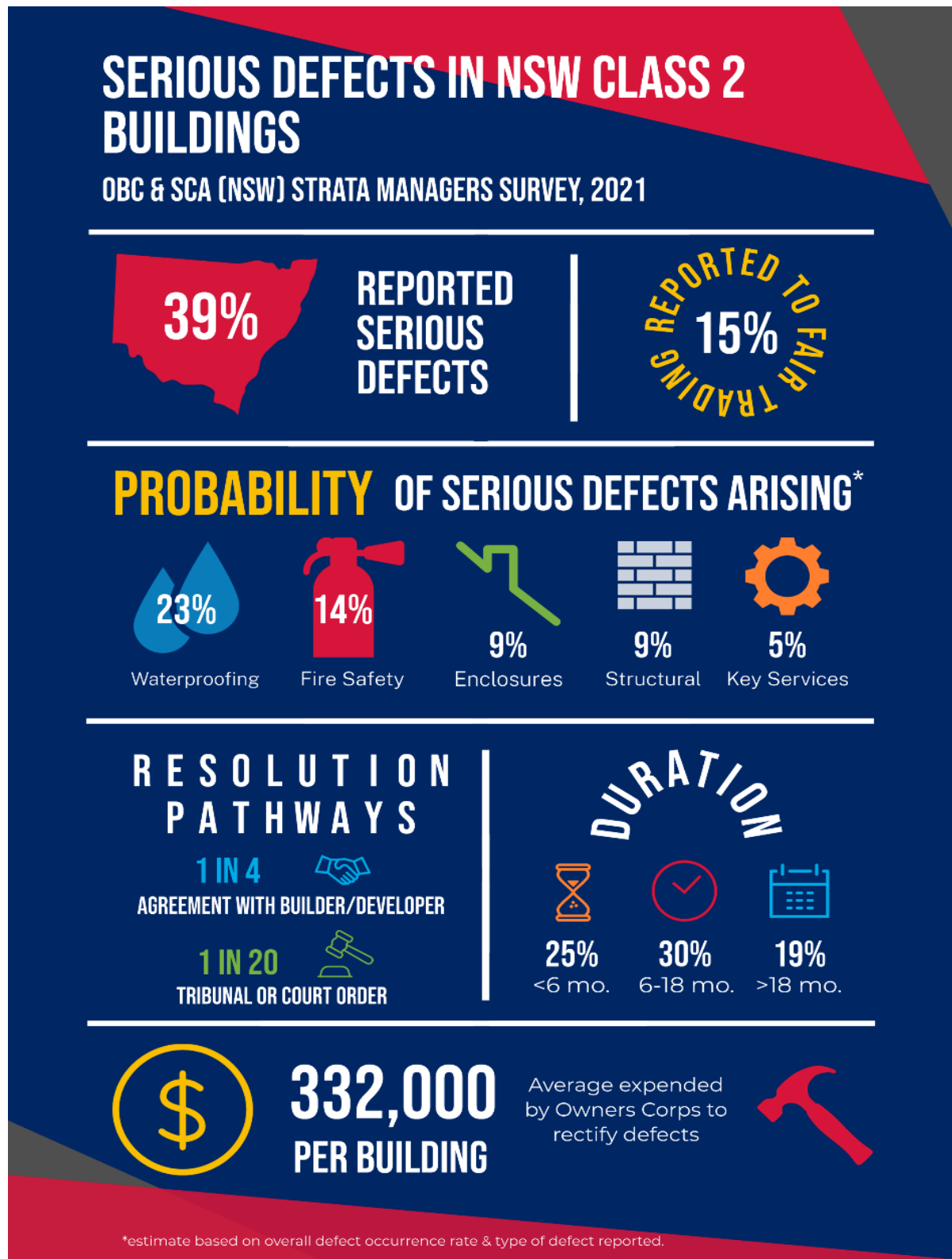
- Demolition & Excavation
- Physical construction works
- Variations
- Professional fees
- GST and other taxes that were applied in the calculation of the built construction

If there is no written contract for the Building Work, or the parties to the building contract are connected persons (eg; developer-builder), then the cost base is to be confirmed by an SBBIS panel cost assessor (Quantity Surveyor) by way of a Cost Report.

Serious Defects in Class-2 Buildings (NSW)

The graphic below, taken from a recent research report published by the Office of the Building Commissioner and Strata Community Association NSW.

The graphic depicts concisely the results of the research in to the nature and probability of serious defects, the pathways relating to their resolution, and the costs of rectification.



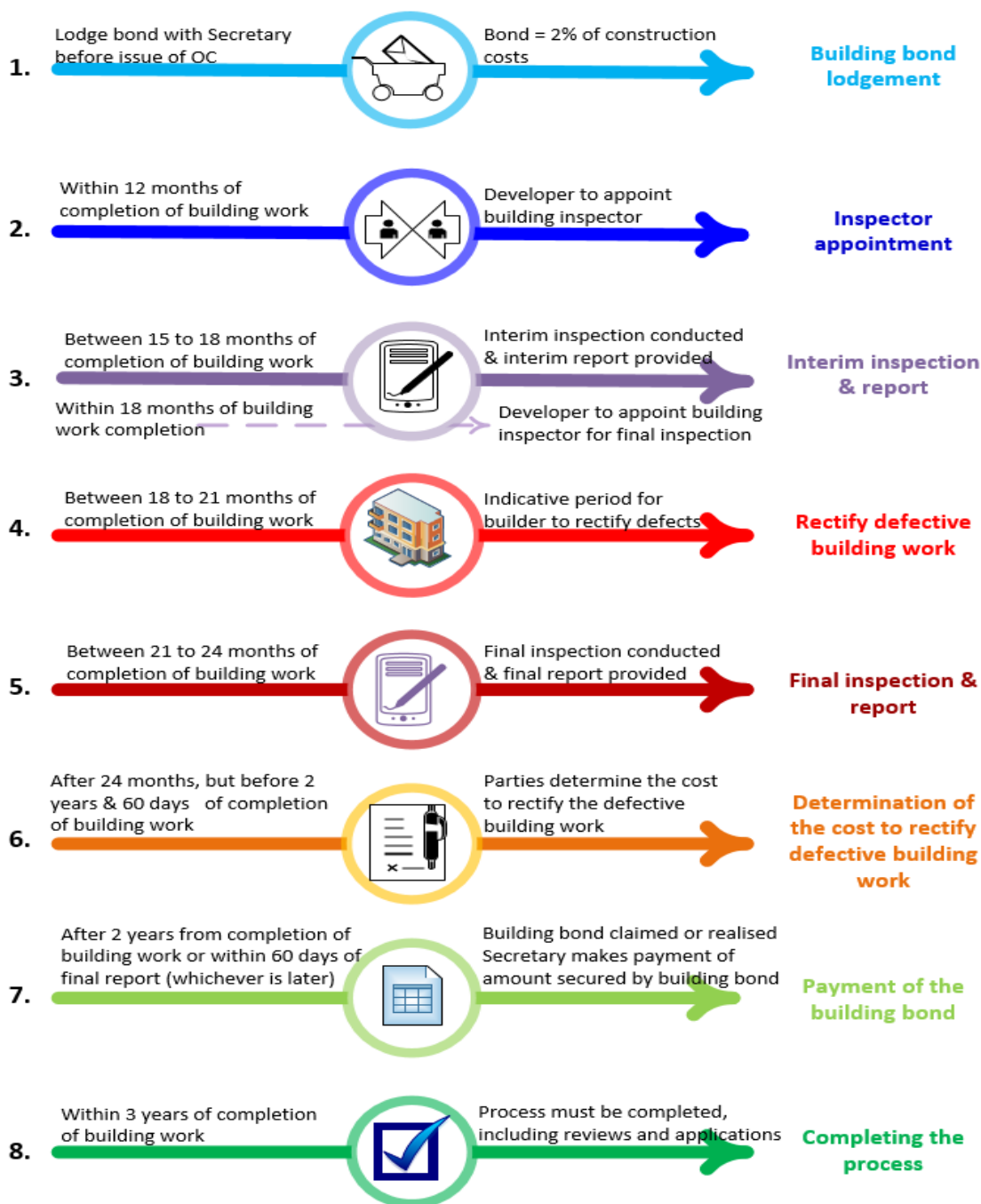
How does the SBBIS work?

Under this scheme, developers of new Class-2 buildings are required to register their project with the NSW Fair Trading (Building Commissioner) via the Planning Portal and then lodge a Building Bond which is held as security to ensure the rectification of any identified defective Building Work.

The SBBIS process is dissected in to two (2) phases with eight (8) progressive stages (stage 1 in phase 1, stages 2-8 in phase 2) where the entire process is administered across two online portals. For stage-1, there are 2 platforms depending on when the project was commenced:

- Current projects: on the SBBIS ePortal for current projects registered with Fair Trading prior to 1 September 2020
- New projects: on the NSW Planning Portal for projects registered from 1 September 2020.

An overview of the eight stages is depicted in the graphic below:



Since 1 July 2021, the entire SBBIS process is administered in two phases via the two digital platforms:

1. **Phase 1** (stage 1) - NSW Planning Portal: applications made and Building Bond lodgement.

It is the responsibility of the developer to complete Stage 1, ie; make application to register the project, and once approved, then lodge the assessed Building Bond.

Stage 1 should be commenced no earlier than six (6) months from the scheduled OC date. The process must be completed prior to making an application for the issue of an OC, whether preliminary or final.

2. **Phase 2** (stages 2 to 8) – The Strata Hub: once the Building Bond lodged, the file is migrated to the Strata Hub where the next seven stages are managed; these phases must be commenced within 12 months of the completion of Building Works and completed within three years of Building Works.

There are several parties involved in these seven stages, which are concerned with appointing an inspector, defects inspection and reporting, determining the cost of rectifying defects, and releasing the Building Bond to pay for defect rectification, if any are found to be required.

A recent publication by the Building Commissioner noted the 5 areas of defects that are being targeted: waterproofing, fire safety systems, structure, enclosure, and key services.

Two years after the completion of the Building Work, or within 90 days after the completion of the Final Report (whichever is the latter), the Building Bond may be claimed or used to pay for the rectification of identified defective Building Work.

If the Building Bond is not utilised, or if a residual amount remains, then this amount is refunded to the Developer; if rectification costs are greater than the bond, the difference would then be sought by pursuing the Developer, which may include via litigation.

How does the SBBIS affect you, the property Developer?

The SBBIS does not apply to commercial buildings nor to projects where the Building Work is subject to the requirement to obtain home warrantee insurance under part 6 of the Home Building Act 1989 (Home Building Compensation Cover), ie; residential buildings of up to three (3) storeys.

However, Developers of new Class-2 buildings must comply with their obligations under the SBBIS.

The SBBIS imposes strict regulatory compliance obligations on developers in an attempt to:

- Improve the quality of the medium-high density residential buildings
- Ultimately reduce insurance policy premiums for developers
- Protect the most vulnerable customer (the consumer) and restore confidence in the sector

The requirements for better quality in building practices, closer adherence to building codes, increased project documentation, delays in completion because of remediation of defects identified during the Building Commissioner's site inspections and audits, and the 2% bond add to a developer's project costs and erode the project's profit margin; provisions must be made in project feasibility and funding analyses.

Further, ([Strata Schemes Management Act 2015 No 50 - NSW Legislation](#)) imposes **harsh penalties** on Developers for non-compliance:

- Failure to provide information or providing misleading information:
 - \$22,000 for an individual Developer
 - \$110,000 maximum, for a corporate Developer
- Failure to lodge the Building Bond:
 - \$1,100,000
 - plus \$22,000 for each day the offense continues

It would be prudent for a developer to make well in advance the adequate provision of equity and resources to ensure the timely lodgement of the Building Defect Bond, ie; via security over real property for a Bank Guarantee / Performance Bond, or line-of-credit, or cash resources.

Further, non-compliance may likely delay the issuing of an Occupation Certificate as well as bringing the Developer and the Developer's project under harsher scrutiny with possible further delays and costs.

Commencing March 2022, developers will be subjected to a publicly advertised rating system, which will ultimately affect the saleability and price that their completed product can fetch in the market, their ability to raise project finance, how they raise project finance, and the risk-weighted cost of that finance.

The grades are to be "A", "B", and "C" to serve as a market warning indicator based on quality of work, compliance, frequency and nature of complaints, and general past developer conduct.

Already the Building Commissioner is naming-and-shaming Private Certifiers as a warning to the public, developers, and financiers (tier-1 and tier-2 project financiers will no longer fund projects where a red-flagged PCA is involved): [Certifier disciplinary register | NSW Fair Trading](#) (*it's worth taking a look*).

The Building Commissioner has stated recently that he is presently targeting 11 PCAs (including all the projects that they have been appointed to) resulting in loss of licence in some cases and penalties and other disciplinary actions imposed; he is also targeting at least six developers.

In a nutshell, delays mean erosion of capitalised interest provision, increase in holding costs, possibly blowing-out of sunset dates in pre-sales contracts, and together with penalties imposed may ultimately manifest as an erosion of the developer's profit margin...*ditto* with loss of reputation.

When does your Project Financier start to worry?

Cost and time over-runs are a project's worst enemy. Should the timeframe for one or more of the stages in the SBBIS exceed the allowable limits, especially as a result of non-compliance during Stage-1, this will cause delays in the issuing of the OC as well as incurring hefty statutory fines under the scheme.

Where defective building work is identified as a result of a pre-completion site audit by the Building Commissioner with rectification required, this will cause delays in project completion. Should orders be sought from the Commissioner's office or actions commenced at the NSW Civil and Administrative Tribunal, the delays could blow out even more, augmenting project costs and eroding profit margin.

Non-compliance would likely result in a project financier ceasing the release of progress payments, either temporarily until the non-compliance was rectified and the project feasibly satisfactorily reassessed, or permanently with the possibility of default recovery action to follow.

We have been made aware, by an associate at a major bank which is funding a project in Sydney's western suburbs, that the bank has stopped funding that project for 8 months as a result of a site inspection and audit – with the developer-builder forced to meet monthly bank interest and line fees from his personal resources until the (significant cost) defect has been remediated. Project financiers will not fund non-compliant projects.

Can you imagine, as a developer, having to put hand-in-pocket each month to pay interest and line fees on a partially or fully drawn project finance facility? This could become reality under the SBBIS for developers who do not properly manage the compliance of their builder and their builder's sub-contractors.

A developer would be wise to appoint a Clerk of Works to work side-by-side, on-site with the builder on a daily basis as ultimately it is the Developer who is to be held to account and vicariously liable.

Further, extended delays present the risk of jeopardising presales contracts where sunset dates may be at risk of expiration: in a downward trending market, a reasonable expectation is that purchasers would rescind pre-sale contracts thereby undermining the timely repayment of a construction loan on project completion and may force the developer to take a short-term residual stock refinance facility, often at pricing at multiples of that of the construction loan.

Without OC, a developer with a completed project cannot complete on sales contracts nor legally rent the apartments to generate cash flow with which to service a fully drawn construction loan, the lack of OC may also hinder a refinance with a residual stock refinance facility.

The breaching of project financier's loan contract and covenants could lead to activation of step-in rights under a tripartite agreement or possible mortgagee recovery action. Depending on the quality of the project financier involved (ie; an up-to-date tier-1, savvy tier-2, tier-3, or private lender with little understanding of the legislation), the Developer's downward spiral to disaster could be catastrophic.

How to Comply with SBBIS obligations?

It is the responsibility of the Developer to register the project, upload the required documentation, and then lodge the Building Bond with NSW Fair Trading at least 6 months BEFORE an application is made for the OC as required under the SBBIS.

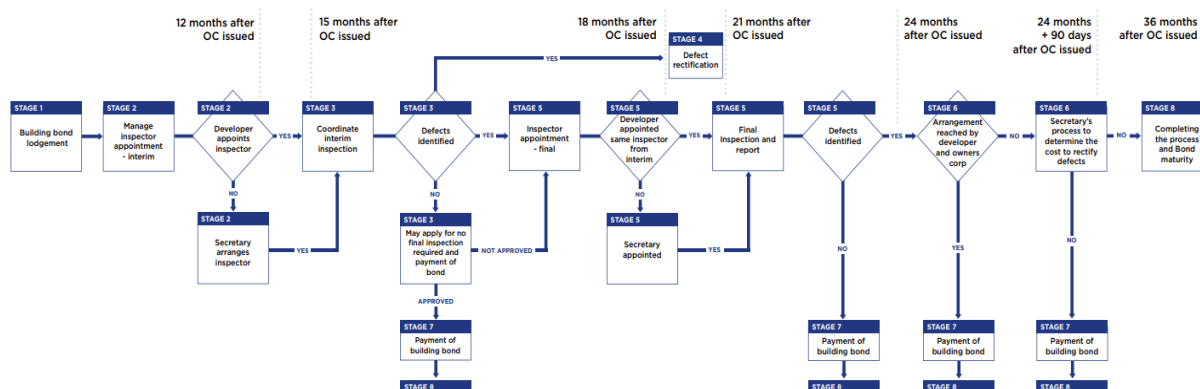
From 1 July 2021, the NSW Planning Portal ("Portal") provides an online environment where planning services and information can be accessed anywhere at any time by any project stake-holder, thereby providing transparency: <https://www.planningportal.nsw.gov.au/>

The system is completely "A-Z" digital and includes design, construction, and post-occupancy applications and approvals. The primary purpose is to drive the digital transformation of the NSW planning system to deliver benefits to the building and construction industry including:

- Open access to reliable and accurate planning information and data, related to a specific property
- Standardised application forms across all NSW LGAs (local government areas)
- Access to a dashboard that provides transparency to the progress of an application
- Reduced holding costs and increased value of realising investment sooner.

Refer: [Building-inspectors-Information-manual.pdf \(nsw.gov.au\)](#)

The process flowchart below depicts the entire SBBIS process including the logic that leads to the various outcomes at the relevant stages:



OC Audits.

Added as a new component of the approvals process, the OC audit applies to Class-2 building and projects (subjects of inspection and audit) and these projects are selected at random by the Building Commissioner.

This on-site inspection and audit process acts as an early warning and allows for the timely rectification of building work defects during construction phase (ie; before residents occupy the building) while the builder and its trades are on site and/or have ready access to the project site.

Despite the associated delays in project completion and the costs involved, there are obvious benefits to a site inspection and audit, these include:

- a quicker and less expensive rectification process (ie; while the builder is still on-site and before the building is occupied by tenants and owners)
- Once defects (if any) are rectified, it then becomes more likely the full Building Defects Bond will be returned to the developer at the end of the process.

Should your site be chosen for audit, the Building Commissioner will provide 7 days' notice then attend with his team. His first destination is the building basement as a first indicator of the quality of works and developer's attitude, followed by the fire stairs as a second indicator, finally the roof – if these three areas provide positive indications, he is likely not to venture into individual units to inspect.

An OC Audit is not a bad thing; it is actually a good thing that allows for a higher likelihood of the return of the full bond to the developer despite initial delays associated with rectification. It is conceivable that a developer may trigger a voluntary OC audit by contacting the office of the Building Commissioner.

Closing Notes

The NSW Government has created a scheme to give greater protection to consumers from defective building work in medium density residential buildings.

Strategy for Developer Compliance

To ensure a developer is capable of being compliant with Scheme, the following strategies are suggested:

1. Developer to ensure that the proper arrangements are in place to qualify for and obtain funds required for the (cash or bank guarantee) 2% bond.
2. Developer to ensure that the Builder has appropriate resources in place to rectify identified defects during construction (should the Commissioner conduct a pre-completion random OC Audit).
3. Developer make financial provisions to cover the risk of time and cost over-runs associated with compliance, the consequences of an OC inspection & audit, the cost of specialist service inspectors (eg; lift, fire, etc engineers), the building inspector's preparation of interim and final reports, and generally working through the 2-phases of the process.
4. Building Contract to include a 24 month defect liability period (covering the term of the Bond).
5. Developers to be conscious of delays due to the timeframe requirements for lodging documents and notifications with the Building Commissioner's office.

Key Takeaways

The Scheme is mechanism to provide greater consumer protection for lot owners of Class-2 buildings.

The onus is firmly on the Developer to ensure contract builders and their trades comply with building codes and complete building works to the required standards; it is the Developer who bears the vicarious liability.

Developers to plan and provision for lodgement of the 2% Building Defects Bond, increased professional costs, increase costs of delays and of rectification works, and adherence to the time-critical SBBIS process. These costs are to be included in a project's prudent funding and feasibility analyses.

The building bond may be used to pay for any defect rectification work if the developer has failed to do so.

The statutory right access to a property for rectification of building work after completion is an important aspect in the rights of contractors of residential building work.

It is important to note that the 2% Building Defect Bond Scheme does not supplant the owners corporation's existing rights to statutory warranties under the *Home Building Act 1989* (NSW) or the statutory duty of care owed by a builder to the owners under the *Design and Building Practitioners Act 2020* (NSW).

Reference Material to assist with Compliance

Resources to help with Stage 1

- [NSW Planning Portal Quick Reference Guide](#)
- [User guide for developers for SBBIS e-portal & share drive](#)
- [Building bond guidelines](#)

Resources to help with Stage 2

- [Appointing a building inspector by the developer and owners corporation](#)

Resources to help with Stage 3 + 5

- [Combined forms for interim and final reports for Strata building bond and inspections scheme](#)

Resources to help with Stage 4

- [Builder's Information Manual](#)

Resources to help with Stage 1 + 6 + 7 + 8

- [Developers Information manual](#)

Other Reference Material

[THE STRATA BUILDING BOND AND INSPECTION SCHEME COMMUNIQUE OWNERS CORPORATION MS FINAL](#)

[Strata Building Bond & Inspections Scheme | NSW Fair Trading](#)

[Developers-Information-manual.pdf \(nsw.gov.au\)](#)

[Deakin report analyses growing number of apartment building defects | Deakin](#)

[Examining-Building-Defects-Research-Report.pdf \(griffith.edu.au\)](#)

[Building-inspectors-Information-manual.pdf \(nsw.gov.au\)](#)

Glossary of Key Terms

- *Building Bond* means a cash bond that is calculated at 2.0% of the *final development cost* in relation to the *Building Work*.
- *Building Work* means any work involved in, or involved in co-ordinating or supervising any work relating to:
 - (a) the construction of a residential or mixed-use (ie; where there is a component of residential, even if only one unit) building to be strata subdivided and which will be four (4) or more storeys, or
 - (b) the making of alterations or additions to a building, or
 - (c) the repairing, renovation, decoration or protective treatment of a building.
- *Final development cost* means the total price paid under all the applicable contracts for the Building Work as at the time just before the developer makes application for any occupation certificate (OC) which allows people to occupy the building – whether Final OC or Interim OC. It also includes all variations, additions and GST.

Final Development Cost includes Building Works & associated items including but not limited to:

- construction and fit out costs (not including appliance and prime cost items)
 - demolition and site preparation
 - excavation
 - car parking
 - costs for the common property that is included in the property plan, including landscaping, pools, fencing and gates
 - professional fees, and
 - GST and other taxes applied in the calculation of the as-built construction.
- *Cost Report* means a report detailing the costs of Building Works in the absence of a building contract or where the parties are connected. It must be prepared by a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or the Royal Institution of Chartered Surveyors and who is not connected to the developer or the builder. The report must include:
 - all work that is conducted in relation to the Building Work, as listed above under Contract Price
 - a certificate by the quantity surveyor that they have inspected the as-built drawings and specifications for the strata plan.
 - *Occupation Certificate* (“OC”) means a compliance certificate issued by a certifying authority (either Council or a Private Certifying Authority) which permits human habitation of a dwelling (refer to the Act for definitions), ie; permitting people to occupy a building; whether with conditions or by way of an Interim OC.
 - *The Secretary* means, broadly, the office of the building commissioner, ie; the Department of Fair Trading as defined in the *Strata Schemes Management Act 2015 No 50*:
 - (a) *the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or*
 - (b) *if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.*

For a comprehensive glossary of terms, please see: Schedule 1: Key terms, Pp: 45-50 at [Developers-Information-manual.pdf \(nsw.gov.au\)](#)



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ANNEXURE

THE 2-PHASES OF THE STRATA BUILDING (DEFECTS) BOND AND INSPECTIONS SCHEME AND THE 8-STAGES WHICH COMPRISE THESE TWO PHASES

The following the eight stages of the SBBIS are to be reviewed in conjunction with the preceding main body of this paper.



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Stage 1 – Building Bond Lodgement



This is the initial stage within the SBBIS and must commence a minimum of 6 months prior to the programmed or anticipated date of the application for OC.

The parties involved are:

- Developer
- Office of Fair Trading
- Owners corporation

The onus is on the Developer; it is the developer's responsibility to initiate the process by:

- a. Making application on the relevant portal, registering the intent to complete the project not less than 6 months prior to the programmed or anticipated OC (whether final or interim)
- b. Uploading all required project documentation
- c. Once the application is approved, then lodge the 2% Building Defects Bond.

Should the Developer fail to do this prior to lodging an application for OC, the Secretary may impose fines under Section 207 of the Strata Schemes Management Act of 2015 which can be substantial and the issue of an OC will be delayed.

Non-compliance will delay the developer obtaining an OC which may result in flow-on effects including:

- Increasing the developer's holding costs
- Depletion of the capitalised interest provision (resulting in out-of-pocket monthly interest payments)
- Project Financier ceasing to fund the non-compliant project
- Penalties, step-in rights, recovery may result from the breaching of the project financier's terms & covenants (within the credit contract)
- Statutory penalties imposed which may be substantial and erode project profit
- Risk of expiration of pre-sale contract Sunset Dates, jeopardising loan repayment and the financial feasibility of the developer's project via increasing holding costs.

To assist developers, Stage-1 has been broken-down into two components:

1. Preparation

The developer (not the builder) is responsible for providing and lodging the Building Bond. It may be a cash deposit or a performance bond / guarantee from an approved issuer, which can take considerable time and will require security, hence this process should start as early as possible.

If the Building Bond is in the form of a performance bond or bank guarantee, it must contain the SBBIS portal issued Project Number or Reference Number issued by the NSW Planning. The SBBIS web site provides a list of approved bond issuers; the bond must comply with the Secretary's guidelines.

The developer is required to upload documents for review to the secured share folder or through the NSW Planning Portal, before the building bond is lodged with the Secretary.

Information required:

- Street address of the building
- Developer's name, address, email, telephone, and contact name
- Builder's name, licence number, address, email, and telephone
- Building class, building use, number of storeys and residential units in the development
- Other details that will be required, but can be subsequently entered in the SBBIS ePortal or the NSW Planning Portal as they become available are:
 - owners corporation name, address, email address for service, phone, & contact name
 - strata plan number, strata plan registration date and deposited plan reference
 - number of non-residential lots, GFA, and services/facilities in the common property
 - name of the principal certifying authority and local council

Although the information may be provided as it becomes available, all fields need to be completed before the building bond application may be approved.

Documents Required:

Once a project has been registered on the Planning Portal, the link to the secured share folder (which will include a checklist) will be emailed to the Developer for the uploading of required documents:

- The building bond
- Documents relevant to the calculate the quantum of the Building Bond amount
- The executed contract(s) between the developer and the builder
- Specifications and variations, the full suite of “as-built” drawings
- Written warranties
- Any schedule of approved samples (of fixtures, fittings, materials and finishes)
- Development consents, approvals or certificates including under s4.55 (formerly s96)
- Alternative solution reports that was required
- Certificates relating to the design of the building work used in the DA
- Consultants’ reports relating to inspections of the building work
- \$1,500 fee payable to NSW Fair Trading (lodgement fee)

The Secretary may request, by written notice, any other documents or information to substantiate the final project cost.

2. Lodgement

The developer is required to then submit the building bond lodgement in the NSW Planning Portal and provide the original building bond (cash or bank guarantee).

To submit the building bond lodgement to the Secretary, the developer is required to:

- complete the on-line lodgement form
- upload a copy of the Building Bond
- upload a copy of the other required documents
- pay the lodgement fee of \$1,500 (in the NSW Planning Portal)
- deliver the original building bond to the Secretary by post or by hand.

Once the developer’s application is approved, the owners’ corporation will receive an email from the Secretary informing that a building bond has been received and requesting verification of the owners’ corporation’s contact details as the Building Commissioner prepares for the post-completion phase.

What’s next?

The next 7-stages, contained within phase-2, relate to the appointment of a building inspector, defects inspections and reports, defects remediation, use of the lodged bond to pay for the defects remediation – the file is at this stage migrated from the NSW Planning Portal to the Strata Hub.



Stage 2 – Appointment of Inspector



This stage must commence within 12 months of the issuing of the OC.

The parties involved are:

- Developer
- Strata manager
- Owners corporation
- Proposed inspector

The developer must appoint a building inspector, appointed to the Strata Inspector Panel, within 12 months of an OC being issued which permits human occupation of the building.

How an Inspector is chosen

The inspector cannot be connected to the developer in any way in the 2 years preceding the inspector appointment. Should the developer fail to comply, the Secretary will arrange the building inspector.

The developer's nominated building inspector must be approved by the owners corporation, the process involves:

- the developer selects, make disclosures, and propose the building inspector to the owners' corporation via the SBBIS Strata Hub
- that building inspector makes requisite disclosures (if any)
- the owners' corporation must pass a resolution by simple majority at a general meeting to either approve or refuse the appointment of that building inspector
- the owners' corporation providing notice to the developer and the Secretary via the SBBIS Strata Hub within 14 days of approving or refusing the building inspector appointment.

Should the owners' corporation reject the proposed building inspector, the developer must repeat the process until either the 12 months expires or the owners' corporation approves an inspector.

The common practice, however, is for the Strata Manager to obtain quotes from several building inspectors, submit them to the developer, who then proposes one to the owners' corporation.

Inspectors must be appointed to the Strata Inspector Panel (SIP) and as such must be qualified professionals who are authorised by professional associations as listed in clause 44 of the Strata Schemes Management Regulation 2016.

Failing to agree on an inspector

If the developer fails to appoint a building inspector within 12 months, the Secretary will arrange a building inspector of its choosing and notify the developer and owners' corporation – owners' corporation approval is not required but a service fee must be paid by the developer.

Documents required

Within 28 days of appointment, the developer must provide the building inspector with:

- Stage 1 documents (excluding Building Bond)
- All documents that identify any known building defects in the Building Work
- A copy of the initial maintenance schedule relating to the strata scheme (a detailed and specialised document that is best prepared by the contracted Building Manager or project Quantity Surveyor).

What's Next?

The building inspector arranges site inspection.

Stage 3 - Interim Inspection & Report



This stage must commence within 15-18 months of the issuing of the OC.

The parties involved are:

- Developer
- Builder
- Strata manager
- Owners corporation
- Appointed building inspector
- Occupants of strata lots

The building inspector will have received the required documentation within 28 days of being appointed; if not, the inspector notifies the Secretary, who will pursue the outstanding documentation and may impose penalties.

The building inspector must attend the site to perform the interim inspection to identify any defective building work.

Building inspector to be provided access

The building inspector must give 14 days' written notice to the owners/occupiers of affected lots, via the owners' corporation, especially if internal inspections are required.

All parties (owners, tenants, building manager, etc) are required to provide reasonable access and assistance and not obstruct or hinder a building inspector.

If access to any area is limited, that area and any defects in that area will be excluded from the inspection and the resultant report.

Identifying defective building work

Defective building work must be identified by visual inspection only, ie; not involving invasive or destructive testing; the inspection can include removing any object designed to be moved/opened.

Building inspections are conducted to identify defective building work, to which Part 11 of the Strata Schemes Management Act 2015 applies.

The inspection is conducted as a "whole of scheme" approach, which includes common property and common property within private lots. It does not include appliances, PC items (tiles, taps, doors, bathroom fittings), or minor defects. Only defects to the original work or remedial work to the original work can be included (this excludes any further work carried out later, eg; by the owners' corporation).

It is essential that all defective building work is identified and recorded at this stage (in the interim report) as any later discovered or subsequently occurring defects cannot be included in the final report; the defective building works report is a *point in time* report and therefore not one that evolves with time.

It is prudent practice for a building inspector to consult a secondary inspector to perform inspections outside of the appointed building inspector's skillset. Any additional specialist or expert reports must be included as part of the interim report. Secondary inspectors / specialists may include: Fire, Lift, Mechanical, Plumbing, Electrical, Façade, and structural engineers, etc.

Preparing the interim report

The building inspector must produce the interim inspection report using the Strata Hub.

The interim defective works report must be prepared with reference to the NCC and Australian Standards with regard to each defect and the report must be in a specific format which includes photographic survey and advice on how to rectify each defect.

Once the submitted report is accepted, a link to the report is emailed to:

- the Secretary
- the owners corporation (who must then provide access to the lot owners)
- the developer
- the builder (responsible for defective building work).

What's Next?

There are two (2) possible outcomes to this stage:

1. No defects identified

If no defective building work is identified in the interim report, the developer can apply to the Secretary requesting that a final report not be required.

If the developer's application is approved by the Secretary, then the interim report becomes the final report. The building bond may then be returned to the issuer and the file closed (see stages 7 & 8).

2. Defects identified

If there are defects identified, the process progresses to the next stage towards satisfactory rectification of defects (see stage 4).



Stage 4 – Rectify Defective Building Work



This stage must commence within 18-21 months of the issuing of the OC.

The parties involved are:

- Developer
- Builder
- Strata manager
- Affected lot owners

Correcting any defective work as identified in the interim report is the responsibility of the developer, who bears the vicarious liability; the developer will liaise with the builder in terms of their building contract.

If the original builder is not available, the developer must arrange for another builder to undertake the defect remediation work.

Rectifying defective work identified in the interim report should be rectified after the interim inspection is completed and before the final inspection commences; but within 18-21 months of the issuing of the OC.

The builder must provide 14 days' written notice to the owners' corporation before entering a strata scheme. Where arranged access is required, the builder may enter affected lots only at a time that is reasonable or as agreed with the individual owners or occupiers, who cannot unreasonably refuse access after the receipt of the notice.

What's Next?

There are two (2) possible outcomes to this stage:

1. Identified defects are satisfactorily rectified

If identified defective building work has been satisfactorily rectified, the developer and the owners' corporation would then agree for the Secretary to return the bond.

The building bond may then be returned to the issuer and the file closed (see stages 7 & 8).

2. The builder's access is denied/hindered

If the builder is rendered unable to attend to the rectification of identified building work defects, the process progresses to the next stage (see stage 5).

Stage 5 – Final Inspection & Report



This stage must commence within 21-24 months of the issuing of the OC.

The parties involved are:

- Developer
- Builder
- Owners' Corporation
- The Secretary

The building inspector must attend the site to re-inspect the defective building works identified in the building inspector's interim report – ideally it should be the same building inspector who prepared the interim report; should that inspector not be available, the developer notifies the Secretary who appoints another inspector at the developer's cost plus a service fee.

Access to be provided

The building inspector must provide 14 days' written notice to the owners' corporation and all parties must not hinder or obstruct access to the building inspector.

This inspection is to determine whether the defective building work identified in the interim report has been rectified.

Preparing the final report

The purpose of the final report is to:

- record any defective building work identified in the interim report that has not been rectified
- identify any defective building work arising from any prior rectification work identified in the interim report
- specify how any outstanding defective building work should be rectified.

The final report cannot include any new defective building work or defective building work not identified in the interim report (eg; where access may have been denied).

The building inspector must produce the final report as provided via the Strata Hub.

Once the submitted report is accepted, a link to the report is emailed to:

- the Secretary
- the owners corporation (who must then provide access to the lot owners)
- the developer
- the builder (responsible for defective building work).

What's Next?

There are two (2) possible outcomes to this stage:

1. No defects identified

If no defective building work is identified in the final report, the Secretary may return the whole building bond to the issuer (see stages 7 & 8).

2. Defects identified

If defective work is identified in the final report, the cost to rectify the defective work will then be determined (see stage 6).

Stage 6 – Determine the Cost of Rectification



This stage must commence within 24-27 months of the issuing of the OC.

The parties involved are:

- Developer
- Owners' Corporation
- Appropriately qualified person
- The Secretary

If there is defective building work identified in the final report, the cost to rectify that work must be determined. This may be undertaken via either one of two options:

Option 1 – Deed of Agreement

Where the developer and the owners' corporation reach an agreement regarding the cost to rectify the defective building work, they enter into a Deed of Agreement after and according to which the rectification works are then completed.

A concurrent application to the Secretary is made for the release of funds from the Building Bond towards payment of the agreed cost of rectification.

If no Deed of Agreement is entered into within 30 days of receipt of the final report, the Secretary will progress the matter via Option 2.

Option 2 – Cost Report

Where the developer and the owners' corporation cannot reach an agreement regarding the cost to rectify defective building work, the Secretary can:

- require the owners' corporation or the developer (or both) to provide any information or reports that the Secretary may require, or
- arrange for an appropriately qualified person, ie; a panel quantity surveyor, to provide a report to the Secretary in relation to the work required and the cost to rectify the defective building work (Costs to Rectify Defects Report).

The Costs to Rectify Defects Report includes:

1. The identified defects and method to rectify the defects
2. The cost of the method prescribed to rectify each defect
3. The order of priority of each defect rectification
4. Inspection requirements to be determined based on the complexity of building and if the person carrying out the report was also the original inspector

The cost for this service and report is to be born equally between the developer and the owners' corporation.

The Building Bond held by the Secretary will then be applied towards the assessed costs to rectify building work defects.

Should it be that the cost of the rectification works outweighs the quantum of the Building Bond, then the entire Building Bond is released to the owners' corporation and the developer is pursued for the balance.

What's Next?

The outcome after this stage should be the completion of rectification of defective building work with the agreed or assessed costs fully or partially met by the Building Bond.

The matter progresses to stages 7 & 8 and if there are residual bond monies remaining, they are returned to the developer; if the costs are greater than the bond amount, litigation against the developer may ensue.

Stage 7 – Paying the Building Bond



This stage must be completed by the later of 2 (or 3) years of OC or 3 months from receipt of final report depending on which preceding stage lead to the paying of the Building Bond.

The parties involved are:

- Developer
- Owners' Corporation
- The Secretary

There are seven different circumstances in which the Building Bond may be released:

1. No defects identified in the interim report

Stage 3 outcome – No defects identified in interim report

In this case, the developer applies to waive the requirement of the final report and hence the interim report becomes the final report.

Then, within 90 days of the deemed final report, ie; with consent of the developer and owners' corporation at any time 2 years after the date of building completion, the Building Bond is released back to the issuer and a release is provided to the developer by the Secretary.

2. No defects identified in the final report

Stage 5 outcome – No defects identified in final report

Following Stage 4, where defective building work identified in the interim report have been rectified; within 90 days of the Secretary's receipt of the final report with satisfactory defects remediation, the Building Bond is released to the developer and a release is provided to the developer by the Secretary.

3. Defective building work is identified in the final report (two scenarios)

Stage 6 outcome – Developer & owners' corporation agree on cost of rectification

The amount specified in the deed of agreement will be released from the Building Bond to pay for the rectification works; the bond must be applied or released within 2-3 years after the issuing of the OC.

Stage 6 outcome – No agreement as to cost of rectification

The amount specified in the Costs of Rectification Report will be released from the Building Bond to pay for the assessed rectification works. If the assessed cost is greater than the Building Bond the whole amount of the Building Bond will be claimed by the Secretary for the owners' corporation and paid to the owners' corporation within 2-3 years after the issuing of the OC.

Should the builder not able to complete rectification works due to access issues (Stage 4 outcome – Access Denied), where the builder has been obstructed or denied access to certain areas requiring remediation, then the remediation of identified defects may not be undertaken or completed.

In such a case, should the Secretary be satisfied that the developer or builder was unreasonably refused access to undertake rectification of defective building work, then the release of an amount of the bond to the owners corporation may be refused or the amount otherwise payable, can be reduced.

In either of these two scenarios, if the cost is greater than the Building Bond the whole amount of the Building Bond will be paid to the owners' corporation and the developer is then pursued for the balance of the rectification costs - litigation may become a final avenue in this regard.

Stage 8 – Completing the process



This stage must commence by the later of 3 years of receipt of OC.

The parties involved are:

- Developer
- Owners' Corporation
- The Secretary

In summary, this stage sees the owners' corporation:

- use any money it receives from the Building Bond to rectify the defective building work identified in the final report within a reasonable time.
- give the developer written notice of the completion of the rectification of the defective building work.
- return to the developer any residual building bond after the defective building work rectification has been completed.

Duration

Excluding the time it may take the owners' corporation to rectify defects that have been identified in the final report, this whole process is to be completed within 3 years from the date of the receipt of an occupation certificate (whether interim or final).

The duration of the whole process may be further extended where there are:

1. Applications for variations: the developer, owners' corporation or building inspector may have made an application to the Secretary to vary the times for reports and other matters.
2. Reviewable decisions: some decisions by the Secretary are reviewable. Reviews may result in the timeline being altered.
3. NSW Civil and Administrative Tribunal orders: a developer, the Secretary, or an owners' corporation may apply to the Tribunal for orders as to access and the contract price for building work to determine the amount to be secured by a Building Bond, thereby varying the amount of the bond.

This stage-8, within phase 2 of the SBBIS, is the final part of the process.

End...