

ASBC December Meeting 2021 –a year like no other!

Mark Glynn | Partner
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14 December 2021

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- Building Commissioner
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 - DB&P Act
- Security of Payment Act
- Supply chain delays
- Materials price increases



Legislative Reform



**Residential Apartment
Buildings**
(Compliance &
Enforcement Powers)
Act 2020 (*RAB Act*)



Building Commissioner



The Sydney Morning Herald

National NSW [Development outrage](#)

Developer promises \$11m for potential defects in Castle Hill towers



By [Matt O'Sullivan](#)
July 26, 2021 – 3.02pm

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The developer of one of Sydney's largest apartment developments at Castle Hill, which had signs of cracking in a basement, will provide \$11 million in security to fix any future defects and has agreed to guarantee its structural integrity for the next two decades.

Toplace's commitments for the \$900 million Skyview towers has led to NSW Building Commissioner David Chandler lifting an order which had prevented the developer from settling with buyers of off-the-plan apartments in two of the five buildings in the complex.

Building Commissioner

Enforceable Undertaking



Date of Enforceable Undertaking (EU):
16 July 2021



Developer:
51 OCHR PTY LTD
and Toplace Pty Ltd



Building address:
51-53 Old Castle Hill Rd,
Castle Hill NSW 2154

Building Commissioner

Stop work orders

Date of order:
8 July 2021

Developer:
Maryland Developments Pty Ltd

Building address:
9A Cooper Park Road, Bellevue Hill NSW 2020

Order:
[Order \(PDF 120kb\)](#)



Prohibition Orders (1/2)

Date of order	Developer	Building address
22 Jul 2021	Hassall Developments Pty Ltd	9 Hassall Street, Parramatta, NSW 2150
19 Jul 2021	Atlas Capital & Equities Pty Ltd	259 Condamine St, Manly Vale, NSW 2093
8 Jul 2021	Maryland Developments Pty Ltd	9A Cooper Park Road, Bellevue Hill, NSW 2020
25 Jun 2021	JKN Hills Pty Ltd	299-309 Old Northern Road, Castle Hill, NSW 2154

Prohibition Orders (2/2)

Date of order	Developer	Building address
9 Jun 2021	Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust	417 – 419 Pacific Highway, Asquith, NSW 2077
3 Mar 2021	Goldenia Developments Pty Ltd	93 Auburn Road, Auburn, NSW 2144
12 Feb 2021	Grand City Investments Pty Ltd	12 Beaconsfield Parade, Lindfield, NSW 2070
21 Dec 2020	Fitz Jersey Pty Ltd	563 Gardeners Road, Mascot, NSW 2020

Building Work Rectification Orders (1/2)

Date of order	Developer	Building address
15 Oct 2021	Hills Shoppingtown Pty Ltd	Modena, 2 Seven Hills Road, Baulkham Hills, NSW 2153
22 Jul 2021	Australia Avenue Developments Pty Ltd	1 Brushbox Street, Sydney Olympic Park, NSW 2127
22 Jul 2021	Icon Co (NSW) Pty Ltd	Opal Tower, 1 Brushbox Street, Sydney Olympic Park, NSW 2127
22 Jul 2021	Sydney Olympic Park Authority	Opal Tower, 1 Brushbox Street, Sydney Olympic Park, NSW 2127
19 Jul 2021	Atlas Capital & Equities Pty Ltd	259 Condamine St, Manly Vale, NSW 2093
28 Jun 2021	Sydney Christian Life Centre Ltd	Otto 2, 32-38 Rothschild Avenue, Rosebery (Phase 2), NSW 2018
28 Jun 2021	Capital Corporation (Rosebery Terrace) Pty Ltd	Otto 2, 32-38 Rothschild Avenue, Rosebery (Phase 2), NSW 2018

Building Work Rectification Orders (2/2)

Date of order	Developer	Building address
25 Jun 2021	JKN Hills Pty Ltd	299-309 Old Northern Road, Castle Hill, NSW 2154
9 Jun 2021	Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust	417 – 419 Pacific Highway, Asquith, NSW 2077
20 May 2021	Eunomia Developments Pty Ltd	2 Mitchell Road, Alexandria, NSW 2015
9 Mar 2021	Australian YMCI Pty Ltd	Ovation Quarter, 29 Carter Street, Lidcombe, NSW 2151
3 Mar 2021	Goldenia Development Pty Ltd	93 Auburn Road, Auburn, NSW 2144
12 Feb 2021	Grand City Investment Pty Ltd	12 Beaconsfield Parade, Lindfield, NSW 2070
24 Nov 2020	Fitz Jersey Pty Ltd	563 Gardeners Road, Mascot, NSW 2020

Legislative reform

Design and Building Practitioners Act 2020 (*DBP Act*) – Class 2 Buildings



Registration of Building Practitioners – commenced 1 July 2021



Compliance declarations – commenced 1 July 2021



Duty of Care – commenced 11 June 2020

Duty of care

Does the duty extend to individuals?

Is proof of the existence of defects enough?

The Owners – Strata Plan No 87060 v Loulach Developments Pty Ltd (No 2) [2021] NSWSC 1068

It is not sufficient simply to assert a defect and allege that the builder was required to take whatever precautions were needed to ensure that the defect not be present.

A plaintiff must identify the specific risks that the builder was required to manage, and the precautions that should have been taken to manage those risks.

Security of Payment regime extended to owner occupier construction contracts

Position – Pre 1 March 2021



Owner occupier construction contracts are exempt from the NSW Adjudication



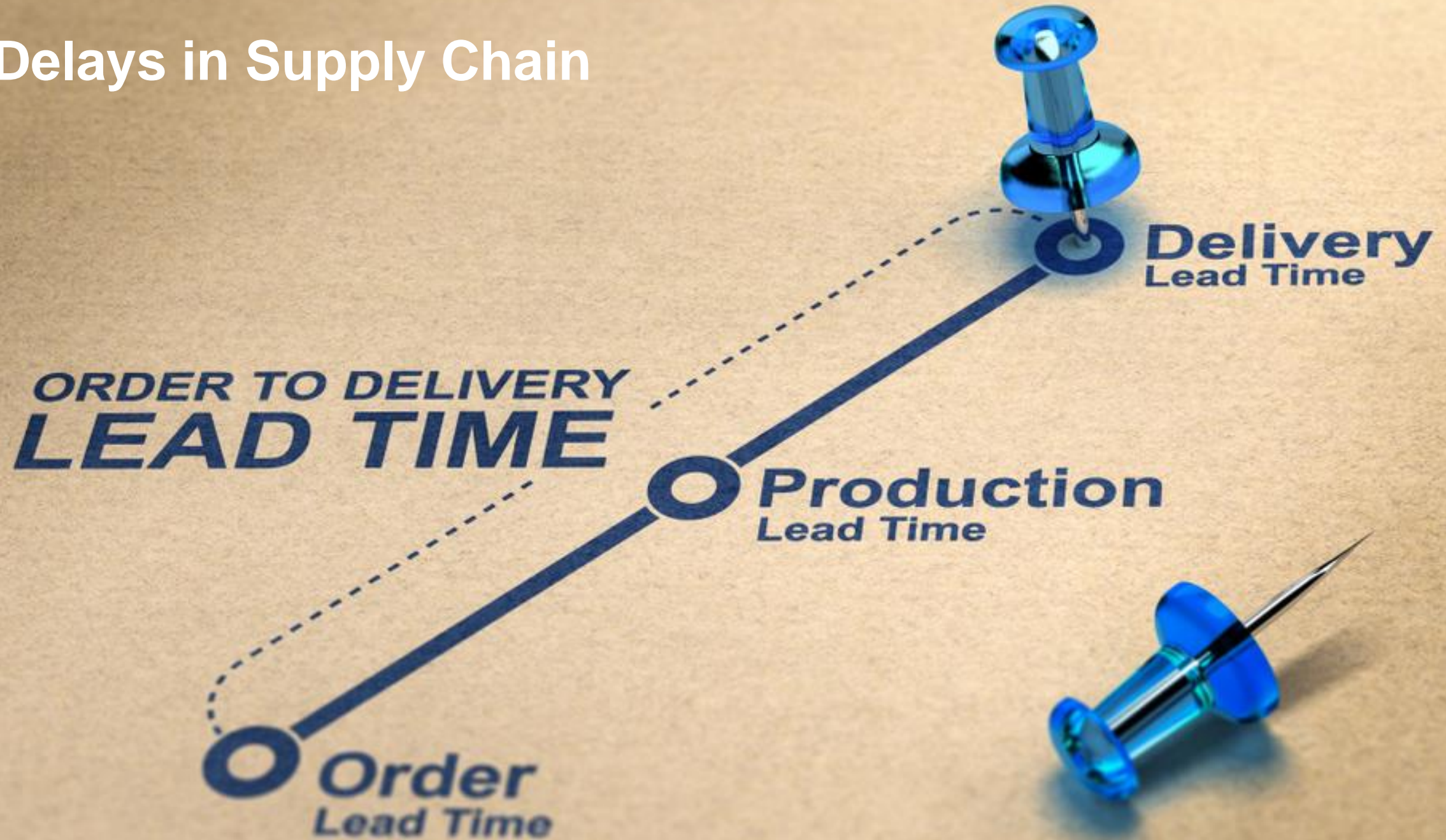
Subcontractors who carry out residential building work on the same project can make such claims against the builder

What do residential builders need to do?

- Understand security of payment requirements
- Ensure Payment Claims:
 - comply with SOP Act
 - include Supporting Statements
 - carry the notation: ***“This is a Payment Claim made under the Building & Construction Industry Security of Payment Act.”***
- Be familiar with the dates from and methods by which a Payment Claim can be served
- Be aware of the strict time limits that apply in relation to Adjudication Applications



Delays in Supply Chain



Materials price increases



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