



Customer
Service

Proper Officer
Mundarra Pty Ltd
(ACN 620 775 877)
Level 1, 68 Alfred Street
MILSONS POINT NSW 2061

Service: to registered address and by email

10 February 2021

Prohibition Order

Section 9 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*

This Prohibition Order is being issued in relation to the residential apartment building located at 50-52 Head Street, Forster NSW 2428 (Lot 50 DP 1249472) (“the Building”).

This Order prohibits the issue of an Occupation Certificate in relation to the Building and the registration of a Strata Plan in relation to the Building, until such time as the Order is revoked by the Secretary.

Please read this Order carefully and comply with any conditions by the date specified.

Failure to comply with this Order or its conditions is a criminal offence.

A. Background

1. The Department of Customer Service (the Department) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW) (the Act).
2. The building work in respect of the residential apartment building located at 50-52 Head Street, Forster NSW 2428 (Lot 50 DP 1249472) (the Building) is building work as defined in s 5 of the Act.
3. The exercise of functions under the Act apply to the Building pursuant to s 6 of the Act.
4. Mundarra Pty Ltd (ACN 620 775 877) is the developer of the Building for the purposes of s 4 of the Act.
5. David Chandler is an authorised delegate of the Secretary of the Department.
6. On 21 December 2020 notices of a proposed prohibition order were given to the developer, Local Council, Principal Certifier or Registrar General. At the date of this Order, no representations have been received.

B. Powers under the Act

1. Under s 9 of the Act, the Secretary of the Department, or their authorised delegate, may make an order prohibiting the issue of an occupation certificate (including a “final occupation certificate”) in relation to a residential apartment building and/or the registration of a strata plan for a strata scheme in relation to a residential apartment building if any one or more of the following apply:
 - a) the expected completion notice required to be given to the Secretary under the Act was not given or was given less than 6 months before the application for the occupation certificate was made (unless the expected completion notice was duly given under s 7(3) of the Act),
 - b) an expected completion amendment notice of a new expected date required to be given to the Secretary under the Act was not given or was given less than 6 months before the application for the occupation certificate was made,
 - c) the Secretary is satisfied that a serious defect in the building exists,
 - d) any building bond required under s 207 of the *Strata Schemes Management Act 2015* (NSW) in relation to the building has not been given to the Secretary.
2. For the purposes of subsection (c) above, “serious defect” is defined as follows:
 - (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.*
3. The Secretary may rely on section 9(2) of the Act to satisfy herself that a serious defect in a building exists if either (a) a building work rectification order has been made in relation to the building and has not been revoked, or (b) a development control order under the *Environmental Planning and Assessment Act 1979* relating to defects in building work has been made in relation to the building and has not been revoked.

C. Grounds

Serious defect in the building exists

10. As an authorised delegate of the Secretary, I am satisfied that a serious defect in the Building exists because a building work rectification order (attached) has been made in relation to the Building and has not been revoked.

11. On 20 October 2020, Compliance Officers from the Department conducted an inspection of the Building. During the inspection, the Compliance Officers observed building work that had been carried out that has resulted in serious defects in relation to the following building element: waterproofing.
12. The developer had made written representations on 10th and 17th December 2020. Authorised officers responded to those representations on 14th and 20th December 2020 advising the developer that the representations were not accepted as the installation remained non-compliant.
13. Further details of the building work and the nature of the serious defect is provided in **Schedule A** to this Order.

D. ORDER

14. I, David Chandler, an authorised delegate of the Secretary, am satisfied that there is a serious defect in the Building, and accordingly make an Order under s 9 of the Act prohibiting the issue of an occupation certificate in relation to the Building and the registration of a strata plan in relation to the Building.

E. Consequences of Order

14. While in effect, this Order prohibits the following:
 - 14.1 The issue of an occupation certificate (including a final occupation certificate) in relation to the Building; and
 - 14.2 The registration of a strata plan in relation to the Building.

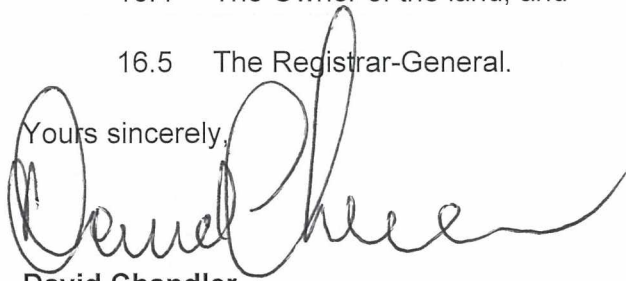
F. Duration of Order

15. This Order remains in force until it is revoked by the Secretary, or their authorised delegate.

G. Notice of Order

16. The following persons have been given notice of the making of this Order:
 - 16.1 Mid Coast Council;
 - 16.2 Building Certificates Australia Pty Ltd (ACN 105 050 897)
 - 16.3 Mundarra Pty Ltd (ACN 620 775 877)
 - 16.4 The Owner of the land; and
 - 16.5 The Registrar-General.

Yours sincerely,



David Chandler
Building Commissioner
Department of Customer Service

Notes

- An occupation certificate issued in contravention of this prohibition order is invalid.
- It is an offence for a principal certifier (other than a council) to issue an occupation certificate in contravention of this order. The maximum penalty for a company is 1,000 penalty units. For an individual the maximum penalty is 200 penalty units.
- A penalty notice of \$3,000 for an individual or \$11,000 for a corporation may be issued if a principal certifier (other than a council) issues an occupation certificate in contravention of this prohibition order.
- A developer in relation to the residential apartment building to which this prohibition order applies may appeal against this order to the Land and Environment Court within 30 days of the notice of the order being given unless the Court grants leave allowing an appeal to be made after that time. Lodging an appeal does not, except to the extent that the Land and Environment Court otherwise directs, operate to stay action on the order.

Schedule A

Building work and serious or potential serious defects

Defect Number	Building Element	Building Work	Observations	Serious Defect
1.	Waterproofing	Waterproofing and external façade cladding.	<p>On 22 October 2020, Compliance Officers observed the following key issues in relation to the external cladding interface to the structure floor slab:</p> <ul style="list-style-type: none"> (i) insufficient membrane upward termination height surrounding the RAB Board façade cladding system; (ii) inadequate membrane termination finishing surrounding the RAB Board façade cladding system; (iii) the inadequate membrane upward terminations and membrane termination finishing was caused by the installation of the RAB Board façade cladding system; (iv) the RAB Board façade cladding system was not installed in compliance with the James Hardie Installation Guide and Technical Specification RAB Board (Australia, May 2020). 	<p>The building work constitutes a serious defect because of the following:</p> <p>1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard 4654.2 clauses 2.8.1.1 and 2.8.1.3 because of the following factors:</p> <ul style="list-style-type: none"> (i) Insufficient membrane upward terminations height surrounding the RAB Board façade cladding system (ii) Inadequate membrane termination finishing surrounding the RAB Board façade cladding system (iii) The inadequate membrane upward terminations and finishing were caused by the installation of the RAB Board façade cladding system. (iv) The RAB Board façade cladding system was not installed in compliance with the James Hardie Installation Guide and Technical Specification RAB Board (Australia, May 2020). <p>2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes, or is likely to cause, the following:</p> <ul style="list-style-type: none"> (i) the inability to inhabit or use the building (or part of the building) for its intended purpose due to the integrity of the waterproofing system being compromised by water from the wall cavity discharging into the base of the RAB Board underneath the waterproofing system, or (ii) the destruction of the building or any part of the building due to water egress and/or mould growth.