

Attn. The Proper Officer
HILL ROAD LURNEA PTY LTD
ACN 620 264 879
25 Bud Greenspan Circuit
Lidcombe NSW 2141
ABN: 59 620 264 879

Service: By registered post and by email

18 November 2022

Prohibition Order

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

This Prohibition Order is being made in relation to the residential apartment building, located at 71 Hill Rd, Lurnea, NSW 2170 (SP101801) (the Building).

This order prohibits

- the issue of an occupation certificate in relation to the Building until the Order is revoked by the Secretary.
- the registration of a strata plan for a strata scheme in relation to the Building until the Order is revoked by the Secretary.

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

Failure to comply with this Order or its conditions 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. The Building is a residential apartment building to which the Act applies pursuant to s 6 of the Act.

3. HILL ROAD LURNEA PTY LTD (ACN 59 620 264 879) is the developer of the Building for the purposes of s 4 of the Act.
4. No occupation certificate has been issued in relation to the Building.
5. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.
6. On the 24 October 2022 a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier. The parties were invited to provide submissions to the Department relating to the Order by 31 October 2022. No submissions were received by the 31 October 2022 or as at the date of this Order from the Developer, Local Council, Office of the Registrar General or Certifier.

Powers under the Act

7. Under s 9(1) of the Act, the Secretary of the Department, or their authorised delegate, may make an order prohibiting the issue of an 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 notices 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* in relation to the building has not been given to the Secretary,
 - e. the developer failed to comply with a direction of an authorised officer under section 17 or 18 of the Act.
8. Under s3 of the Act a serious defect in relation to a building, means –
 - f. 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
 - g. 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

- h. a defect of a kind that is prescribed by the regulations as a serious defect, or
- i. the use of a building product (within the meaning of the *Building Products (Safety) Act 2017*) in contravention of that Act.

9. Section 6 of the *Design and Building Practitioners Act 2020* a Building element relevantly states:

- (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.

What are the reasons for making this Order?

- 10. A serious defect exists in the Building and a building work rectification order has been made in relation to the Building dated 22 July 2022 and has not been revoked.

What Order is being made?

- 11. I, Matthew Whitton, an authorised delegate of the Secretary, am satisfied there are serious defects 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.

How long is the Order in force?

- 12. This order remains in force until it is revoked by the Secretary or their authorised delegate.



Matthew Whitton

Director

Building and Construction Compliance

NSW Fair Trading Department of Customer Service

Notes about this Order

- 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.

REASONS FOR THE ORDER

Serious defect.

1. I, Matthew Whitton, an authorised delegate of the Secretary of the Department, have reviewed a copy of the Building Work Rectification Order for the Building dated 22 July 2022
2. Based on my review of the above document I am satisfied that a serious defect exists in the Building and a building work rectification order has been made in relation to the Building dated 22 July 2022 and has not been revoked.

Consideration of written representations

3. On the 24 October 2022 a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier. The parties were invited to provide submissions to the Department relating to the Order by 31 October 2022. No submissions were received by the 31 October 2022 or as at the date of this Order from the Developer, Local Council, Office of the Registrar General or Certifier.

Why is it appropriate to give the Prohibition Order?

4. I have considered all of the circumstances. I accept that the order will delay the issuing of an occupation certificate and registration of the strata plan alongside of further construction work that is likely to be costly, and I give this consideration moderate weight. I also accept that the issuing of a Prohibition Order will place pressure on the Developer and give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the future occupiers of the Building in having the serious defects contained in the Building Work Rectification Order remediated. I give greater weight to having the Building work remediated and I find that it is appropriate, in the exercise of my discretion, to make the Prohibition Order.