

Attn. Proper Officer
Young Street Apartments Pty Ltd (ACN 636 464 107)
c/- PFS Accountants,
10D Mallett Street,
CAMPERDOWN NSW 2050

Service: By registered post and by email

30 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 28-30 Young Street / 29-31 Belmore Street, Wollongong NSW 2088 (Lot 38/Sec5/DP1258; Lot B/DP358466; Lot 29/Sec5/DP1258; Lot A/DP358466) (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.

A. 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. The Building comprises a 16 storey mixed use development, containing 47 residential apartments, commercial units and 3 basement parking levels.

4. Young Street Apartments Pty Ltd (ACN 636 464 107) is the developer of the Building for the purposes of s 4 of the Act.
5. No occupation certificate has been issued in relation to the Building.
6. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.
7. On 14 November 2022 a notice of intention to issue this Order and a draft copy of the Order was served on the following persons: a Developer in relation to the building work, Local Council, Office of the Registrar General and the principal certifier inviting submissions to the Department relating to the Order. As at 21 November 2022, and the date of this Order, no submissions have been received from the Developer, Local Council, Office of the Registrar General or Certifier.

B. Powers under the Act

8. 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 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,
 - c1. a rectification bond required under the terms of an undertaking given by the developer relating to the residential apartment building has not been provided to the Secretary,
 - 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.
 - f. other circumstances prescribed by the regulations for the purposes of s 9(1)(f) of the Act exist.
9. Under s 3 of the Act a 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.
10. A building element has the same meaning as in the *Design and Building Practitioners Act 2020*. Section 6 of the *Design and Building Practitioners Act 2020*, Building elements, 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.

C. What are the reasons for making this Order?

Serious Defect 1 – Honeycombing and structural cracking on loadbearing wall on level 6

- 11. On 31 October 2022, authorised officers of the Department, including myself conducted a lawful inspection of the Building, pursuant to s 20 of the Act.
- 12. It was observed during inspection on level 6 at Grid 6 and Grid J that areas of the loadbearing wall on the northern boundary of the development have honeycombing and structural cracking within the concrete. The honeycombing and cracking indicates to me that the structural integrity of this wall is reduced making it inadequate to support weight placed upon it including the weight of upper levels of the building, as a loadbearing wall which is an element of the internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it. This is a serious defect because AS 3600 at clause 4.10.3 states, "... *Hardened concrete shall be liable to rejection if – (i) it does not satisfy the requirements of clause 17.1.6; (ii) it is porous, segregated, or honeycombed, or contains surface defects outside the specified limits; (iii) it fails to comply with other requirements of this Standard.*

Serious Defect 2 – Unsupported weight transfer to loadbearing slab on level 6

13. On 31 October 2022, authorised officers of the Department, including myself conducted a lawful inspection of the Building, pursuant to s 20 of the Act.
14. It was observed during inspection on level 6 at Grid 6 and Grid J that areas of the loadbearing wall on the northern boundary of the development had foam and visible gaps between the loadbearing wall and concrete which indicates to me that the weight transferred through the loadbearing wall is inadequately supported creating an uneven load transfer to the base of the loadbearing wall which is an element of the internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it. This is a serious defect because it is a failure to comply with BCA Volume One: Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 Structural reliability which states *“(a) A building or structure, during construction and use, with appropriate degrees of reliability, must – (i) Perform adequately under all reasonably expected design actions; and (ii) Withstand extreme or frequently repeated design actions; and (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...”*.

Serious Defect 3 – Unsupported weight transfer to structural hob on level 7

15. On 31 October 2022, authorised officers of the Department conducted a lawful inspection of the Building, pursuant to s 20 of the Act.
16. It was observed during inspection on level 7 at Elevation 35 and 38 that areas of the loadbearing wall on the eastern elevation of the development have been constructed in such a way that there is misalignment between the loadbearing wall and the structural hob beneath. The misalignment of the loadbearing wall onto the structural hobs indicates to me that there is uneven load transfer from the base of the loadbearing wall to the structural hob which is an element of the internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it. This is a serious defect because it is a failure to comply with BCA Volume One: Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 Structural reliability which states *“(a) A building or structure, during construction and use, with appropriate degrees of reliability, must – (i) Perform adequately under all reasonably expected design actions; and (ii) Withstand extreme or frequently repeated design actions; and (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...”*.

D. What Order is being made?

17. I, Matt Whitton, an authorised delegate of the Secretary, am satisfied there is a serious defect in the Building and make an Order under s 9 of the Act prohibiting the issue of an occupation certificate and the registration of a strata plan for a strata scheme in relation to the Building.

E. How long is the Order in force?

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



Matthew Whitton
Assistant Building Commissioner
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

Satisfied there are serious defects for the purposes of s9 of the Act

1. I, Matt Whitton, an authorised delegate of the Secretary, am satisfied for the purposes of s9 of the Act, that the building has a serious defect.

Defect 1:

2. I observed during my inspection and am informed that on level 6 at Grid 6 and Grid J that areas of the loadbearing wall on the northern boundary of the development have honeycombing and structural cracking within the concrete. The honeycombing and cracking indicates to me that the structural integrity of this wall is reduced making it inadequate to support weight placed upon it including the weight of upper levels of the building, as a loadbearing wall which is an element of the internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it. This is a serious defect because AS 3600 at clause 4.10.3 states, “... *Hardened concrete shall be liable to rejection if – (i) it does not satisfy the requirements of clause 17.1.6; (ii) it is porous, segregated, or honeycombed, or contains surface defects outside the specified limits; (iii) it fails to comply with other requirements of this Standard.* This is a serious defect because it fails to comply with the following:

Australian Standard 3600: Concrete Structures, Section 4 – Design for durability, 4.10 Requirements for cover to reinforcing steel and tendons, 4.10.3 Cover for corrosion protection, 4.10.3.7 Embedded items cover, which states: “*Embedded items, as defined in Clause 14.2, shall be protected from corrosion or deterioration.*”

The cover to embedded items that are not corrosion resistant shall be as given in Table 4.10.3.2 and 4.10.3.3, as applicable. 2. Section 17 - Materials and construction requirements, 17.1.7- Rejection of concrete, 17.1.7.2 Hardened concrete, which states: “Hardened concrete shall be liable to rejection if –

(i) it does not satisfy the requirements of Clause 17.1.6;

(ii) it is porous, segregated, or honeycombed, or contains surface defects outside the specified limits.

(iii) it fails to comply with the other requirements of this Standard.”

BCA Volume 1: (i) Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 which states:

“Structural reliability

(a) A building or structure, during construction and use, with appropriate degrees of reliability, must-

(i) Perform adequately under all reasonably expected design actions; and

(ii) Withstand extreme or frequently repeated design actions; and

(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

(iv) ”

Defect 2:

3. I observed during my inspection and am informed that on level 6 at Grid 6 and Grid J that areas of the loadbearing wall on the northern boundary of the development had foam and visible gaps between the loadbearing wall and concrete which indicates to me that the weight transferred through the loadbearing wall is inadequately supported creating an uneven load transfer to the base of the loadbearing wall which is an element of the internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it. This is a serious defect because it is a failure to comply with BCA Volume One: Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 Structural reliability which states:

BCA Volume 1: (i) Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 which states:

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(i) Perform adequately under all reasonably expected design actions; and

(ii) Withstand extreme or frequently repeated design actions; and

(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

(iv) ”

Defect 3:

4. I observed during my inspection and am informed that on level 7 at Elevation 35 and 38 that areas of the loadbearing wall on the eastern elevation of the development have been constructed in such a way that there is misalignment between the loadbearing wall and the structural hob beneath. The misalignment of the loadbearing wall onto the structural hobs indicates to me that there is uneven load transfer from the base of the loadbearing wall to the structural hob which is an element of the internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it. This

is a serious defect because it is a failure to comply with BCA Volume One: Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 Structural reliability which states:

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(ii) Withstand extreme or frequently repeated design actions; and

(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

(iv)”

5. I have considered matters raised by the email from Trenton Jones to Raymond Boumoussa and others dated 7/11/22 attaching Written Directions Notice dated 7/11/22, Structural Engineers site inspection email dated 4/11/22, Email from Zaid Haddad to Trenton Jones dated 4/11/22 and Email from Chris Iannuzzi to Trenton Jones, Zaid Haddad and others dated 4/11/22.

Consideration of written representations

6. The decision maker will consider any written representations received by the date specified in correspondence producing the draft order. On 14 November 2022 a notice of intention to issue the order and a copy of the draft order was provided to the following persons: a Developer in relation to the building work, Local Council, Office of the Registrar General and the principal certifier inviting submissions to the Department relating to the Order. As at 21 November 2022, and the date of this Order, no submissions have been received from the Developer, Local Council, Office of the Registrar General or Certifier.

Why is it appropriate to give the Prohibition Order?

7. 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, 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 moderate weight. The cost to the Developer must be balanced against the benefit to the future occupiers of the Building having been constructed in compliance with the Building Code of Australia and Australian Standards. I give greater

weight to having the Building constructed in compliance with the Building Code of Australia and Australian Standards and I find that it is appropriate, in the exercise of my discretion, to make the prohibition order.