

Attn:
PSR Crownview Investment Pty Ltd
(ACN 601 764 578)
SE 1301, 51 Crown St
WOLLONGONG NSW 2500

Service: By registered post and by email

19 December 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 373 Crown Street, Wollongong NSW 2500 (Lot 100 DP 1214547) (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 two towers with 149 apartment dwellings.

4. PSR Crownview Investment Pty Ltd (ACN 601 764 578) 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 David Chandler is an authorised delegate of the Secretary of the Department.
7. A copy of this Order will be 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.

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 – Structural systems – column remediation works

- 11. On 9 November 2022, authorised officers of the Department conducted a lawful inspection of the Building, pursuant to s 20 of the Act.
- 12. It was observed during inspection in basement level 3 that column (being the column marked as C43 next to the intersection of grid line “4” and “F” on the plan titled “BASEMENT LEVEL 3 BLOCK A OUTLINE PLAN” drawing number S00711, an extract of which is attached as “Annexure A” to this order) had undergone remediation works. The column is an element of the internal load-bearing component of a building that is essential to the stability of the building, or a part of it. That remediation works were carried out in relation to the column indicates to me that the column was structurally inadequate prior to the remediation works. Further, from inspection of the remediation works, it is apparent that the column has been ‘jacketed’ with high strength concrete to thicken it. An inspection of the jacketing indicates an absence of adequate horizontal ties/connectors. The construction of a structurally inadequate

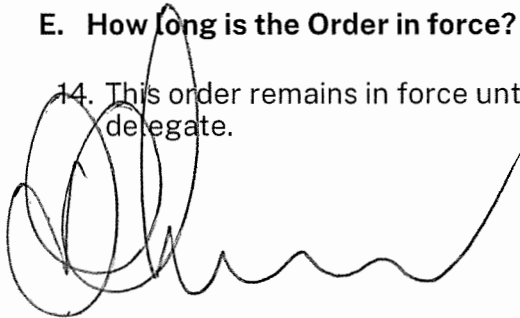
column is defective. Further, remediation of the defective column with concrete jacketing lacking horizontal ties, is defective because the jacketing will not provide adequate core confinement. This is a serious defect because AS 3600 at clause 10.7.3.1 requires, *Fitments (including helical reinforcement) shall be detailed to provide confinement to the core of the column*", and at clause 10.7.4.1 requires "...longitudinal bars in columns shall be laterally restrained in accordance with clause 10.7.4.2..."

D. What Order is being made?

13. I, David Chandler, 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?

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



David Chandler
Building Commissioner
NSW Fair Trading Department of Customer Service

19/12/22

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, David Chandler, 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. It was observed during inspection in basement level 3 that column (being the column marked as C43 next to the intersection of grid line "4" and "F" on the plan titled "BASEMENT LEVEL 3 BLOCK A OUTLINE PLAN" drawing number S00711, an extract of which is attached as "Annexure A" to the order) had undergone remediation works. The column is an element of the internal load-bearing component of a building that is essential to the stability of the building, or a part of it. That remediation works were carried out in relation to the column indicates to me that the column was structurally inadequate prior to the remediation works. Further, from inspection of the remediation works, it is apparent that the column has been 'jacketed' with high strength concrete to thicken it. An inspection of the jacketing indicates an absence of adequate horizontal ties/connectors. The construction of a structurally inadequate column is defective. Further, remediation of the defective column with concrete jacketing lacking horizontal ties, is defective because the jacketing will not provide adequate core confinement. This is a serious defect because AS 3600 at clause 10.7.3.1 requires, "*Fitments (including helical reinforcement) shall be detailed to provide confinement to the core of the column*", and at clause 10.7.4.1 requires "*...longitudinal bars in columns shall be laterally restrained in accordance with clause 10.7.4.2...*".
3. This is a serious defect as it fails to comply with the following:

Australian Standard 3600 Concrete structures, Section 10 Design of columns for strength and serviceability, 10.7 Reinforcement requirements for columns 10.7.3 Confinement to the core 10.7.3.1 General requirements:

"Fitments (including helical reinforcement) shall be detailed to provide confinement to the core of the column —

...

(b) for columns where $f'_c > 50$ MPa confinement shall be provided-

- (i). in special confinement regions using fitments detailed to provide a minimum effective confining pressure to the core of $0.01 f'_c$, calculated in accordance with Clauses 10.7.3.2, 10.7.3.3 or 10.7.3.4; and*
- (ii). outside of the special confinement regions, confinement shall deem to be provided if the maximum spacing of the fitments does not exceed the lesser of $0.8D_c$, 300 mm and that of Clause 10.7."*

In the special confinement regions, the spacing or pitch of the fitments shall not exceed the lesser of $0.6 D_c$, 300 mm and that of Clause 10.7.4. Special confinement regions are regions where the design action effects satisfy one of the following [see Figure 10.7.3.1(A)]:

(A). $N^ \geq 0.75_\phi N_{uo}$ 10.7.3.1(1)*

(B). $N^ \geq 0.3_\phi f'_c A_g$ and $M^* \geq 0.6_\phi M_u$... 10.7.3.1(2)*

Australian Standard 3600 Concrete structures, Section 10 Design of columns for strength and serviceability, 10.7 Reinforcement requirements for columns 10.7.4 Restraint of longitudinal reinforcement 10.7.4.1 General requirements:

"The following longitudinal bars in columns shall be laterally restrained in accordance with clause 10.7.4.2:

(a) Single bars-

- (i) each corner bar;*
- (ii) all bars, where bars are spaced at centres of more than 150 mm or where the design axial force $> 0.3A_g f'_c$;and*
- (iii) at least every alternate bar, where bars are spaced at 150 mm or less.*

Consideration of written representations

4. On 17 November 2022 a notice of intention to make the prohibition order and a 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 5pm on 23 November 2022. On 23 November 2022 submissions were received from the Developer. No submissions have been received as at the date of this Order from the Local Council, Office of the Registrar General or Certifier.
5. The submissions provided by the Developer on 23 November 2022 included the following information (**Developers Representations**):
 - a. Mr Robert Huang, Managing Director of PSR Crownview Investment Pty Ltd states that on 6 January 2022 I had already given my undertaking in written [sic] that "the developer PSR Crownview Investment Pty Ltd hereby undertakes not to apply for an Occupancy Certificate until the approval of the BIC".
 - b. Piety Constructions Pty Ltd had engaged engineers both internal and externally since March 2021 to rectify the design deficiency and construction defects, chaired by the General Manager of Piety Constructions Pty Ltd. They have been working closely with your office and the BIC team at the Wollongong City Council and rectified majority of the remedial works identified by the peer review engineer BG&E except some critical packages including the transfer & slab and the footings remained outstanding.
6. I have reviewed the Developers Representations and supporting material and note that the written submissions received from the Developer do not specifically address defect 1 of the Order.
7. I am not satisfied that the identified serious defect no longer exists and will be appropriately addressed by 20 December 2022.

Why is it appropriate to give the Prohibition Order?

8. 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.