

Attn. The Proper Officer
See Win Holdings Pty Ltd (ABN 65 132 944 542)
30 Livingstone Street
BURWOOD, NSW, 2134

Service: By registered post and by email

13 December 2021

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 11 John Street, LIDCOMBE, NSW, 2141 (SP100536) (the Building). This order prohibits

- the issue of an occupation certificate 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. See Win Holdings Pty Ltd (65 132 944 542) is the developer of the Building for the purposes of s 4 of the Act.
4. Building work currently being carried out at the Building is building work as defined in s 5 of the Act.

5. Mr Matthew Whitton is an authorised delegate of the Secretary of the Department.
6. On 9 December 2021, notices of a proposed prohibition order were given in accordance with sections 44 and 45 of the Act. No representations relating to the issues raised in the Order have been received from the Developer. No representations have been received from the Certifier, Local Council or Registrar General.

B. 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 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* 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 –
 - 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.

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.

C. What are the reasons for making this Order?

Serious Defect – The installation of balustrade wall with no reinforcement.

10. On 26 November 2021, authorised officers of the Department conducted a lawful inspection of the Building, pursuant to s 20 of the Act. The Building comprises of 9 storeys above ground and approximately 5 storeys below ground. The building comprises of below ground basement carparking, plant and equipment rooms, commercial space on the ground floor and 8 storeys of residential apartments.
11. It was observed during the inspection that the roof top level perimeter balustrade walls and first floor balcony balustrade walls (which are an external load bearing component of a building) have been constructed with 230 mm wide clay masonry blocks. The Developer confirmed that the 230mm wide clay masonry block walls were constructed on the top of the concrete rooftop slab on a mortar bed and that the wall was not reinforced.
12. Following the inspection, one of the authorised officers, Greg O'Mara, prepared a Report dated 26 November 2021 (**the Report**) annexed at Attachment A. The Report states that the rooftop level perimeter balustrade walls and the first floor balcony balustrade walls have been constructed with no reinforcement. The Report also contains engineering calculations as to the strength of the balustrade walls.
13. I consider that the roof top level perimeter balustrade walls and the first floor balcony balustrade walls are external load bearing components of a building that are essential to the stability of part of the building, being that part of the building which comprises those walls.
14. The failure to reinforce the balustrade walls is a serious defect because it is a defect in a building element that is attributable to a failure to comply with the relevant **Australian Standard AS/NZS1170.1 - 2002 - Structural design actions – Permanent, imposed and other actions and the following, Section 3 - Imposed Actions, 3.6 Barriers states:**

“Barriers, including parapets, balustrades and railings, together with members and connections that provide structural support, shall be designed to sustain the imposed actions given in Table 3.3.”

TABLE 3.3
MINIMUM IMPOSED ACTIONS FOR BARRIERS

Type of occupancy for part of the building or structure	Specific uses	Top edge			Infill		
		Horizontal	Vertical	Inwards, outwards or downwards	Horizontal	Any direction	
		kN/m	kN/m	kN	kPa	kN	
C Areas where people may congregate							
C1/C2	Areas with tables or fixed seating	Areas with fixed seating adjacent to a balustrade, restaurants, bars, etc.	1.5	0.75	0.6	1.5	1.5
C3	Areas without obstacles for moving people and not susceptible to over-crowding	Stairs, landings, external balconies, edges of roofs, etc.	0.75	0.75	0.6	1.0	0.5

Table 3.3 relevantly nominates a minimum horizontal imposed action for external balconies and edges of roofs of 0.75kN/m.

The horizontal load of the external balconies and edges of roofs in the Report is calculated to be 0.17kN per meter, therefore is a failure to comply with the Australian **Standard AS/NZS1170.1 - 2002 - Structural design actions – Permanent, imposed and other actions and the following, Section 3.**

15. I Matthew Whitton, an authorised delegate of the Secretary of the Department, am satisfied for the purposes of section 9(1)(c) of the Act that a serious defect in the Building exists, namely the Building does not have balustrade walls which are compliant with the requirements of the relevant Australian Standard.
16. I have formed this belief after reviewing the Report which contains the authorised officer's observations and includes photographs of the rooftop, first floor balconies and the external elevations of the Building. The Report also contains engineering calculations in relation to the strength of the balustrade walls. I am satisfied on the evidence before me that the roof top level perimeter balustrade walls and first floor balcony balustrade walls are insufficiently strong to properly act as an external load bearing component of the Building.

D. What Order is being made?

17. I, Matthew Whitton, an authorised delegate of the Secretary, am satisfied 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.

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.

F. Who has been given notice of the Order?

19. The following persons have been given notice of the making of this order:

- a. the local council: **Cumberland Council**,
- b. the certifier: **Cumberland Council**,
- c. the developer: **See Win Holdings Pty Ltd**,

- d. the owner of the land: **Owners Corporation of Strata Plan 100536**
- e. the **Registrar-General**,



Matthew Whitton
Director
Building & 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.