

Attn: Proper Officer
Parkmeng Pty Ltd (ACN 601 875 398)
Suite 204, 460 Church Street
PARRAMATTA NSW 2150

Service: By registered post and by email:

31 May 2023

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 buildings, located at 5-7 Parkes Street, Parramatta NSW 2150 (Lot 511 DP 866023) (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.

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. **Parkmeng Pty Ltd (ACN 601 875 398)** 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. Matthew Whitton is an authorised delegate of the Secretary of the Department.

Powers under the Act

6. 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,
 - 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.
7. 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.
8. 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.

What are the reasons for making this Order?

9. A building work rectification order has been made in relation to the Building dated 17 March 2023 and has not been revoked.

What Order is being made?

10. I, Matthew Whitton, an authorised delegate of the Secretary, am satisfied that a building work rectification order has been made in relation to the Building dated 17 March 2023 and has not been revoked 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?

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



Matthew Whitton
Assistant Building Commissioner
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 Prohibition 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 (BWRO) for the Building dated 17 March 2023.
2. Based on my review of the above document, I am satisfied that a serious defect exists in the Building and that a building work rectification order has been made in relation to the Building dated 17 March 2023 and has not been revoked.

Consideration of written representations

3. On 9 May 2023, a notice of intention to issue a prohibition order and a draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier.
4. The parties were invited to provide submissions to the Department in relation to the draft Order by 5pm on 16 May 2023. No submission has been received as at the date of this Order from the Local Council, Office of the Registrar General or Certifier.
5. On 16 May 2023, submissions were received on behalf of the developer from Mr Gilbert Abi Assaf, Project Manager. The submissions include the following information (Developers Representations):
 - a. The Developer is committed to resolving any outstanding issues to ensure the full compliance of the building.
 - b. The Developer confirmed that the works to fulfil the requirements under the building work rectification order dated 17 March 2023 are being prioritised and that compliance is anticipated to be achieved prior to the time for compliance as specified in the building rectification work order.
 - c. Further, the Developer noted that the issuing of a prohibition order is a discretionary exercise and stated that “there are serious and compelling discretionary factors which militate strongly in favour of the Prohibition Order not being required to be issued considering the inevitable fact that an Occupation Certificate cannot be issued in the first place without the items in the BWRO, which are building elements that are still under construction, being completed; and acknowledging the developer’s responsible and timely response to the BWRO and the seriousness shown so far in seeking to achieve full compliance and closure of the BWRO”.
6. I have reviewed the Developers Representations and supporting materials. While the issuing of a prohibition order is a discretionary exercise, I do not accept the Developer’s submission that a prohibition order is not required “considering the inevitable fact that an Occupation Certificate cannot be issued in the first place without the items in the BWRO being satisfactory completed”.

7. The issuing of an occupation certificate is not a matter for the Department. While a building work rectification order identifies serious defects and potential serious defects in a building, it is issued to order rectification and does not prohibit the issuing of an occupation certificate under the Act.
8. The Developer has also made representations that there has been partial compliance with the building work rectification order and that full compliance is anticipated prior to the time for compliance set out in the building work rectification order. I acknowledge that the Developer has committed to resolving the serious defects, however, as of the date of this Order, a building work rectification order has been made in relation to the building and has not been revoked.

Why is it appropriate to give the Prohibition Order?

9. I have considered all of the circumstances. I accept that the Order will delay the issuing of an occupation certificate and 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.