



Attn: The Proper Officer
The Owners Corporation of Strata Plan 1731 (ABN 15 619 185 741)
C/o Strata Logic
Studio 12, Level 5, 35 Buckingham St
SURRY HILLS, NSW 2010

Via registered post and email: david@stratalogic.com.au

16 December 2021

Stop Work Order

Section 29 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*

The Owners Corporation of Strata Plan 1731 (ABN 15 619 185 741) (**the Developer**) is issued with this Stop Work Order (**this Order**) in relation to residential apartment building located at 20 Illawong Avenue, TAMARAMA, NSW, 2026 (CP/SP1731) (**the building**).

The Developer is required to ensure all work on the site stops by **5pm** on **16 December 2021**.

Please read the Stop Work Order carefully and comply with the conditions.

Failure to comply with this Order is an offence and may result in criminal proceedings.

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 located at 20 Illawong Avenue, TAMARAMA, NSW, 2026 (CP/SP1731) (the **Development**).
3. The Developer is currently carrying out or organising building works to be carried out to construct the Development (**Building Work**).
4. The Development is a Class 2 residential apartment building where work has previously been authorised to commence.
5. Under section 29 of the Act, the Secretary of the Department or her authorised delegate may order the Developer to ensure that work stops at the building if the Secretary forms the opinion that the building work is, or is likely to be, carried out in a manner that could result in:

- a. Significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates
 - b. Significant damage to property.
5. Mr Matthew Whitton is an authorised delegate of the Secretary for the purposes of section 29 of the Act.
 6. On 22 September 2021 and 8 October 2021, inspections were conducted at the Development by authorised officers of the Department. The inspections were documented in a report dated 20 October 2021 (the **Audit Report**).
 7. At the inspection it was observed by the authorised officers that the following works had been undertaken.
 - Excavation and construction of two (2) levels of basement carpark;
 - Construction of extended eastern and western balconies to each level;
 - Construction of two (2) access / fire egress stair and lift towers;
 - Construction of an additional top floor level storey comprising two (2) roof top penthouse apartments;
 - Construction of elements within the basement carpark of permanent plastic formwork structural reinforced concrete walls;
 - Fire safety systems installed throughout awaiting final commissioning;
 - Fire sprinklers limited in location to only the two (2) basement carpark levels;
 - Works at advanced stages indicating the Development was nearing completion.

Grounds for issuing this Order

8. I, Matthew Whitton, am aware that during the 8th October 2021 inspection, building Work was being carried out at the Building as outlined in the Audit Report. Authorised officers were advised that the Building Work would continue until the completion of the Building in December 2021, and I am therefore of the opinion that building work is currently being carried out or is likely to be carried out.
9. I consider that fire safety systems, including, but not limited to, the sprinklers are key elements of a building. The proper performance of these elements is critical to the safety and integrity of the building that is under construction. In particular, fire safety systems are critical measures designed to protect life and property in the event of a fire either during construction or following occupation.
10. Based on reviewing the Audit Report and speaking with the authorised officers, I consider that the fire safety systems installed at the building, in particular, the sprinklers, are not in accordance with the Building Code of Australia (**BCA**) Volume One 2019.
11. Based on the Audit Report, I am of the view that fire sprinklers have not been installed on all levels of the Building.
12. In my opinion the lack of fire sprinklers on all levels of the building fails to comply with the BCA Volume One 2019 requirement set out at paragraph 10 above.
13. In my opinion, that continuing to carry out of the Building Work in the absence of sprinklers on all levels could result in significant harm to property and to persons working on the site, in the event of a fire breaking out.

Direction to ensure Building Work stops

14. I, Matthew Whitton, Order the Developer to ensure that the Building Work stops by **5 pm** on **16 December 2021**

Duration of this order

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



Matthew Whitton
Director
Building & Construction Compliance
NSW Fair Trading Department of Customer Service

Notes

- It is an offence to fail to comply with this order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this order within 30 days of the notice of the order being given. Lodging an appeal does not stop the order taking effect, unless directed by the Court.
- Upon issuing this order, the Department has notified the relevant local council and the principal certifier for the building, in accordance with s 29(6) of the Act

REASONS FOR THE ORDER

Building work is, or is likely to be, carried out in a manner which could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates and/or significant damage to property

1. On 15 November 2021, notices of the proposed stop work order were given in accordance with sections 44 and 45 of the Act.
2. The proposed stop work order indicated my preliminary reasons as to why it was necessary to issue a Stop Work Order in respect of the Development as follows:
 - (a) the version of the BCA applicable to the fire safety systems for the Development is the 2019 version;
 - (b) the 2019 BCA requires sprinklers to be installed on every level of the Building;
 - (c) the Building currently only has sprinklers on two levels, being in the basement carpark;
 - (d) building work is currently being carried out at the Development and is planned to continue through December 2021; and
 - (e) that continuing to carry out building work at the Development in the absence of sprinklers on all levels could result in significant harm to property and to persons working at the site in the event that a fire breaks out.
3. Representations were received by email dated 25 November 2021 from Structured Project Management (**SPM**) on behalf of the Owners Corporation of Strata Plan 1731. At the date of this Order, no other representations have been received from either the Certifier or Local Council.
4. SPM provided me with submissions which included the following information: (**Developer's Representations**).
 - a. The first construction certificate (CC) was issued on 18 August 2017 for a partial hydrant and sprinkler line installation.
 - b. A report obtained from Credwell Consulting dated 24 November 2021 advising that the correct BCA applicable to the sprinkler system was BCA 2016 Amendment 1
 - c. That the Local Council did not require the existing building to be upgraded to require the provision of a sprinkler system
 - d. Legal Advice obtained from Norton Rose Fulbright dated 25 November 2021 to the effect the correct BCA for the sprinkler system was the 2016 BCA thus the draft Order did not properly engage s29 of the Act.
 - e. Report from project Hydraulic Engineer of TNA Consulting dated 23 November 2021 addressing the feasibility of the hydraulic works completed in 2017 under the Construction Certificate 1 to be utilized as a supply for a fire suppression system.
5. SPM in summary advised the applicable BCA for the automatic fire suppression system under CC1 is BCA 2016 Amendment 1 and that there is no requirement under the *Environment Planning and Assessment Regulations 2000* to retrospectively upgrade the works to standards applicable to future construction certificates. There were no submissions made in relation to risk and whether the Building work is, or is likely to be, carried out in a manner that could result in 'significant harm or loss to the public/occupiers or significant damage to property.
6. I have reviewed the Developer's Representations including the supporting reports. In relation to the issues raised in the Developer's Representations, I make the following

observations:

- a. The date at which the relevant BCA is applicable is “the time the application for the construction certificate was made” cl 145(1)(b) *Environment Planning and Assessment Regulation 2000*;
 - b. The CC “1 Part Hydrant” had a construction certificate application date of the 18 August 2017 for works which comprised of partial hydrant line and sprinkler line installation only. This application did not require consideration of fire safety system for the Building.
 - c. Between 18 August 2017 and 24 June 2019 there were no construction certificate applications for any structural works, only applications for site investigation and demolition
 - d. On 24 June 2019 there was a construction certificate application for structural works - ground to level 7.
 - e. The 24 June 2019 application is therefore the first application which required any consideration of the fire safety system for the Building.
 - f. As the application date for the construction certificate for structural work was made on 24 June 2019, this is the applicable BCA date for consideration of the fire safety system for the Building.
 - g. The BCA 2019 came into effect on 1 May 2019 and is therefore the version of the BCA applicable to the Building.
7. I remain satisfied that the BCA 2019, being the applicable BCA, requires sprinklers to be installed on every floor and that the Building currently only has sprinklers in the two levels of the basement carpark.
8. I therefore remain of the view that the Building does not comply with the 2019 BCA and, in the absence of any submissions made by the developer to the contrary, that continuing to carry out of the Building Work in the absence of sprinklers on all levels could result in significant harm to property and to persons working on the site, in the event of a fire breaking out.

Why is it appropriate to give the stop work order.

9. I have considered all of the circumstances. I accept that the order requires considerable additional building work that is likely to be costly, and I give this consideration moderate weight. However, the cost to the developer must be balanced against the risk to the workers and future safety to the occupiers of the units in having the building constructed to the correct BCA. The failure to have sprinklers on all storeys of the Building is a risk to both workers and future safety of occupiers if a fire breaks out.
10. Considering these potential consequences, I give greater weight to the seriousness of the failure to adhere to the correct BCA, and I find that it is appropriate, in the exercise of my discretion, to require the Owners Corporation of Strata Plan 1731 to stop work.
11. I, Matthew Whitton, Order the Developer to ensure that the Building Work stops by **5 pm on 16 December 2021**