



Customer
Service

Attn: Proper Officer
dVT Group (Administrators of Toplace Pty Ltd)
Level 2, 72 Pitt Street,
SYDNEY NSW 2000

Service: By registered post and by email to mail@dvtgroup.com.au

18 October 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 “JOLYN PLACE” 67-77 Epsom Road, Rosebery NSW 2018 (SP 94145) (the Development). This order prohibits

- the issue of any further occupation certificates 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. **dVT Group (Administrators of Toplace Pty Ltd)** are the developer of the Building for the purposes of s 4 of the Act.
4. An interim occupation certificate has previously been issued, but no final occupation certificate has been issued in relation to the Building.
5. David Chandler, NSW Building Commissioner, 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 s 7 of the Act, a developer is required to provide notification to the Secretary of intended completion of building work:

“7 Notification to Secretary of intended completion of building work

- (1) A developer in relation to building work must not cause or permit an application to be made for an occupation certificate for any part of a residential apartment building for which the building work is being or was carried out unless, at least 6 months, but not more than 12 months, before that application is made, the developer notified the Secretary, or caused the Secretary to be notified, of that proposed application (an expected completion notice).
- (2) The expected completion notice must set out the date that the developer expects to make the application for the occupation certificate for the building or part of the building (the expected date).
- (3) Despite subsection (1), if, at the commencement of building work for a new building, the developer expects to make the application for the occupation certificate for the building or part of the building within less than 6 months, the developer must give the Secretary, or cause the Secretary to be given, an expected completion notice within 30 days of the commencement of that building work.

(4) The expected completion notice is to be given in a manner and form approved by the Secretary.

(5) The regulations may provide that the expected completion notice may be given to another person in the manner and form prescribed as an alternative to being given to the Secretary.

(6) If there is more than 1 developer in relation to a residential apartment building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion notice to the Secretary (or other person prescribed under subsection (5)).”

8. Under s 8 of the Act, a developer is required to inform the Secretary of a change to an expected date:

“(1) If a developer becomes aware that circumstances have changed so that the developer expects an application for the occupation certificate for a residential apartment building or part of a residential apartment building to be made on a different date than the expected date specified in an expected completion notice, the developer must notify the Secretary of the new expected date (an expected completion amendment notice).

(2) The expected completion amendment notice must be given—

(a) within 7 days of the developer becoming aware of the change in circumstances, and

(b) in a manner and form approved by the Secretary.

(3) The regulations may provide that the expected completion amendment notice may be given to another person in the manner and form prescribed as an alternative to being given to the Secretary.

(4) This section does not apply if the new expected date is within 60 days of the expected date specified in the expected completion notice given to the Secretary in relation to the building work.

(5) A developer may give more than 1 expected completion amendment notice in accordance with this section and, for the purposes of any subsequent notice, a reference in this section to the expected date specified in an expected completion notice is to be taken to be a reference to the new expected date specified in the most recent expected completion amendment notice given by the developer.

(6) If there is more than 1 developer in relation to a residential apartment building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion amendment notice to the Secretary (or other person prescribed under subsection (3)).”

What are the reasons for making this Order?

9. The NSW Department of Customer Service Audit Report dated 21 September 2023 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act of the Building on 13 May 2022, 22 February 2023, 01 March 2023 and 29 March 2023, identified serious defects in the building;
10. The BCA Fire Safety Defects Report with report number 11371 dated 18 October 2022 prepared by AED Group identified serious defects in the building.
11. In accordance with Section 9(c) of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, I am satisfied that serious defects in the building exists.
12. An expected completion notice has not been lodged on the NSW Planning Portal for a Final Occupation Certificate in accordance with Section 7 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

What Order is being made?

13. I, David Chandler, an authorised delegate of the Secretary, prohibit the issue of any further occupation certificates for the residential apartment building **“JOLYN PLACE” 67-77 Epsom Road, Rosebery NSW 2018 (SP 94145)**.

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
NSW Building Commissioner
Office of the Building Commissioner, NSW 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.