

Attn. the Proper Officer
Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust
(ACN 932 168 925)
Suite 106, 155 Avoca Street,
Randwick NSW 2031

Service: to registered address/ by email

9 June 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 417 – 419 Pacific Highway, Asquith NSW 2077 (Lot 10 DP 658184, Lot 11 DP 666335) (the Building). This order prohibits

- the issue of an occupation certificate in relation to the Building until the Order is revoked by the Secretary. and
- 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 work carried out at the Building is building work as defined in s 5 of the Act.
3. Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust (ACN 932 168 925) is the developer of the Building for the purposes of s 4 of the Act.
4. The Building is a residential apartment building to which the Act applies pursuant to s 6 of the Act.

5. Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust (ACN 932 168 925) is the owner of the land on which the Building is located.
6. Matthew Whitton is an authorised delegate of the Secretary of the Department.
7. On 21 April 2021, notices of a proposed prohibition order were given to the Developer, Private Certifier, Council and Registrar General. At the date of this Order, no written representations have been received.

B. Powers under the Act

8. Under s 9 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.

C. What are the reasons for making this Order?

Serious defect in the building exists

9. As an authorised delegate of the Secretary, I am satisfied that a serious defect in the Building exists because:
 - a. A building work rectification order (attached) has been made in relation to the Building and has not been revoked.

D. What Order is being made?

10. I, Matthew Whitton, an authorised delegate of the Secretary, am satisfied that there are serious defects in the Building and accordingly make an Order under s 9 of the Act prohibiting the issue of an occupation certificate and the registration of a strata plan in relation to the Building.

E. How long is the Order in force?

11. 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?

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

- a. Hornsby Shire Council,
- b. Ivan Boulle Consulting Pty Ltd (ACN 621 300 589), Ivan Boulle,
- c. Asquith 79 Pty Ltd as trustee for Asquith 79 Unit Trust (ACN 932 168 925), and
- d. the **Registrar-General**.



Matthew Whitton
Director Consumer, Building and Property
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.



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