

Attn. Proper Officer
Akkari Constructions and Management Pty Ltd (ACN 628 528 843)
16 Dudley Street,
PUNCHBOWL, NSW 2196

Via email

27 March 2024

Stop Work Order

Section 89 of the *Design and Building Practitioners Act 2020*

Akkari Constructions and Management Pty Ltd (ACN 628 528 843) (**Akkari**) is issued with this Stop Work Order (the **Order**) in relation to a Class 2 and Class 7a residential development located at 46-48 Holden St Gosford 2250 (Lot 5 & 6 DP 758466) (the **Development**).

Akkari is required to ensure all work at the Development stops by **5.00 p.m. on 27 March 2024**.

Please read the Stop Work Order carefully and comply with the conditions; and also make the Development site safe.

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 *Design and Building Practitioners Act 2020* (the **Act**) and the *Design and Building Practitioners Regulation 2021* (the **Regulations**).
2. The Development, being 9-storey building, is located at 46-48 Holden St Gosford 2250 (Lot 5 & 6 DP 758466) and contains 42 residential units over 1 level of basement car parking (the **Building**). The Building is a Class 2 and Class 7a building.
3. Three Construction Certificates were issued in relation to the Development and relevant building work has commenced under each:
 - a. The Construction Certificate 210619/02 under application CFT-212910 on NSW Planning Portal (**CC1**) issued by Joseph Hallal (BDC0159) on 29 September 2022;
 - b. The Construction Certificate 210619/03 under application CFT-231383 on NSW Planning Portal (**CC2**) issued by Joseph Hallal (BDC0159) on 04 November 2022.
 - c. The Construction Certificate 210619/05 under application CFT-277583 on NSW Planning Portal (**CC3**) issued by Joseph Hallal (BDC0159) on 22 February 2023.
4. Akkari is the owner of the land in respect of the Development pursuant to section 36 of the Act and is the owner of the land at the Development for the purposes of section 89(1)(a) of the Act.
5. On 4 March 2024, a Notice of Intention to issue a Stop Work Order was issued to Akkari.

Power to Stop Work

6. Under section 89(2) of the Act, the Secretary of the Department or their authorised delegate may order a person carrying out building work, professional engineering work or specialist work (**the Work**) or the owner of the land on which the Work is being carried out to ensure that work stops at the Site if the Secretary forms the opinion that:
 - a. the Work is, or is likely to be, carried out in contravention of this Act, and
 - b. the contravention could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates or significant damage to property.
7. I, Matthew Whitton, Director Practitioner Compliance: Building Commission NSW, Department of Customer Service, am a duly authorised delegate of the Secretary for the purposes of section 89 of the Act.

Requirements of the Act

8. Under section 4 of the Act, the term “building work” relevantly means work involved in, or involved in coordinating or supervising work involved in, the construction of a building of a class or type prescribed by the Regulations for the purposes of this definition. Clause 12 of the Regulations states that a building is prescribed for the purposes of section 4 of the Act if the building, or part of the building, is a class 2 building or class 3 building or class 9c building.
9. Under section 5(1) of the Act, a regulated design is a design that is prepared for a building element for building work, a design that is prepared for a performance solution for building work (including a building element), or any other design of a class prescribed by the Regulations that is prepared for building work.
10. Under section 6(1)(a) of the Act, a building element includes:
 - a. the fire safety systems for a building within the meaning of the *Building Code of Australia* (the **BCA**);
 - 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 BCA;
 - f. other things prescribed by the Regulations for the purposes of this section.
11. Under section 19 of the Act, a building practitioner must not, except with reasonable excuse, carry out any part of building work for which a regulated design is to be used unless
 - a. the practitioner has obtained a design from a registered design practitioner for the work and a design compliance declaration for the design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
 - b. the declaration states that the design complies with the requirements of the BCA and other applicable requirements prescribed

for the purposes of section 8(1) of the Act.

12. Section 20(2)(a) and (c) of the Act provides:

(2) A building practitioner who does building work must take all reasonable steps to ensure that, if the building work (in relation to a building element or performance solution) is to be varied from a regulated design for the building element or performance solution, before the varied building work commences-

(a) a design with the variation is prepared by a registered design practitioner, and

(c) a design compliance declaration is obtained for the varied design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and

13. Under section 107(2)(e) of the Act, the regulations may make provision with respect to the lodging of copies of designs and compliance declarations electronically or otherwise with the Department or another person approved by the Minister.

14. Under section 107(2)(f) of the Act, the regulations may make provision with respect to the notice to registered practitioners of matters affecting the circumstances when compliance declarations are to be provided.

15. Under clause 16 of the Regulations, for the purposes of section 107(2)(e) of the Act, a building practitioner must provide required documents for the building work to which the construction certificate relates to the Secretary in the approved way before commencing building work. Required documents means:

a. copies of the construction issued regulated designs for the building work,

b. copies of the design compliance declarations, made by a suitably authorised registered design practitioner for each of the construction issued regulated designs.

16. Clause (8) of the Regulation provides:

For the purposes of section 8(1)(b) of the Act, it is an applicable requirement that a regulated design must, as far as is reasonably practicable, integrate details of the following —

(a) other aspects of building work to which the design relates,

(b) other regulated designs for the work, including designs prepared by other registered design practitioners for building work.

17. Clause 9(1)(c) of the Regulation provides:

(1) For the purposes of section 8(1)(d) of the Act, a design compliance declaration must include the following matters —

(c) whether or not the design accords with relevant elements of guidance material for regulated designs that have been approved by the Secretary and published on a website of the Department

18. The *Regulated Design Guidance Material*, approved by the Secretary of the Department pursuant to cl 9(1)(c) of the Regulations, is material that is required to be complied with by registered design practitioners when designing relevant Building Element(s) for relevant Building Work and therefore forms part of the Construction Issued Regulated Design.

19. The Dictionary to the Regulations defines the term '*approved way*':

'*approved way*' as lodgement on the NSW planning portal or, if the registered practitioner is unable to access the portal, provision of the document to the Secretary

20. Clause 3A of the Regulation defines the term '*construction issued regulated design*':

(1) In this Regulation, construction issued regulated design means a regulated design for which a design compliance declaration is provided that —

(a) contains the necessary detail to produce building work that would achieve compliance with the Building Code of Australia, and

(b) can be used by a building practitioner to carry out the work in accordance with the regulated design and the Building Code of Australia.

(2) In subclause (1)(a), the necessary detail includes —

(a) the proposed dimensions of the completed building, and

(b) the characteristics and materials comprising the proposed building, and

(c) the location of the building elements and systems proposed to be built.

(3) However, a reference in subclause (2)(a) or (b) to a building is, in relation to a construction issued regulated design for building work carried out under more than 1 construction certificate, a reference to a part of the building to which the construction

certificate relates.

Note—

See the Act, section 4(3), which provides that a reference to a building includes a reference to part of a building.

- (4) In addition to subclauses (1)(a) and (2), a construction issued regulated design for building work carried out under more than 1 construction certificate must, as far as reasonably practicable, integrate details of other aspects of the building work to which the design relates.

Work occurring or likely to be carried out at the Development

21. The following building work is occurring or likely to be carried out at the Development:

- a. Building works under the CC1: Basement footings and basement slab only.
- b. Building works under the CC2: Construction up to ground floor slab only.
- c. Building works under the CC3: All remaining works.

Residential Flat Building (42 Units).

(the **Works**).

Documents for the Development

22. On 12 January 2024, authorised officers under section 73 of the Act commenced an audit pursuant to section 92(4) of the Act, with a focus on Architectural CIRDS and the integration with other regulated designs for the Development. The audit is ongoing as of the date of this Notice.
23. Authorised officers under section 73 of the Act reviewed the information of the Registered Practitioners available on the NSW Planning Portal, within the uploaded documentation and observed that HiQuality are the nominated Building Practitioner on the NSW Planning Portal. This was further corroborated during the audit meeting where the Developer representative Mark Akkari confirmed that the main building contract was between AKKARI CONSTRUCTIONS AND MANAGEMENT PTY LTD and HIQUALITY CONSTRUCTIONS PTY LTD. The latter entity does not hold a building practitioner registration under the Act.

24. Authorised officers reviewed the CC1, CC2 and CC3 that had been issued and were available on the NSW Planning Portal, along with answers given during the audit meeting on 29 February 2024 and observed that:
- a. The copies of construction issued regulated designs (**CIRDs**) and Design Compliance Declarations (**DCDs**) that have been uploaded on the NSW Planning Portal, have not been provided in the **approved way** i.e., the CIRDs and DCDs that have been uploaded on the NSW Planning Portal for the CC1, CC2 and CC3 have not been lodged by the registered building practitioner.
 - b. The copies of construction issued regulated designs (**CIRDs**) and Design Compliance Declarations (**DCDs**) that have been uploaded on the NSW Planning Portal, are missing required designs such as the Mechanical CIRDs for Level 1 to Level 9.
 - c. The copies of construction issued regulated designs (**CIRDs**) and Design Compliance Declarations (**DCDs**) that have been uploaded on the NSW Planning Portal, are missing required designs such as the Architectural CIRDs for the fire safety systems including passive fire protection.
25. The Architectural documents do not satisfy the definition of a CIRD under clause 3A of the Regulations as they do not contain the necessary detail to produce building work that would achieve compliance with the BCA and are not in accordance with the *Regulated Design Guidance Material* (RDGM) as approved by the Secretary of the Department pursuant to clause 9(1)(c) of the Regulations for the following reasons:
- a. The architect provided concrete set-out drawings which did not specify floor gradients and locations of floor wastes.
 - b. The architect provided bathroom drawings which did not show the extent of the waterproofing membrane.
 - c. The architect provided façade detail drawings which were not resolved, not coordinated and lacked key features such as, but not limited to, steel angles to support the façade, fire stops, sarking, appropriate set-downs.
26. The Architectural documents do not satisfy Clause 8 of the Regulation as they are not integrated with other regulated designs prepared by other registered design practitioners for the following reasons:
- a. The architect provided drawings with notes requiring further coordination such as, but not limited to, set-downs to be defined by the builder, structural elements to be defined by the structural engineer, columns to be moved by the structural engineer.

Submissions

27. On 4 March 2024, a Notice of Intention to issue a Stop Work Order was issued to Akkari.

28. On 7 March 2024 submissions were received from Akkari, which relevantly noted that “*all steps are being taken to ensure the outstanding information is updated and provided to the Compliance Officer and loaded to the portal as per the DBP Audit process requirements by the 8th of April 2024 after the Easter weekend*”.

Grounds for issuing this Order

29. The work is, or is likely to be, carried out in contravention of the Act for the following reasons:
- a. Based on the information set out above, I am of the opinion that the nominated Building Practitioner Body Corporate who entered the main contract, do not hold the required registration under section 7(1) (b) and 7(2) of the Act to carry out the Works.
 - b. CIRDs provided for Architectural regulated designs for the Building at the Development do not contain the necessary details to produce building work that would achieve compliance with the BCA and therefore, do not satisfy the definition of a CIRD under clause 3A of the Regulations. As a result, the building practitioner carried out part of the building work for which regulated designs are to be used without obtaining regulated designs from registered design practitioners authorised to provide the relevant declarations in contravention of section 19 of the Act. In addition, copies of the required CIRDs have not been provided to the Secretary in the approved way before the building work commenced in contravention of clause 16 of the Regulations.
 - c. The building practitioner has not obtained a CIRD and DCD from a design practitioner in the class of Mechanical Engineering for the construction of mechanical systems from Level 1 to Level 9, all of which constitute building elements for the purpose of the Act.
 - d. The building practitioner has not obtained a CIRD and DCD from a design practitioner in the class of architectural for the passive fire protection, including protection of penetrations.
30. The failure to provide integrated CIRDs for aspects of building work such as, but not limited to, plans where columns are required to be moved is a contravention of:
- a. **Clause 8 of the Regulations:** For the purposes of section 8(1)(b) of the Act, it is an applicable requirement that a regulated design must, as far as is reasonably practicable, integrate details of the following (a) other aspects of building work to which the design relates and (b) other regulated designs for the work, including designs prepared by other registered design practitioners for building work.
31. The failure to provide copies of the required CIRDs and DCDs to the Secretary in the approved way before the Works commenced is a contravention of:

- a. **Clause 16 of the Regulations:** a building practitioner must provide the Secretary in the approved way before commencing building work copies of the construction issued regulated designs for the Building Work and copies of the design compliance declarations, made by a suitably authorised registered design practitioner for each of the construction issued regulated designs.
32. I am of the opinion that carrying out building works at the Development in the absence of regulated designs and DCDs is a contravention of:
- a. **Section 19 of the Act:** A building practitioner must not, except with reasonable excuse, carry out any part of building work for which a regulated design is to be used unless (a) the practitioner has obtained a design from a registered design practitioner for the work and a design compliance declaration for the design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates and (b) the declaration states that the design complies with the requirements of the BCA.
33. I am of the opinion that engaging and continuing in the Works without a registered building practitioner could result in significant harm or loss to the occupiers or potential occupiers at the Development.
34. I am of the opinion that failing to lodge CIRDs and DCDs with the Secretary also compromises the proper regulation and supervision of the Works and for those reasons could result in significant harm or loss to the occupiers or potential occupiers at the Development.
35. I am of the opinion that engaging and continuing in the Works without CIRDs for key building elements, such as the Architectural regulated designs for the fire safety systems including passive fire protection, and Mechanical regulated designs could result in the need for further designs, variations and rectification/remediation work which increases the risks associated with that work, as well as requiring the work to be rectified/remediated, resulting in loss to the potential occupiers of the building or significant damage to property .
36. I am also of the opinion that engaging in any further building works at the Development, in circumstances where Works have already been carried out in the absence of CIRDs and where proper CIRDs have not been generated, could result in significant harm or loss to the occupiers or potential occupiers at the Development.
37. I have considered all of the circumstances, including the submissions from Akkari, and I accept that the Order may have financial consequences for Akkari, and I give this consideration moderate weight. However, the cost to Akakri must be balanced against the risk of non-compliant work and potential harm to the occupiers or potential occupiers of the Development and their interests in having the building constructed in a manner which is compliant with the BCA.
38. Considering these potential consequences, I give greater weight to the seriousness of the failure to have CIRDs for key building elements, and I find that it is appropriate, in the exercise of my discretion, to require Akkari to stop work.

Order to ensure that building work stops

39. I, Matthew Whitton, Director Practitioner Compliance: Building Commission NSW, Department of Customer Service, am a duly authorised delegate of the Secretary for the purposes of section 89 of the Act.
40. I, Matthew Whitton, order Akkari to ensure that all building work (as defined by section 4 of the Act) at the Development stops by **5.00 p.m. on 27 March 2024.**

Duration of this order

41. This Order remains in force until it is revoked by the Secretary or their authorised delegate or the period of twelve months from the day on which the order takes effect ends.



Matthew Whitton
Director Practitioner Compliance, Building Commission NSW

Date: 27/03/24

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 pursuant to s 90 of the Act 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.