



**Fair
Trading**

Attn:
Platino Properties Pty Ltd
(ACN 002 388 856)
Suite 11, 20 Young St
NEUTRAL BAY NSW 2089

Service: By registered post and by email

1 November 2022

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 314-316 West Street, Cammeray (Lot 10 DP 1274463) (the Building). This order prohibits

- the issue of an occupation certificate in relation to the Building until the Order is revoked by the Secretary.
- 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 is a residential apartment building to which the Act applies pursuant to s 6 of the Act.
3. The Building comprises 5 storeys including basement parking and a total of 7 dwellings. (the **Residential Apartments**).

4. Platino Property Pty Ltd (ACN 002 388 856) is the developer of the Building for the purposes of s 4 of the Act.
5. No occupation certificate has been issued in relation to the Building.
6. Mr David Chandler is an authorised delegate of the Secretary of the Department.
7. A copy of a notice of intention to issue this Order (enclosing a draft copy of the order) will be served on the Developer, Local Council, Office of the Registrar General and Certifier inviting submissions to the Department relating to the draft Order.

B. Powers under the Act

8. 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 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,
 - 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.
9. Under s 3 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.

10. 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.

C. What are the reasons for making this Order?

Serious Defect 1 – The installation of stormwater drains which do not convey water to the drain outlet.

- 11. On 27 August 2022, authorised officers of the Department conducted a lawful inspection of the Building, pursuant to s 20 of the Act.
- 12. It was observed during inspection in the basement carpark that the stormwater drainage located between the plenum wall and wet wall had water ponding with no water flow to stormwater drains. The ponding of the water indicates to me that the stormwater was not being conveyed to the drain outlet which is an element of the building enclosure. This is a serious defect because AS 3500.3-2018 at clause 5.3.2 requires, ‘... *Stormwater from other than roof areas shall be collected and conveyed via stormwater channels and inlets to site stormwater drains.*’ and at clause 5.3.3, ‘...*ponding of stormwater shall only occur temporarily at sag pits confirming to Clause 5.4.10.1*’.

Serious Defect 2 – Car Stack Parking System

- 13. On 27 August 2022, authorised officers of the Department conducted a lawful inspection of the Building, pursuant to s 20 of the Act.

14. It was observed during the inspection that there are no safety emergency isolation stop points installed in the near vicinity of the car park stacking system. The lack of installed safety emergency isolation stop points, a building element, is a defect because there is no way for a member of the public to immediately stop the car stacker mechanism in the event of an accident, malfunction, fire or other situation where the car stacker should be stopped to prevent the risk of serious injury or loss of life. This is a serious defect because it is attributable to a failure to comply with clause 5.2.2.1 of AS 5124.2017 which states *"Safety devices ... emergency stop devices ... shall be located and installed to prevent them being damaged or rendered inoperative during any foreseeable operating conditions...."*
15. It was observed there is no visible fire safety system provision for applications defined as special hazards. The lack of a fire safety system, a building element, in near vicinity of the car park stacking system is a defect as the risk of serious injury or loss of life is increased due to the vertical stacking of cars, the fuel load of vehicles and obstructions to fighting a fire at a car park stacking system. The lack of a fire safety system is a serious defect because it is attributable to a failure to comply with clause ZX2 of AS5124.2017 which specifies *"AS 2118.1-2006, Section 10, Ordinary hazard class systems, includes specific design criteria for both ceiling and in-stacker sprinklers, as well as physical layout guidelines for stackers. Car stackers by their nature result in obstructions to the ceiling sprinkler spray pattern such that vehicles below the top level will not receive appropriate coverage for the ceiling sprinklers alone to control a fire."*
16. It was observed there are no visible barriers between the operating console of the car stack parking system and the car stack, to avoid fall or crush hazards. The lack of barriers is a defect that could result in serious injury or loss of life. The lack of visible barriers is a serious defect because it is attributable to a failure to comply with clause 5.11.8 to AS5124.2017 which specifies *"Fixed enclosing guards, fixed distance guards or interlocking guards shall be provided to protect persons from crushing, shearing, entanglement, drawing-in and trapping hazards..."*
17. It was observed there is no visible mechanical ventilation smoke exhaust at the highest level of the car stack parking system. The lack of a mechanical ventilation smoke exhaust is a defect that creates a risk of serious injury or loss of life due to smoke accumulation in the event of a fire. The lack of a mechanical ventilation smoke exhaust system is a serious defect because it is attributable to a failure to comply with clause 4.8.1 of AS 1668.1 which states *"Each smoke exhaust fan, complete with all associated componentry, shall be constructed and installed so that ... in a building or part of a building protected by a sprinkler system, the fan serving the protected parts of the building shall operate for a period of not less than 2 h with a smoke exhaust air temperature of 200°C..."*

D. What Order is being made?

18. I, David Chandler, an authorised delegate of the Secretary, am satisfied there is a serious defect in the Building and make an Order under s 9 of the Act prohibiting the issue of an occupation certificate and the registration of a strata plan for a strata scheme in relation to the Building.

E. How long is the Order in force?

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


David Chandler
Building Commissioner
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 THE ORDER

Satisfied there are serious defects for the purposes of s9 of the Act

1. I, David Chandler, an authorised delegate of the Secretary, am satisfied for the purposes of s9 of the Act, that the building has a serious defect.

Defect 1:

2. The installation of the stormwater drainage located between the plenum wall and wet wall had water ponding with no water flow to stormwater drains. The ponding of the water indicates to me that the stormwater was not being conveyed to the drain outlet which is an element of the building enclosure. This is a serious defect because AS 3500.3-2018 at clause 5.3.2 requires, '*... Stormwater from other than roof areas shall be collected and conveyed via stormwater channels and inlets to site stormwater drains.*' and at clause 5.3.3, '*...ponding of stormwater shall only occur temporarily at sag pits conforming to Clause 5.4.10.1*'. This is a serious defect as it fails to comply with the following:

Australian Standard 3500.3 - 2018, Plumbing and drainage – Stormwater drainage Section 5 Surface water drainage system – Design, 5.3 Layout – General criteria:

"5.3.2 Other than roof areas Stormwater from other than roof areas shall be collected and conveyed via stormwater channels and inlets to site stormwater drains."

And

"5.3.3 Ponding Except for on-site stormwater detention (OSD) systems, ponding of stormwater shall only occur temporarily at sag pits conforming to Clause 5.4.10.1. ..."

The ponding water was not located at the sag pits and only located at the stormwater drains.

Defect 2:

3. In relation to car stack parking systems Building Code of Australia (BCA) clauses E1.10, E2.3 and AS2118.1-2006 are invoked by operation of clause ZX2 of appendix ZX to AS 5124.2017 which states:

...The current provisions of the BCA do not consider the use of car stackers within buildings; therefore it is considered appropriate that BCA clauses E1.10 and E2.3 (Provision for special hazards) be invoked to include in the design suitable additional provisions to address the hazards.

AS2118.1-2006, Section 10, Ordinary hazard class systems, includes specific design criteria for both ceiling and in-stacker sprinklers, as well as physical layout guidelines for car stackers...

4. It was observed during the inspection that there are no safety emergency isolation stop points installed in the near vicinity of the car park stacking system. The lack of installed safety emergency isolation stop points, a building element, is a defect because there is no way for a member of the public to immediately stop the car stacker mechanism in the event of an accident, malfunction, fire or other situation where the car stacker should be stopped to prevent the risk of serious injury or loss of life. This is a serious defect because it is attributable to a failure to comply with clause 5.2.2.1 of AS 5124.2017 which states "*Safety devices ... emergency stop devices ... shall be located and installed to prevent them being damaged or rendered inoperative during any foreseeable operating conditions....*".
5. It was observed there is no visible fire safety system provision (including no mechanical ventilation smoke exhaust) for applications defined as special hazards. The lack of a fire

safety system, a building element, in near vicinity of the car park stacking system is a defect as the risk of serious injury or loss of life is increased due to the vertical stacking of cars, the fuel load of vehicles and obstructions to fighting a fire at a car park stacking system. The lack of a fire safety system is a serious defect because it is attributable to a failure to comply with clause ZX2 of AS5124.2017 which specifies “AS 2118.1-2006, Section 10, Ordinary hazard class systems, includes specific design criteria for both ceiling and in-stacker sprinklers, as well as physical layout guidelines for stackers. Car stackers by their nature result in obstructions to the ceiling sprinkler spray pattern such that vehicles below the top level will not receive appropriate coverage for the ceiling sprinklers alone to control a fire.”.

6. It was observed there are no visible barriers between the operating console of the car stack parking system and the car stack, to avoid fall or crush hazards. The lack of barriers is a defect that could result in serious injury or loss of life. The lack of visible barriers is a serious defect because it is attributable to a failure to comply with clause 5.11.8 to AS5124.2017 which specifies “Fixed enclosing guards, fixed distance guards or interlocking guards shall be provided to protect persons from crushing, shearing, entanglement, drawing-in and trapping hazards...”.
7. It was observed there is no visible mechanical ventilation smoke exhaust at the highest level of the car stack parking system. The lack of a mechanical ventilation smoke exhaust creates a risk of serious injury or loss of life due to smoke accumulation in the event of a fire. The lack of a mechanical ventilation smoke exhaust system is a serious defect because it is attributable to a failure to comply with BCA E2.3, E2.2b and clause 4.8.1 of AS 1668.1 which states “Each smoke exhaust fan, complete with all associated componentry, shall be constructed and installed so that ... in a building or part of a building protected by a sprinkler system, the fan serving the protected parts of the building shall operate for a period of not less than 2 h with a smoke exhaust air temperature of 200°C...”.

Consideration of written representations

8. On 4 October 2022 a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier. The parties were invited to provide submissions to the Department relating to the Order by 5pm on 11 October 2022. On 6 October 2022 submissions were received from the Developer. No submissions have been received as at the date of this Order from the Local Council, Officer of the Registrar General or Certifier.
9. The submissions provided by the Developer on 6 October 2022 included the following information: (**Developers Representations**)

Defect 1 – Stormwater Drainage between Plenum Wall and Wet Wall

- a. The ponding observed at the time of Inspection is a result of incomplete works.
- b. At the time of inspection the pumps within the pump out pit were in the process of being installed and had not yet been commissioned.

- c. There was also a considerable amount of rain in the days before the inspection which caused the pump out pit to fill up and thus not allowing the water behind the plenum walls to drain.
- d. As at [6 October 2022] with all the rain we have been having the areas are draining out 100%, please see attached video taken this morning whilst its been raining.

Defect 2 - Car Stacker

- e. A fire engineered solution has been undertaken by Holmes Fire Engineering to address this excessive hazard. A hyperlink was included to a Sharepoint page containing two PDF files titled '9 – FER.pdf' and '9 – HF-FR-LETTER-Design Compliance Declaration Single Regulated Design.pdf' with instructions to click the link and refer to pages 83-101 of the DER.
- f. These solutions have subsequently been supported by the brigade via an FEBQ & FER. Please see below extract from FER which summarises the measures required to satisfy the performance requirements.

The car stacker proposed in this building is not considered a conventional automated system. The system operates via a deadman control, located at the front of the stacker, meaning the key switch must be continuously operated by the user. If the user lets go of the key the stacker operation ceases immediately. The car stacker is primarily taken up by the car storage volume, and occupants are expected to be located at Basement level in the for vehicle drop-off only, which is the main access level of the car stacker. The upper platform is located at Ground Floor above, as such there is no pit where occupants can fall into and only maintenance personnel are expected to be accessing the void space via a ladder or by operating the stacker.

To mitigate the risk of crushing accidents, a light curtain which stands around 900 mm tall and has a separate light beam every 20 mm will be provided, to maximise capturing any interferences. When triggered, the car stacker operation will stop immediately.

The car stacker is proposed to be protected by a sprinkler system in accordance with AS 2118.1-2017 and to generally comply with the AFAC Fire Safety Requirements for Automated Vehicle Parking Systems.

A smoke exhaust system is provided within the carpark providing a capacity of 2.0 m³/s via ducting, which is activated upon smoke detector activation. This smoke exhaust is also able to be controlled by fire brigade personnel at the FIP.

- g. These works are nearly complete and will be Inspected and Certified by the Fire Engineer prior to the issue of the Occupation Certificate.

10. I have reviewed the Developers Representations and supporting material and make the following observations:

- a. In relation to Defect 1, the Developer indicated the works have been completed satisfactorily. The Developer acknowledged the ponding observed was due to incomplete works and that pumps within the pump out pit were in the process of being installed and had not been commissioned. Further, the Developer advised the pump pit itself had filled up not allowing the water behind the plenum walls to drain. The video supplied by the Developer is insufficient to establish that the works have been completed to the required standard. A certificate must be obtained from a certifier to certify the works have been satisfactorily completed.

- b. In relation to Defect 2, the Developer confirms a fire engineered solution has been undertaken to address the hazard. Further, the Developer indicates the fire engineered solution has been supported by the Fire Brigade and will be inspected and certified by the Fire Engineer prior to the issue of the Occupation Certificate. I agree a certificate must be obtained to certify the implemented fire engineered solution is suitable.
- c. I am not satisfied that the identified serious defects no longer exist and will be appropriately addressed by 2 November 2022.

Why is it appropriate to give the Prohibition Order?

11. I have considered all of the circumstances. I accept that the order will delay the issuing of an occupation certificate and registration of the strata plan, and I 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.