

Attn. the Proper Officer
Goldenia Developments Pty Ltd (ACN 164 693 181)
C/-Newcombe & Co Pty
Suite 202, 118 Great North Road
FIVE DOCK NSW 2000

Service: to registered address and by email

3 March 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 93 Auburn Road, Auburn NSW 2144 (SP97827, SP97827B) (the Building).

This order prohibits the issue of an occupation certificate 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. Goldenia Developments Pty Ltd (ACN 164 693 181) 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. Strata plans SP97827 and SP97827B is the owner of the land on which the Building is located.
6. Mr David Chandler is an authorised delegate of the Secretary of the Department.

7. On 24 December 2020, notices of a proposed prohibition order were given to the developer, Local Council, Principal Certifier or Registrar General.
8. The developer responded to the notice and made a rectification proposal, which did not address all of the serious defects in Schedule A.
9. At the date of this Order, no representations have been received in response to the notices sent to the Local Council, Principal Certifier or Registrar General.

B. Powers under the Act

10. 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 if any one or more of the following apply:

- a. the Secretary is satisfied that a serious defect in the building exists.

C. What are the reasons for making this Order?

Serious defect in the building exists

11. 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.
- b. On 8 October 2020, authorised officers from the Department conducted an inspection of the Building.
- c. During the inspection, the authorised officers observed building work that had been carried out that has resulted in serious defects in relation to the following building elements: waterproofing, fixing of wall tiles to bathroom and ensuite walls, falls to bathroom and ensuite floors.

12. Further details of the building work and the nature of the serious defects are provided in **Schedule A** to this Order.

D. What Order is being made?

13. I, David Chandler, an authorised delegate of the Secretary, am satisfied that there is a serious defect 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.

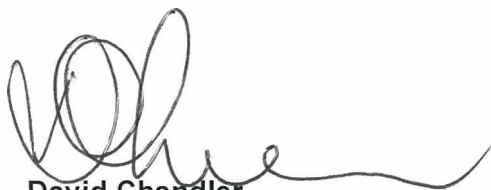
E. How long is the Order in force?

14. 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. Cumberland Council,
- b. AE & D Pty Ltd (ACN 149 587 495),
- c. Goldenia Developments Pty Ltd (ACN 164 693 181),
- d. (SP97827) CLSM Investment Pty Ltd (ACN 626 890 140), (SP97827B) HW Realty Group Pty Ltd (ACN 107 951 253), and
- e. the Registrar-General.



David Chandler

Building Commissioner

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.

Schedule A

Building work and serious or potential serious defects

| Defect number | Building element | Building Work | Observations | Serious Defect |
|---------------|------------------|-------------------------------|---|---|
| 1. | Waterproofing | Construction of planter boxes | <p>On 8 October 2020, Compliance Officers inspected the planter boxes and observed the following:</p> <ul style="list-style-type: none"> a) insufficient height for termination of the waterproof membranes on planter boxes; b) no mechanical protection board to minimise root damage to the waterproofing membrane in the planter box. c) no suitable overflow for the planter box. | <p>The building work constitutes a serious defect because of the following:</p> <ul style="list-style-type: none"> 1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS 4654.2 (waterproofing membranes of external above ground use) clause 2.13 (planter boxes) because of the following factors: <ul style="list-style-type: none"> a) insufficient height for termination of the waterproof membranes on planter boxes; b) no mechanical protection board to minimise root damage to the waterproofing membrane in the planter box; and c) no suitable overflow for the planter box. 2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following: <ul style="list-style-type: none"> a) the inability to inhabit or use the building (or part of the building) for its intended purpose due to water ingress behind the waterproofing membrane and water accumulation on the base of the planter box; b) poor drainage and waterproofing of planter boxes could cause "concrete cancer", and c) water egress, humidity or mould growth. |

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| 2. | Construction of wall tiles | Adhesion of wall tiles | On 8 October 2020, Compliance Officers inspected the wall tiles and observed inadequate adhesive, namely, that adhesive failed to cover 90% of each tile. | <p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> 1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS3958.1 (ceramic tiles), clause 5.6.4.2 (adhesive coverage) and National Construction Code FP1.7, because of the following factors: <ol style="list-style-type: none"> a) inadequate use of adhesive to wall tiles, namely, that adhesive failed to cover 90% of each tile. 2. It is a defect in a building element that is attributable to defective or faulty workmanship and is likely to cause the following: <ol style="list-style-type: none"> a) the accumulation of moisture and mould growth behind the tiles causing loosening of the tiles; b) the tiles to eventually fall off the wall. |
| 3. | Waterproofing | Waterproofing to the external sliding balcony door and main entrance thresholds. | <p>On 8 October 2020, Compliance Officers inspected the balconies and main entrance thresholds and observed that:</p> <ol style="list-style-type: none"> a) there is no evidence of water-stop angles at the internal balcony door subsill, b) insufficient height for termination of the waterproof membrane under the balcony door subsill, and c) the use of unsuitable substrates to receive the application of the membrane system. | <ol style="list-style-type: none"> 1. The building work constitutes a serious defect because of the following: <ol style="list-style-type: none"> a) there is no evidence of water-stop angles at the internal balcony door subsill and main entrance thresholds; b) insufficient height for termination of the waterproof c) membrane under the balcony doorsill, and d) the use of unsuitable substrates to receive the application of the membrane system. 2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following: <ol style="list-style-type: none"> a) the inability to inhabit or use the building (or part of the building) for its intended purpose due to water egress, humidity and/or mould growth, or |

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|----|-------|----------------------------------|---|--|
| | | | | b) the destruction of the building or any part of the building due to water egress, humidity and/or mould growth. |
| 4. | Falls | Falls in bathroom floor finishes | <p>On 8 October 2020, Compliance Officers inspected the bathrooms and observed the following:</p> <p>a) when there is a shower screen, hob, step-down or waste stop, the falls had surface drainage which is flatter than 1 in 100.</p> | <p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> 1. it is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard 3958.1 because the falls in the bathroom had surface drainage which is flatter than 1:100. 2. it is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the drain waste to accumulate and create puddles without reaching the floor waste. |