

Attn. Proper Officer
Attena Group Pty Limited (ACN 160 438 371)
305, Level 3 Commercial Tower, Westfield Eastgardens
152 Bunnerong Road
Eastgardens NSW 2036

CAS Ref: 11191016

Via express post and email: nick@attenagroup.com.au

10 January 2024

Stop Work Order

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

Attena Group Pty Limited (ACN 160 438 371) (**Attena Group**) is issued with this Stop Work Order (the **Order**) in relation to a 2/7a residential building located at 2 Waruda Street, Kirribilli NSW 2061 (Lot CP SP 9429, Lot 1 SP 9429, Lot 2 SP9429) (the **Development**).

Attena Group is required to ensure all work at the Development stops by **5.00 p.m. on 10 January 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 Building Commission NSW, part of 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 is located at 2 Waruda Street, Kirribilli NSW 2061 (Lot B DP346417) and concerns the construction of a 4 storey residential flat building comprising three apartments with basement car parking (the **Building**).
3. The Building is a Class 2/7a building at the Development, where work has commenced.

4. Attena Group a building practitioner in respect of the Development pursuant to section 7 of the Act and is the principal contractor and a person carrying out the work at the Development for the purposes of section 89(1)(a) of the Act.

Power to Stop Work

5. Under section 89(2) of the Act, the Secretary of the Department or her 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.
6. I, Dominic Wong, Acting 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

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The Dictionary to the Regulations relevantly defines the following terms:
- ‘*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
- ‘*construction issued regulated design*’ as 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 BCA, including detail specifying –
 - (i) the proposed dimensions of the completed building, and
 - (ii) the characteristics and materials comprising the proposed building, and
 - (iii) the location of the building elements and systems proposed to be built, and
 - (b) can be used by a building practitioner to carry out the work in accordance with the regulated design and the BCA.

Work occurring or likely to be carried out at the Development

16. The following is occurring or likely to be carried out at the Development:
- a. Building works under the *Construction Certificate 4311.2 (Registration No. BPB0415) all remainder of works* issued 8 November 2021.
 - b. Building works under the *Construction Certificate P20220014 (Registration No. BDC0219) exclusions – any and all works relating to: Construction Certificate 4311.1 dated 6 February 2020, Construction Certificate 4311.2 dated 8 November 2021, and Building Information Certificate C18/21 dated 16 July 2021* issued 5 September 2023.

(the **Works**)

Documents for the Development

17. On 16 July 2021 a Building Information Certificate (**BIC**) was issued for the following works progressed beyond the scope of the construction certificates 4311.1:
 - i. All ground floor, first floor, second floor and third floor structural walls, concrete floors, concrete ceilings and third floor masonry walls and timber framed roof of a partially constructed four-story, (4) residential flat building, excluding all basement levels.
 - ii. Internal steel framed partition walls to ground, first and second floors levels. Partially constructed ground floor, first floor, second floor and third floor electrical wiring, plumbing, drainage and gas pipework and mechanical ventilation system, excluding stormwater drainage.
 - iii. External glazed windows.
18. Beginning 21 October 2023, authorised officers under section 73 of the Act inspected the NSW Planning Portal *CFT-386828 and CFT-134235* and observed that:
 - a. No construction issued regulated designs (**CIRD**) had been lodged in the approved way.
 - b. No design compliance declaration (**DCD**) had been lodged in the approved way.

Inspection of the development

19. On 26 October 2023, an inspection at the Development was conducted by authorised officers of the Department and confirmed building work was in progress.
20. At the inspection it was observed building work had commenced under Construction Certificate 4311.2 and P20220014, work included but was not limited to:
 - a. Mechanical services installations including ventilation and air conditioning.
 - b. Electrical services installations including the main switchboard.
 - c. Building enclosure installations including windows.
 - d. Vertical transportation installations including the passenger lift and vehicular lift.
 - e. Passive fire system installations including fire rating systems for services penetrations.
 - f. Waterproofing installations including wet area waterproofing membranes.
 - g. Sprinkler installation.
 - h. Internal load bearing elements including floor slab installation of upper levels.

CIRDs and DCDs required for the building work commenced under CC 4311.2 and P20220014:

21. Based on the notes of the inspection conducted by authorised officers on 26 October 2023, records of what was inspected on the NSW Planning Portal and consideration of the BIC issued it is apparent that building work has commenced under CC 4311.2 and P20220014 and has been commenced without CIRDs and DCDs being lodged in the approved way.
22. On 23 November 2023 an authorised officer via email requested the Building Practitioner to lodge in the approved way regulated designs for CC 4311.2 and P20220014.
23. On 24 November 2023 the Building Practitioner lodged the following CIRDs and DCDs on the NSW Planning Portal:

- a. P20220014 CC plans – mechanical services.pdf
- b. P20220014 CC plans – electrical services.pdf
- c. P20220014 CC plans – car hoist.pdf
- d. Design-Compliance-Declaration-single-regulated-design-Signed (1).pdf
- e. Combined-DesignCompliance-Declaration-single-regulated-design.pdf
- f. Mechanical_Design-Compliance-Declaration-single-regulated-design.pdf
- g. HYD Design Compliance Declaration rev 2.pdf
- h. Design-Compliance-Declaration-single regulated-design-Signed.pdf
- i. 18-92KD95 2 Waruda St.Kirribilli – Design-Compliance-Declaration (06 Jul 2023).pdf
- j. 1.-DCD ElecEng003EE.pdf
- k. Design-Compliance-Declaration-single-regulated-design.pdf
- l. P20220014 CC plans – fire services.pdf
- m. P20220014 CC plans – architectural.pdf
- n. P20220014 CC plans – hydraulic services.pdf
- o. 18-92KDS 2 Waruda St Kirribilli – FER R4 (05 Jun 2022).pdf

(the **Documents**)

24. The Building Practitioner failed to lodge all CIRDs and DCDs for CC 4311.2 and P20220014. The following CIRDs and DCDs have not been lodged in the approved way:

Building element	Type	Registered design practitioner class
Internal and external load bearing	Structure	Structural engineering
Internal and external load bearing	Architecture	Architecture
Fire safety systems	Passive fire	Architecture
Building enclosure	Façade	Architecture/structure/façade
Essential services	Plumbing and drainage (site stormwater)	Civil/drainage
Integration of vertical transportation products	Vertical transportation	Vertical transportation – passenger lift and car stacker

Inspection of the documents

25. The document, titled “P20220014 CC plans – car hoist.pdf” does not have a regulated design record and a DCD has not been prepared by a registered design practitioner in the class of vertical transportation integrating the vertical transportation product into the building. The vehicular lift has been installed. The installation of the vehicular lift without a regulated design and DCD prepared by an authorised registered design practitioner is a failure to comply with section 19 of the Act.
26. The document, titled “P20220014 CC plans – mechanical services.pdf” does not meet the definition of a CIRD as it does not contain the necessary detail to produce building work that would achieve compliance with the Building Code of Australia (cl 3A of the Regulations) for the following reasons:
 - a. The Basement underground carpark does not have a mechanical exhaust air system and is enclosed and more than 1.2 m below the external ground level. The absence of a mechanical exhaust air system is a failure to comply with *BCA 2019 (Vol 1): F4.11 Carparks* and subsequently *AS 1668.2-2012 The use of ventilation and airconditioning in buildings*

Part 2: Mechanical ventilation in buildings clause 4.4.1 General.

- b. The basement underground carpark is mechanically ventilated with a supply air system. The ductwork, fan and relief opening have been installed. The relief-air openings are not more than 6 m away from any outside air intake or natural ventilation openings not associated with the enclosure. All parts of the enclosure are not within 10 m of a supply-air opening. The supply air only system fails to comply with *BCA 2019 (Vol 1): F4.11 Carparks* and subsequently *AS 1668.2-2012 The use of ventilation and airconditioning in buildings Part 2: Mechanical ventilation in buildings clause 4.4.2 Ventilation distribution*.
- c. The vehicular lift shaft is not ventilated by a mechanical air-handling system. This is a failure to comply with *BCA 2019 (Vol 1): F4.11 Carparks* and subsequently *AS 1668.2-2012 The use of ventilation and airconditioning in buildings Part 2: Mechanical ventilation in buildings clause 4.5.4.2 Exhaust ventilation of vehicular lift shafts*.
- d. The document does not accord with the *Regulated Design Guidance Material* as it does not demonstrate the insulation requirements for pipework serving the air conditioning amongst other things. Authorised officers witnessed pair coil with white insulation throughout the development. The product does not comply with the fire hazard properties in *BCA 2019 (Vol 1): Specification C1.10 section 7*.
- e. Authorised officers witnessed PVC ductwork installed for the kitchen exhaust system. The document does not specify PVC ductwork and/or the compliant fire hazard properties for air-handling ductwork. The Building Practitioner has not obtained a varied CIRD and DCD specifying PVC ductwork for the air-handling systems from a registered practitioner whose registration authorises the practitioner to provide a declaration. This is a failure to comply with section 20 (2) of the Act.

27. The document, titled "*P20220014 CC plans – architectural.pdf*" does not meet the definition of a CIRD for the following reasons:

- a. The document does not accord with the *Regulated Design Guidance Material* (cl 9(1)(c) of the Regulation) and does not contain the necessary details to produce building work that would achieve compliance with the BCA (cl 3A(1)(c) of the Regulation) as it does not demonstrate the following-
 - i. Floor plans for each floor of the building;
 - ii. Elevations of each aspect of the building;
 - iii. Relevant elements of performance solutions;
 - iv. Location of all expansion joints and movement joints;
 - v. The dimensions of elements and rooms of the floor plate;
 - vi. Proposed materials and finishes;
 - vii. Locations and sizes of windows and doors;
 - viii. Egress system design;
 - ix. Door schedule;
 - x. Reflected ceiling plans;
 - xi. Passive fire safety designs;
 - xii. Waterproofing coverage plans;
 - xiii. Locations of floor wastes and overflows;
 - xiv. Plans that specify balcony gradients;
 - xv. Construction methods and materials of roofs;
 - xvi. Details of insulation and sarking, and
 - xvii. Details external windows weatherproofing, e.g. head jamb and sill flashings.

Grounds for issuing this Order

28. Based on the information set out above, I am of the opinion that no CIRDS for building elements internal or external-load bearing components of the building, fire safety systems passive fire, building enclosure and vertical transportation at the Development have been provided to the Secretary in the approved way before the Works commenced.
29. Based on the information above, I am of the opinion that the regulated designs for the integration of the vehicular lift into the building, mechanical services and architecture lodged on the NSW Planning Portal 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 CIRDS in paragraph 15.
30. The failure to provide CIRDS to the Secretary in the approved way before the Works commenced is a contravention of clause 16 of the Regulations.
31. Furthermore, I am of the opinion that carrying out building works at the Development in the absence of CIRDS is a contravention of section 19 of the Act.
32. I am of the opinion that failing to lodge variations to CIRDS before carrying out building works at the Development for the mechanical services is a contravention of section 20 of the Act.
33. In relation the failure to provide required documents in the approved way, I am of the opinion that:
 - a. engaging and continuing in the Works without CIRDS for key building elements, such as fire safety systems for a building, an internal or external load-bearing component of a building, and a component of a building that is part of the building enclosure could significantly impact the actual performance of those building elements, as these building elements are critical to the safety and integrity of the Development that is under construction, and thereby could result in significant harm or loss to the occupiers or potential occupiers at the Development.
 - b. failing to lodge CIRDS with the Secretary 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.
 - c. failing to have CIRDS for key building elements for the Development, such as fire safety systems for a building, an internal or external load-bearing component of a building, and a component of a building that is part of the building enclosure, could result in the need for further designs, variations and rectification/remediation work which increases the risks associated with that work, as well as the work to be rectified/remediated.
34. Based on the above, I am of the opinion that work is, or is likely to be carried out in contravention of the Act and the contravention could result in significant harm or loss to the potential occupiers of the building to which the work relates or significant damage to property.
35. I have considered all of the circumstances and I accept that the Order may have financial consequences for Attena Group and I give this consideration moderate weight. However, the cost to Attena Group 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.

36. Considering these potential consequences, I give greater weight to the seriousness of the failure to have CIRDS for key building elements, and it is appropriate, in the exercise of my discretion, to require Attena Group to stop work.

Consideration of written representations

37. On 19 December 2023 a notice of intention to issue a stop work order, including a draft copy of the Order, was served on Attena Group, who were invited to provide written representations in response by 22 December 2023.
38. On 22 December 2023 Attena Group provided submissions in response by including the following documents related to building elements:
- a. 2 Waruda St – Kirribilli (CC).pdf (architecture)
 - b. Design-Compliance-Declaration-single-regulated-design.pdf (architecture)
 - c. 30922-LTH5278 Certificate of Compliance_.pdf (car lift)
 - d. LTH5278.GA.03.RevB_AB.pdf (car lift)
 - e. TRAFFICABLE ROOF WSV 0150563849.pdf (car lift)
 - f. 20210429_WarudaSt(2)Kirribilli NSW_REV00 for Manufacture.pdf (car stacker)
 - g. BS_CA454_en.pdf (car stacker)
 - h. DCD-Electrical.pdf
 - i. Electrical Services Design.pdf
 - j. Fire Engineering Report.pdf
 - k. DCD-Fire Design.pdf
 - l. Fire Design.pdf
 - m. DCD-Hydraulic.pdf (sic)
 - n. Hydraulic Design.pdf (sic)
 - o. Lift design certificate 3300AP3300EU5500AP MRL RII.pdf
 - p. Lift Drawing.pdf
 - q. DCD-Mechanical.pdf
 - r. Mechanical Design.pdf
 - s. 190310 – 21-08-24.pdf (structure)
 - t. DCD-Structural.pdf
39. The submission stated the only document that is still outstanding is the DCD for the Car Hoist, and that a VT Eng has been hired and is currently working on the regulated design and DCD for the Car Hoist.
40. The submission and supporting documents have been reviewed and in summary, the regulated designs do not comply with the DBP Act for reasons including but not limited to:
- a. There is no passive fire design within the architecture submission.
 - b. There is no façade design demonstrating compliance with BCA FP1.4 within the submission.
 - c. There is no regulated design record on the architecture, car lift, car stacker, electrical, passenger lift, mechanical, and structural regulated design submissions.
 - d. There is no regulated design record on the smoke detection and alarm systems regulated design submission and the regulated design is for tendering purposes and not for construction.
 - e. There is no design compliance declaration for the car lift, car stacker and passenger lift regulated design submissions.
 - u. The design compliance declaration for structure, document *DCD-Structural.pdf*, has been modified with the word ‘regulated’ struck through in all instances. Further a note has been added to the design compliance declaration which states “The design

addressed in this declaration (sic), was provided prior to July 2021 when the DBP act was not formally introduced to be followed. As such, this declaration in line with our certificate attached, has been prepared to confirm the compliance of our design with NCC and Australian Standards. In the meantime there (sic) we cannot confirm all the items required by Regulated Design referred in DBP have been addressed in this design.” The designs were issued for construction on 24 August 2021 when the Act was in force and CC 4311.2 and P20220014 do not fall within the transitional period. The modified design compliance declaration is not in the form approved by the Secretary.

41. I have considered the representations provided by Attena Group. In circumstances where the building practitioner has completed work without CIRDs and DCDs for key building elements, and where the obtained regulated designs do not contain the necessary detail to produce building work in compliance with the BCA, I consider it appropriate to issue the Order. The issue of this Order will prevent building work being completed without required regulated designs.

Order to ensure that building work stops

42. I, Dominic Wong, order Attena Group Pty Ltd to ensure that all building work (as defined by section 4 of the Act) at the Development stops by **5.00 p.m. on 10 January 2024.**

Duration of this order

43. 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.



Dominic Wong
Acting Director Practitioner Compliance
Building Commission NSW
Department of Customer Service

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.