

Attn. Proper Officer
Sembuild Construction & Management Pty Ltd (ACN 635 341 061)
7 McPherson Street
CARLTON NSW 2218

CAS Ref:11106338

Via email

30 August 2023

Stop Work Order

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

Sembuild Construction & Management Pty Ltd (ACN 635 341 061) (**Sembuild Construction Management**) is issued with this Stop Work Order (the **Order**) in relation to a class 2/6/7a residential building located at 2 Alice Street, Seven Hills NSW 2147 (Lot 24 DP14294) (the **Development**).

Sembuild Construction Management is required to ensure all work at the Development stops by **5.00 p.m. on 31 August 2023**.

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 is located at 2 Alice Street, Seven Hills NSW 2147 (Lot 24 DP14294) and concerns the construction of a 6-storey mixed-use building containing retail and 16 residential units over 2 levels of basement car parking (the **Building**).
3. The Building is a Class 2/6/7a building at the Development, where work has commenced.
4. Sembuild Construction Management is 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, Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, 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 21/0046-01 (Registration No. BDC 3179) bulk excavation, shoring and piling.
 - b. Building works under the Construction Certificate 21/0046-02 (Registration No. BDC 3179) Structural building works up to & including Ground Floor slab.
 - c. Building works under the *Construction Certificate 21/0046-03 (Registration No. BDC 3179) Amended structural design*.
 - d. Building works under the *Construction Certificate (Registration No. BDC 3179) Remaining building work* (this Construction Certificate has not yet been issued).

(the **Works**)

Documents for the Development

17. Beginning 20 July 2023, authorised officers under section 73 of the Act inspected the above construction certificates that had been issued and were available on the NSW Planning Portal and observed that:
 - a. Insufficient construction issued regulated designs (**CIRD**) had been lodged in the approved way.
 - b. Insufficient compliance declaration (**DCD**) had been lodged in the approved way.
18. The following CIRDs and DCDs were missing: Architectural (no CIRD to date); façade (no CIRD to date); stormwater (only has CIRD up to L1); mechanical (no CIRD to date); fire services (no CIRD to date); hydraulic services (no CIRD to date); fire engineering (no CIRD to date); vertical transport (no CIRD to date).
19. On 21 April 2023 a Written Directions Notice (**WDN**) was issued in relation to the following issues at the Development: for the following works progressed beyond the scope of the construction certificates 21/0046-01, 21/0046-02 and 21/0046-03:
 - a. following works progressed beyond the scope of the construction certificates 21/0046-01, 21/0046-02 and 21/0046-03 (Structural building works up to & including Ground Floor slab).
 - b. Fire Hydrants, Fire Hose Reels and Portable Fire Extinguishers did not appear to be installed in accordance with BCA Clause E1.9.
20. On 2 August 2023 a Building Information Certificate was approved by the Blacktown City Council for Class 2 & 6 Structural work (slabs and supports) ground floor to 5th floor including roof of residential apartment building under construction.

Inspection of the development

21. On 4 August 2023, an inspection at the Development was conducted by authorised officers of the Department.
22. At the inspection it was observed building elements not in the approved Construction Certificate Works (being structure only) had been installed.
23. At the inspection, the following installations were observed. The inspections were not of all levels:
 - a. Construction of structure load bearing elements all levels,
 - b. passive fire systems,
 - c. fire hydraulics systems,
 - d. windows,
 - e. fire door frames,
 - f. external wall weatherproofing,
 - g. drainage,
 - h. electrical,
 - i. waterproofing, and
 - j. internal partitions.

CIRDs and DCDs required for the building work commenced under CC3 and the extra work outside of the CC's:

24. Based on the notes of the inspection conducted by authorised officers on 4 August 2023, records of what was inspected on the NSW Planning Portal and consideration of the WDNS

issued it is apparent that the following building work has commenced under CC3 and additional work has been commenced without CIRDS and DCDs prepared by a registered design practitioner:

Building element/Building work	Type	Registered design practitioner class	Lodged in the approved way before building work commenced?
Internal and external load bearing	Architecture	Architecture	No
Fire safety systems	Passive fire	Architecture	No
Waterproofing	Waterproofing	Architecture	No
Building enclosure	Façade	Architecture/structure/façade	No
Fire safety systems	Fire safety engineering	Fire Safety engineering	No
Essential services	Plumbing and drainage	Drainage	Up to 1 st floor
Fire safety systems	Fire hydrant and fire hose reel	Fire systems (fire hydrant and fire hose reel)	No
Fire safety systems	Fire sprinkler	Fire systems (fire sprinkler)	No
Essential services	Mechanical services	Mechanical engineering	No
Vertical Transportation	Vertical Transportation	Vertical Transportation	No

Consideration of written representations

25. On 11 August 2023 a draft copy of this order was served on Sembuild Construction Management, who were invited to provide written representations by 18 August 2023. On 16 August 2023, Sembuild Construction Management wrote to the Department acknowledging the Order and confirming that building work had been stopped for a number of months while the required documents were obtained for the final stage of construction.
26. Based on these submissions, it is clear that regulated designs have not yet been obtained for all building elements. If building work commences, it is likely to be carried out in contravention of the Act due to there being no regulated designs. Accordingly, I am satisfied it is appropriate to issue the Order.

Grounds for issuing this Order

27. Based on the information set out above, I am of the opinion that no CIRDS for building elements at the Development have been provided to the Secretary in the approved way before the Works commenced.
28. 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.
29. 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.

30. 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 waterproofing, 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 waterproofing, 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.
31. 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.
32. I have considered all of the circumstances and I accept that the Order may have financial consequences for Sembuild Construction Management and I give this consideration moderate weight. However, the cost to Sembuild Construction Management 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.
33. 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 Sembuild Construction Management to stop work.

Order to ensure that building work stops

34. I, Matthew Whitton, order Sembuild Construction Management to ensure that all building work (as defined by section 4 of the Act) at the Development stops by **5.00 p.m. on 31 August 2023**.

Duration of this order

35. 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
Assistant Building Commissioner
Building & Construction Compliance,
NSW Fair Trading, 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.