

Attn: Proper Officer
1A Eden Pty Ltd
Suite G07, 13 Eden Street,
NORTH SYDNEY NSW 2060

Service: By registered post

14 September 2023

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 buildings, located at “RIGEL” 1A Eden Street, North Sydney (SP 92226) (the Building). This order prohibits

- the issue of any further 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.

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. **1A Eden Pty Ltd (ACN 162 152 794)** is the developer of the Building for the purposes of s 4 of the Act.
4. An Interim and Final Occupation certificate has been issued in relation to the Building, but an Occupation Certificate has not been issued for North Sydney Council's development consent number D212/16 as detailed below in this draft order.
5. David Chandler, NSW Building Commissioner, is an authorised delegate of the Secretary of the Department.

Powers under the Act

6. 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 notices 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.
7. Under s 7 of the Act, a developer is required to provide notification to the Secretary of intended completion of building work:

“7 Notification to Secretary of intended completion of building work

- (1) A developer in relation to building work must not cause or permit an application to be made for an occupation certificate for any part of a residential apartment building for which the building work is being or was carried out unless, at least 6 months, but not more than 12 months, before that application is made, the developer notified the Secretary, or caused the Secretary to be notified, of that proposed application (an expected completion notice).
- (2) The expected completion notice must set out the date that the developer expects to make the application for the occupation certificate for the building or part of the building (the expected date).
- (3) Despite subsection (1), if, at the commencement of building work for a new building, the developer expects to make the application for the occupation certificate for the building or part of the building within less than 6 months, the developer must give the Secretary, or cause the Secretary to be given, an expected completion notice within 30 days of the commencement of that building work.

- (4) The expected completion notice is to be given in a manner and form approved by the Secretary.
- (5) The regulations may provide that the expected completion notice may be given to another person in the manner and form prescribed as an alternative to being given to the Secretary.
- (6) If there is more than 1 developer in relation to a residential apartment building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion notice to the Secretary (or other person prescribed under subsection (5)).”
8. Under s 8 of the Act, a developer is required to inform the Secretary of a change to an expected date:
- “(1) If a developer becomes aware that circumstances have changed so that the developer expects an application for the occupation certificate for a residential apartment building or part of a residential apartment building to be made on a different date than the expected date specified in an expected completion notice, the developer must notify the Secretary of the new expected date (an expected completion amendment notice).
- (2) The expected completion amendment notice must be given—
- (a) within 7 days of the developer becoming aware of the change in circumstances, and
- (b) in a manner and form approved by the Secretary.
- (3) The regulations may provide that the expected completion amendment notice may be given to another person in the manner and form prescribed as an alternative to being given to the Secretary.
- (4) This section does not apply if the new expected date is within 60 days of the expected date specified in the expected completion notice given to the Secretary in relation to the building work.
- (5) A developer may give more than 1 expected completion amendment notice in accordance with this section and, for the purposes of any subsequent notice, a reference in this section to the expected date specified in an expected completion notice is to be taken to be a reference to the new expected date specified in the most recent expected completion amendment notice given by the developer.
- (6) If there is more than 1 developer in relation to a residential apartment building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion amendment notice to the Secretary (or other person prescribed under subsection (3)).”

What are the reasons for making this Order?

9. On 8 November 2013 North Sydney Council granted Development Consent 215/13 with the agreement of the parties in Land and Environment Court Proceedings No. 10724 of 2013.

The approved development provided for alterations and additions to the existing building to create a mixed-use development incorporating a café, six (6) serviced apartments, and 29 residential apartments. Off-street car parking was approved for 19 vehicles within the basement, accessed via the existing driveway along Eden Lane.

On 09 July 2014, Council granted approval to amend the approved development pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 under consent DA 215/13/2. The approved amendments included internal layout changes, associated fenestration adjustments, and adjustments to the balcony walls, privacy screens and external materials and finishes.

On 21 September 2015, Council granted approval to amend the approved development pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 under DA 215/213/3. The approved amendments were limited to a change in the external paint colour, and the deletion of a requirement to render a portion of the southern façade.

The approved serviced apartments are located at the ground floor level of the existing building, and Condition I4 of Land and Environment Court consent number 215/13, under the heading “*Use of Serviced Apartments*”, relates to the use of the serviced apartments and states;

14. The ground floor serviced apartments shall operate only in accordance with the definition of serviced apartments at all times being "dwellings which are cleaned and serviced by the owner or manager of the building or the owner's or manager's agent, and which provides short-term accommodation for travellers or tourists".

The serviced apartments shall not be used for residential dwellings or long-term accommodation.

10. On the 09 September 2016 Council granted Development Consent D212/16 for a change of use of six serviced apartments to six residential apartments and condition F2 required the applicant to obtain an Occupation Certificate which was never obtained.
11. On the 01 September 2023 the Office of the NSW Building Commissioner conducted an inspection of the building which revealed that at least two of the six serviced apartments had been sold as residential units and that at least two other serviced apartments were being advertised for sale as residential units without an occupation certificate. On this same day a purchaser was able to provide a copy of their Contract of Sale which revealed that the serviced apartments had been sold as a “Home unit”.
12. The inspection carried out by the NSW Building Commissioner on 01 September 2023 identified that serious defects in the building exist which are the subject of a Building Work Rectification Order (BWRO).

What Order is being made?

13. I, David Chandler, an authorised delegate of the Secretary, prohibit the issue of any further occupation certificate for the residential apartment building at 1A Eden Street, North Sydney.

How long is the Order in force?

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

David Chandler
NSW 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.**