

Attn: Proper Officer
DA Tamarama Pty Ltd (ACN 622 845 210)
Suite 1 Level 1, 95-97 Grafton Street
BONDI JUNCTION NSW 2022
Service: By registered post and by email

CAS Ref: 11216368

01 May 2024

Building Work Rectification Order

Section 33 of the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020

DA Tamarama Pty Ltd (ACN 622 845 210) is being given this Building Work Rectification Order (Order) in relation to 63 Fletcher Street Tamara NSW 2026 (SP105595) (the Development).

DA Tamarama Pty Ltd (ACN 622 845 210) is required to cause building work to be carried out or take other specified action to remediate the serious and/or potential serious defects as set out below in this Order.

Failure to comply with the requirements in this Order 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. Under section 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was carried out in a manner that could result in a serious defect in relation to the Building, they may order the developer to rectify building work to remediate the serious defect or potential serious defect.
3. Section 3 of the Act defines a serious defect. Section 3 of the Act also defines the term “building element” by reference to the *Design and Building Practitioners Act 2020 (DBP Act)*. Section 4 of the Act defines the term “developer”. Section 6 of the Act provides the building work to which the Act applies. Relevant excerpts from sections 3, 4 and 6 of the Act and section 6 of the DBP Act are **Attachment A** to this order.
4. I, Matthew Whitton, Director (Building Practitioner Compliance, Building Commission NSW, Department of Customer Service) am an authorised delegate of the Secretary of the Department.
5. **DA Tamarama Pty Ltd (ACN 622 845 210)** is the developer of the residential apartment building at **63 Fletcher Street Tamara NSW 2026 (SP105595) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development consists of a four-storey residential flat building containing thirteen dwellings with basement parking and landscaping.
7. On 25 October 2023 authorised officers conducted a lawful inspection of the Development.
8. I, Matthew Whitton, under section 34(1) of the Act, specify the standard of building work to be done in respect of the serious defects referenced in column 1 of Table 2 below and under section 34(1A) of the Act require that you **DA Tamarama Pty Ltd (ACN 622 845 210)** do the things specified in column 5 of Table 2 below in respect of those serious defects. Each requirement must be complied with by the time set out in column 6 of Table 2:

Table 2: Requirement in relation to specified standard

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work (s 34(1)(a))	Requirement (s 34(1A))	Time for compliance with Requirement from the date this order is given (s 39(1))
1.	Passenger lift lobby – all levels	Lift control button at the lift landings were located within 500mm of an internal corner.	Ensure lift control buttons are not installed within 500mm of an internal corner.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				<p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
2.	Passenger lift - lift car	Automatic audible information in the lift car was very low and hard to hear.	Ensure audible information is provided at sufficient volume in accordance with the BCA.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				Stage 1 and make good any resultant consequential damage.	
3.	Basement car stacker No. 3/2	There is no wheel stop on the load carrier.	Ensure a wheel stop is present to enable the safe operation of the equipment.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

4.	Basement All car stackers	The car stacker load carrier does not have a continuous surface	Ensure the load carrier contains a continuous surface	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>
5.	Basement	Openings on the load carrier are	Ensure there are no openings in the load carrier that would	Within the time period specified in column 6,	Stage 1: 2 months

	All car stackers	greater than 30 mm wide	allow a 30mm ball to pass through	<p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	Stage 2: 4 months
6.	Basement Car stacker No. 11/5	There is no handrail where there is a gap greater than 200mm between the load carrier and wall	Ensure a handrail is present where there is a gap greater than 200mm	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p>	Stage 1: 2 months Stage 2: 4 months

				<p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
7.	Basement Visitor car stacker	The handrail is less than 1 m high and the distance between the load carrier and stationery or moving parts is greater than 200mm	Ensure the handrail is at least 1m high	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				<p>the building, being a vertical transportation design practitioner;</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order; and</p> <p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
8.	Basement All car stackers	Gaps between the car stackers greater than 125mm were not covered as per the approved plans	Ensure that gaps of greater than 125mm are covered in accordance with the approved plans	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <p>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a vertical transportation design practitioner;</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order; and</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				<p>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</p> <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
9.	Basement All car stackers	There are no optical warnings means such as markings on the floor or flashing indicator lights at the access point to the load carrier	Ensure there are optical warnings are installed at the access point to the load carrier	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				<p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	
10.	Basement All car stackers	There is no barrier to prevent a person walking into the car stacker when it is moving and there is no automatic device to stop the car stacker moving if a person walks into the car stacker when it is moving	Ensure a barrier is present to prevent risk of serious injury or death	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a vertical transportation design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				Stage 1 and make good any resultant consequential damage.	
11.	Basement All car stackers	Sprinkler installation does not align with the Fire Engineering Report performance solution or approved Wet Fire Protection Layout for: - Number of sprinkler heads - Location of sprinkler heads - Type of sprinkler heads - Orientation of sprinkler heads	Ensure sprinkler installation is in accordance with the relevant approved plans	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a fire safety systems (sprinklers) design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

12.	Basement All car stackers	Sprinkler head shields are less than 80mm in diameter	Ensure all sprinklers are fitted with metal shields of not less than 80mm diameter and not greater than 100mm diameter	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the DBP Audit team via email to dbpaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building, being a fire safety systems (sprinklers) design practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; and iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2 Carry out the work to rectify the serious defect in accordance with the written report submitted in compliance with Stage 1 and make good any resultant consequential damage.</p>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>
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Duration of this Order

9. This Order remains in force until it is revoked by the Secretary.
10. This Order is given on the date that is listed above in accordance with section 67 of the Act.

A handwritten signature in blue ink, appearing to read 'M. Whitton', with a long horizontal flourish extending to the right.

Matthew Whitton
Director Building Practitioner Compliance
Building Commission NSW

Date: 01/05/24

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 01 May 2024 issued to **DA Tamarama Pty Ltd (ACN 622 845 210)** under the *Residential Apartment Buildings (Compliance and Enforcement Powers Act 2020* (the **Order**). These Reasons for Order adopt the Background to the Order and any definitions within the Order, unless otherwise specified in the Reasons for Order.
2. I, Matthew Whitton, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - (a) An inspection report dated 06 February 2024 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act in the Building on 25 October 2023.
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.

Table 2 – Basis of reasonable belief as to serious defects

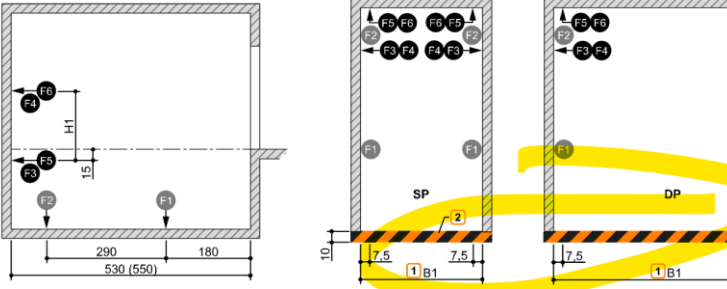
Serious Defect Ref No.	Building element in which serious defect has been identified	Defect	Reason why defect is a serious defect	Applicable approved plan, Code or Australian Standard	Consequences of serious defect		
1.	Vertical transportation product	Lift control button at the lift landings were located within 500mm of an internal corner.	Lift control buttons should not be located within 500mm of an internal corner.	<p>The installation of lift control buttons within 500mm of an internal corner demonstrates a failure to comply with BCA 2019 Volume 1 A1 E3.6 which states:</p> <p><i>In an accessible building, every passenger lift must – (b) have accessible features in accordance with Table E3.6b</i></p> <table border="1" data-bbox="1055 778 1789 842"> <tr> <td data-bbox="1055 778 1406 842">Lift car and landing control buttons complying with AS 1735.12</td> <td data-bbox="1406 778 1789 842">All lifts except— (a) a <i>stairway platform lift</i>; and (b) a <i>low-rise platform lift</i>.</td> </tr> </table> <p>AS1735.12:1999 states:</p> <p><i>Control buttons shall be located adjacent to the lift entrances and shall not be closer than 500 mm from any internal corner or fixed obstruction (see Clause 7.1).</i></p> <p><i>NOTE: control buttons should not be located on a wall surface that is likely to cause damage to a sliding hand; for example, rough masonry walls.</i></p>	Lift car and landing control buttons complying with AS 1735.12	All lifts except— (a) a <i>stairway platform lift</i> ; and (b) a <i>low-rise platform lift</i> .	The building features may not be accessible or usable for people of all abilities.
Lift car and landing control buttons complying with AS 1735.12	All lifts except— (a) a <i>stairway platform lift</i> ; and (b) a <i>low-rise platform lift</i> .						
2.	Vertical transportation product	Automatic audible information in the lift car was	Audible information is of insufficient volume for all	The insufficient volume of the audible information demonstrates a failure to comply with BCA 2019 Volume 1 A1 E3.6 which states:	The building features may not be accessible or		

		very low and hard to hear.	passengers to hear.	<p><i>In an accessible building, every passenger lift must – (b) have accessible features in accordance with Table E3.6b</i></p> <p>Table E3.6b Application of features to passenger lifts</p> <table border="1"> <tr> <td>(a) Automatic audible information within the lift car to identify the level each time the car stops; and</td> <td rowspan="3">All lifts serving more than 2 levels.</td> </tr> <tr> <td>(b) audible and visual indication at each lift landing to indicate the arrival of the lift car; and</td> </tr> <tr> <td>(c) audible information and audible indication <i>required</i> by (a) and (b) is to be provided in a range of between 20–80 dB(A) at a maximum frequency of 1 500 Hz</td> </tr> </table>	(a) Automatic audible information within the lift car to identify the level each time the car stops; and	All lifts serving more than 2 levels.	(b) audible and visual indication at each lift landing to indicate the arrival of the lift car; and	(c) audible information and audible indication <i>required</i> by (a) and (b) is to be provided in a range of between 20–80 dB(A) at a maximum frequency of 1 500 Hz	usable for people of all abilities.
(a) Automatic audible information within the lift car to identify the level each time the car stops; and	All lifts serving more than 2 levels.								
(b) audible and visual indication at each lift landing to indicate the arrival of the lift car; and									
(c) audible information and audible indication <i>required</i> by (a) and (b) is to be provided in a range of between 20–80 dB(A) at a maximum frequency of 1 500 Hz									
3.	Vertical transportation product	There is no wheel stop on the load carrier.	A wheel stop should be present to prevent cars overhanging the load carrier.	<p>The lack of wheel stop demonstrates a failure to comply with AS 5124:2017 which states:</p> <p><i>5.5 Load carrier</i> <i>5.5.5 Load carriers shall have devices (e.g. wheel stops, wheel troughs, positioning aids), which enable the vehicle to be parked so that the safe operation of the power driven parking equipment is ensured.</i></p> <p>AS 5124:2017 provides relevant standards to ensure the safe design and installation of parking systems. A failure to comply with the requirements of AS 5124:2017 means that the use of the vertical transportation product poses a risk that persons are at risk of death or serious injury.</p> <p>This is also a failure to comply with the approved plan referenced in Certificate Concerning the Examination of Conformity, being the approved plans prepared by Klaus Multiparking SD-00b and SD-00.4. AS 5124:2017 is referenced in the Certificate of Compliance for Commissioning.</p>	An overhanging vehicle may cause the destruction of part of the building when the car stacker is moving.				
4.	Vertical transportation product	The car stacker load carrier does not have a	The load carrier should have a continuous	The lack of continue surface demonstrates a failure to comply with AS 5124:2017 5.5 Load carrier, which states:	The uneven surface is a trip hazard and poses				

		continuous surface	surface and be anti-slip.	<p><i>5.5.6 In areas intended to be accessed by the user, the load carrier shall have a continuous surface and openings shall be avoided. Where openings are necessary e.g for water evacuation, they shall not allow a ball of more than 30mm of diameter to pass through and the surface shall be anti-slip, e.g. rigid.</i></p> <p>AS 5124:2017 provides relevant standards to ensure the safe design and installation of parking systems. A failure to comply with the requirements of AS 5124:2017 means that the use of the vertical transportation product poses a risk that persons are at risk of death or serious injury.</p>	a risk of serious injury to a person.
5.	Vertical transportation product	Openings on the load carrier are greater than 30 mm wide	Openings should be less than 30mm.	<p>The openings in excess of 30mm demonstrate a failure to comply with AS 5124:2017 5.5 Load carrier, which states:</p> <p><i>5.5.7 In areas intended to be accessed by the user, the transfer area shall have a continuous surface and openings shall be avoided. Where openings are necessary, e.g. for water evacuation, they shall not allow a ball of more than 30 mm of diameter to pass through.</i></p> <p>AS 5124:2017 provides relevant standards to ensure the safe design and installation of parking systems. A failure to comply with the requirements of AS 5124:2017 means that the use of the vertical transportation product poses a risk that persons are at risk of death or serious injury.</p>	The openings in the load carrier are a trip hazard and pose a risk of serious injury to a person.

6.	Vertical transportation product	There is no handrail where there is a gap greater than 200mm between the load carrier and wall	There is a possible fall of more than 1m with a gap greater than 200mm.	<p>The lack of handrail demonstrates a failure to comply with AS 5124:2017 5.5 Load carrier, which states:</p> <p><i>5.5.3 If a user or passenger could fall more than 1 m from the load carrier surface, it shall have protection provision at least 1m high. Where a railing is used, a handrail, knee-height rail and kick plate at least 0.05m high shall be provided. Protection provision is not required where locally the distance between the load carrier and stationary or moving parts in the environment is less than 0.2m.</i></p> <p>AS 5124:2017 provides relevant standards to ensure the safe design and installation of parking systems. A failure to comply with the requirements of AS 5124:2017 means that the use of the vertical transportation product poses a risk that persons are at risk of death or serious injury.</p>	The absence of a handrail is a fall hazard and poses a risk of serious injury to a person.
7.	Vertical transportation product	The handrail is less than 1 m high and the distance between the load carrier and stationery or moving parts is greater than 200mm	There is a possible fall of more than 1m with a gap greater than 200mm.	<p>The under-height handrail demonstrates a failure to comply with AS 5124:2017 5.5 Load carrier, which states:</p> <p><i>5.5.3 If a user or passenger could fall more than 1 m from the load carrier surface, it shall have protection provision at least 1m high. Where a railing is used, a handrail, knee-height rail and kick plate at least 0.05m high shall be provided. Protection provision is not required where locally the distance between the load carrier and stationary or moving parts in the environment is less than 0.2m.</i></p>	The inadequate handrail is a fall hazard and poses a risk of serious injury to a person.

				AS 5124:2017 provides relevant standards to ensure the safe design and installation of parking systems. A failure to comply with the requirements of AS 5124:2017 means that the use of the vertical transportation product poses a risk that persons are at risk of death or serious injury.	
8.	Vertical transportation product	Gaps between the car stackers greater than 125mm were not covered as per the approved plans	Approved Plans provide for gaps greater than 125mm to be covered by builder.	<p>The excessive gaps demonstrates a failure to comply with approved plan SD-01.1 prepared by Klaus Multiparking:</p>	The absence of covers over the gaps is a fall hazard and poses a risk of serious injury to a person.
9.	Vertical transportation product	There are no optical warnings means such as markings on the floor or flashing indicator lights	Optical warnings provide a relevant safety feature to reduce risk of	<p>The lack of optical warnings demonstrates a failure to comply with AS 5124:2017 5.10 Non-automatic vertically moving parking equipment in areas accessible to the user, which states:</p> <p><i>5.10.6 At the access point to the load carrier an optical warning means such as marking on the floor (see ISO 3864), flushing indicator light, shall be provided.</i></p>	The absence of an optical warning at the access point to the car stacker is a fall hazard or crush hazard and poses a risk

		at the access point to the load carrier	serious injury to a person.	<p>AS 5124:2017 provides relevant standards to ensure the safe design and installation of parking systems. A failure to comply with the requirements of AS 5124:2017 means that the use of the vertical transportation product poses a risk that persons are at risk of death or serious injury.</p> <p>And approved plans prepared by Klaus Multiparking SD-00b and SD-00.4, which provide:</p>  <p>1 Width dimension B1 (see "Width dimension without door", page 6) 2 Marking in accordance with DIN ISO 3864 (illustration colour not consistent with DIN ISO 3864)</p>	of serious injury to a person.
10.	Vertical transportation product	There is no barrier to prevent a person walking into the car stacker when it is moving and there is no automatic device to stop the car stacker moving if a person walks	The appropriate safety features have not been provided on and around the stacker.	N/a	The absence of a barrier or automatic device to stop the car stacker moving is a fall hazard or crush hazard and poses a risk of serious injury to a person.

		into the car stacker when it is moving			
11.	Vertical transportation product	<p>Sprinkler installation does not align with the Fire Engineering Report performance solution or approved Wet Fire Protection Layout for:</p> <ul style="list-style-type: none"> - Number of sprinkler heads - Location of sprinkler heads - Type of sprinkler heads - Orientation of sprinkler heads 	Sprinklers have not been installed in accordance with the approved plans.	<p>The improper sprinkler installation demonstrates a failure to comply with AS2118.1:2017 10.6.2.4 Within stacker sprinkler design which states:</p> <p><i>A car stacker sprinkler system shall be in accordance with the following:</i></p> <p><i>(f) Sprinklers within and over car stackers shall be fitted with metal guards in accordance with the requirements of Clause 6.9 to prevent mechanical damage.</i></p> <p>And the following approved plans:</p> <ul style="list-style-type: none"> • Fire Engineering Report prepared by BCA Innovations PRO-04708-F1L3 Issue V7 • Fire Services Legend and Notes F000 C3 • Fire Services Basement Level Wet Fire Protection Layout F200 C3 	Inadequate sprinkler coverage may compromise fire detection performance and protection.
12.	Vertical transportation product	Sprinkler head shields are less than 80mm in diameter	Sprinkler head shields be in accordance with the relevant Australian	<p>The improper shielding of sprinkler heads demonstrates a failure to comply with AS2118.1:2017 3.2.3 Shielding which states:</p> <p><i>Where building features do not shield sprinklers to prevent cooling from sprinklers operating above, such sprinklers shall be fitted with metal shields not less</i></p>	Spray from overhead sprinklers may compromise the performance of sprinklers below.

			<p>Standard and approved plans.</p> <p>And</p> <p>10.6.2.4 Within stacker sprinkler design, which states:</p> <p><i>A car stacker sprinkler system shall be in accordance with the following:</i></p> <p><i>(e) Water shields shall be installed above each in-stacker sprinkler to prevent wetting from sprinklers operating above. Water shields shall not be less than 80 mm and not more than 100 mm in diameter.</i></p> <p>And the relevant approved plan, being Fire Services Basement Level Wet Fire Protection Layout F200 C3.</p>	
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Consideration of written representations

5. On 28 March 2024, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, Owners Corporation and Certifier. The served parties were invited to provide written representations relating to the Order to the Department by 28 March 2024. The following documents were received:
 - (a) The Developer made representation on 28 March 2024 and 9 April 2024.
6. The representations of the Developer were that their role as the developer “is not applicable in this instance, and that it is Gledhill Constructions who holds the position of principal contractor and developer”.
7. The Developer did not make any representations with regards to the individual serious defects identified and said the strata manager has taken proactive steps to address the concerns raised during the inspection.
8. The Developer requested an extension from 1 month to 3 months for the time for compliance with Stage 1 Requirement. The Developer did not make any request for change to the time for compliance with the Stage 2 Requirement.
9. The representations of the Developer were considered, and it is confirmed:
 - (a) DA Tamarama Pty Ltd (ACN 622 845 210) are the developer as defined under section 4(a) of the Residential Apartment Buildings Act (Compliance and Enforcement Powers) 2020 (RAB Act) being the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out; and
 - (b) an extension from 1 month to 2 months for the time for compliance with Stage 1 Requirement is granted as an appropriate time to prepare the Stage 1 reports.

Why is it appropriate to give the Building Work Rectification Order?

10. Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defect identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defect and I find that it is appropriate, in the exercise of my discretion, to make the Order to carry out the specified actions in the Order within the time specified in the Order.

11. I have considered all of the circumstances. I accept that the Order requires specified actions that are likely to be costly. I give this consideration moderate weight. However, the cost to the developer must be balanced against the benefit to the occupiers to be gained from identifying the specific building work that will eliminate the Serious Defect.
12. I am of the view that the periods above for Defect 1 through 12 (inclusive) are reasonable periods for compliance in all the circumstances for the specified actions required by the Order to be carried out. I have formed this belief balancing the risks that the serious defects pose against the period of time it will take to carry out the specified actions.

Attachment A

Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020.

3 Definitions

(1) In this Act —

approved plans, in relation to building work, means the following —

- (a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,
- (b) regulated designs under the *Design and Building Practitioners Act 2020*,
- (c) any other plans prescribed by the regulations for the purposes of this definition.

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

Building Commissioner means the Building Commissioner referred to in section 61.

building element has the same meaning as in the *Design and Building Practitioners Act 2020* and includes any element of a building that is prescribed by the regulations for the purposes of this definition.

building product means any product, material or other thing that is, or could be, used in a building.

building work — see section 5.

building work rectification order — see section 33.

class of building means a building of that class as recognised by the *Building Code of Australia*.

completion, in relation to building work, means the date that the occupation certificate for the building or part of a building to which the building work relates was issued.

Department means the Department of Customer Service.

developer — see section 4.

expected completion amendment notice — see section 8.

expected completion notice — see section 7.

expected date — see section 7(2).

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

occupation certificate means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*.

owner's corporation for a strata scheme means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

prohibition order — see section 9.

rectification bond — see section 28.

residential apartment building means a class 2 building within the meaning of the *Building Code of Australia* and includes any building containing a part that is classified as a class 2 component but does not include any building or part of a building excluded from this definition by the regulations.

Secretary means the Secretary of the Department.

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.

stop work order — see section 29.

strata building means a building containing a lot or part of a lot that is the subject of a strata scheme.

strata plan has the same meaning as in the *Strata Schemes Development Act 2015*.

strata scheme has the same meaning as in the *Strata Schemes Development Act 2015*.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

4 Meaning of “developer”

For the purposes of this Act, a **developer**, in relation to building work, means any of the following persons, but does not include any person excluded from this definition by the regulations —

- (a) the person who contracted or arranged for, or facilitated or otherwise caused, (whether directly or indirectly) the building work to be carried out,
- (b) if the building work is the erection or construction of a building or part of a building — the owner of the land on which the building work is carried out at the time the building work is carried out,
- (c) the principal contractor for the building work within the meaning of the *Environmental Planning and Assessment Act 1979*,
- (d) in relation to building work for a strata scheme — the developer of the strata scheme within the meaning of the *Strata Schemes Management Act 2015*,
- (e) any other person prescribed by the regulations for the purposes of this definition.

6 Act applies only to residential apartment building work

(1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that —

- (a) is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, or is required to be authorised by a construction certificate or complying development certificate, and
 - (b) has not been completed or has been completed within the period of 10 years before the exercise of that function.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the *Building Code of Australia*).

Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020

17 Serious defects – safety risks

- (1) For the Act, section 3(1), definition of ***serious defect***, paragraph (c), the use of a vertical transportation product in a building is a serious defect if the use of the product in the building poses a risk that persons are or will likely be at risk of death or serious injury.
- (2) A risk may be considered to arise from the use of a product in a building even if the risk will only arise in certain circumstances or if some other event occurs.

Example of another event –

fire

- (3) In this clause –

vertical transportation product means machinery installed in a building and designed to move persons, vehicles or goods and includes a lift, escalator, moving walkway and parking systems and equipment.

Design and Building Practitioners Act 2020.

6 Building elements

- (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.
- (2) The regulations may exclude things from being building elements for the purposes of this Act.
- (3) In this section —
- above grade wall** means a wall above the level of the ground surrounding a building.
- below grade wall** means a wall below the level of the ground surrounding a building.
- building enclosure** means the part of the building that physically separates the interior environment of the building from the exterior environment, including roof systems, above grade and below grade walls (including windows and doors).

Design and Building Practitioners Regulation 2021

3B Building element

For the Act, section 6(1)(f), the aspects of a vertical transportation product that are required to achieve compliance with the *Building Code of Australia* are prescribed.

Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- 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 within 30 days after this Order is given unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.
- You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.
- The Secretary has given the following persons notice of the making of this building work rectification order:
 - the relevant local council,
 - if the local council is not the certifier in relation to the building work—the principal certifier,
 - if you are not the owner of the land concerned—the owner of the land concerned,
 - if the order relates to a strata building—the relevant owners corporation,
 - any other person prescribed by the regulations.
- This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.