

Attn: Proper Officer
Gordon Merriwa Pty Ltd (ACN 168 465 245)
651 Princes Highway,
BLAKEHURST NSW 2221

Service: By Express Post and email

13 December 2023

Building Work Rectification Order

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

Gordon Merriwa Pty Ltd (ACN 168 465 245) is being given this Building Work Rectification Order (Order) in relation to address **44 Willis Street, Kingsford NSW 2032** (Lot 1458, DP752011) (the Development). Gordon Merriwa Pty Ltd (ACN 168 465 245) is required to cause building work to be carried out 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.

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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. Elizabeth Stewart, Acting NSW Building Commissioner is an authorised delegate of the Secretary of the Department.
5. **Gordon Merriwa Pty Ltd (ACN 168 465 245)** is the developer of a boarding house at **44 Willis Street, Kingsford NSW 2032 (Lot 1458, DP752011) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development is a boarding house consisting of 40 rooms and 17 car parking spaces. The Act applies to building work at the development due to the operation of cl 4 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020*.
7. On 8 March 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Elizabeth Stewart, under section 33 of the Act, require you **Gordon Merriwa Pty Ltd (ACN 168 465 245)** to do the things specified in column 4 in Table 1 to eliminate, minimise or remediate each respective serious defect described in columns 1, 2 and 3 of Table 1. Each requirement must be complied with by the time set out in column 5 of Table 1:

Table 1: Requirements in respect of Serious Defects

Serious Defect Reference No.	Location of Serious Defect	Description of Serious Defect	Requirement to ensure the following specified building work is carried out (s 33(2)(a))	Time for compliance with Requirement from the date this order is given (s 39(1))
1.	Non-automatic vertical parking system	There are no safety markings provided around the entry area of the vertical stacker pit	<p>The Developer is to take the following steps to rectify the serious defect to comply with the Approved Plans:</p> <ol style="list-style-type: none"> 1. Install yellow/black markings in the entry area of the stack pit. 2. Rectify any consequential damage. 3. Developer to demonstrate compliance of remediation works by providing evidence to buildingcommissioner@customerservice.nsw.gov.au of comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports. 	2 months

9. I, Elizabeth Stewart, 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 **Gordon Merriwa Pty Ltd (ACN 168 465 245)** 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 of issue of this order (s 39(1))
2.	Non-automatic vertical parking system	Side wall sprinklers have not been installed at mid and lower level of car stacker space	Ensure sprinklers are installed at mid and lower levels	<p>Submit a written report to the project intervene team via email to buildingcommissioner@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 engineer ; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration to relevant design and installation specifications and manufacturer recommendation, and iv) 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>

3.	Non-automatic vertical parking system	Sprinklers installed over the stacker have not been fitted with metal guards	Provide protection to sprinkler system to prevent damage during any foreseeable operating condition	<p>Submit a written report to the project intervene team via email to buildingcommissioner@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 engineer ; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration to relevant design and installation specifications and manufacturer recommendation, and iv) 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.	Non-automatic vertical parking system	Safety limit switch has not been installed in a position to prevent it being damaged or inoperable. A metal plate has been screwed to	Ensure safety measures are installed specifically in accordance with developer specifications and relevant Australian Standard	<p>Submit a written report to the project intervene team via email to buildingcommissioner@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 mechanical engineer or vertical transportation practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

		the gate pressing the limit switch so that the stacker is engaged at all times and can operate with the safety gate open.		<p>iii) be prepared with consideration to relevant design and installation specifications and manufacturer recommendation, and</p> <p>iv) 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>	
5.	Non-automatic vertical parking system	Wheel stops have not been installed on several load carriers	Ensure all wheel stops are installed and commissioned in accordance with developer specifications and relevant Australian Standard	<p>Submit a written report to the project intervene team via email to buildingcommissioner@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 mechanical engineer or vertical transportation practitioner;</p> <p>ii) be prepared with consideration to this Order and the Reasons for this Order;</p> <p>iii) be prepared with consideration to relevant design and installation specifications and manufacturer recommendation, and</p> <p>iv) 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>	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

6.	Non-automatic vertical parking system	The load carrier area accessed by the user does not have a continuous surface	Ensure the load carrier user access area has a continuous surface	<p>Submit a written report to the project intervene team via email to buildingcommissioner@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 mechanical engineer or vertical transportation practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) be prepared with consideration to relevant design and installation specifications and manufacturer recommendation, and iv) detail the specific building work necessary to eliminate the serious defect and meet the specified standard. <p>Stage 2</p> <p>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>
7.	Non-automatic vertical parking system	Lower and upper car parking spaces have headroom of less than 2200mm clear	Ensure parking spaces are provided with adequate headroom clearance	<p>Submit a written report to the project intervene team via email to buildingcommissioner@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 mechanical engineer or vertical transportation practitioner; ii) be prepared with consideration to this Order and the Reasons for this Order; 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p>

				<p>iii) be prepared with consideration to relevant design and installation specifications and manufacturer recommendation, and</p> <p>iv) 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>	
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Duration of this Order

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

Elizabeth Stewart
Acting NSW Building Commissioner
Building Commission NSW

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 27 November 2023 issued to **Gordon Merriwa Pty Ltd (ACN 168 465 245)** 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, Elizabeth Stewart have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
 - (a) An inspection report dated 26 July 2023 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 14 July 2023;
 - (b) Certificate of compliance in relation to the non-automatic vertical parking system provided by *Klaus Multiparking*, and
 - (c) the Approved Plans titled *Fire Services Basement Floor Plan 19117 F02 Issue WAE1*.
 - (d) Submissions submitted via email by Primus DMS 1 November 2023 and 11 December 2023 on behalf of Gordon Merriwa Pty Ltd.
4. My belief is also based upon the following matters, set out in Table 3. I note that Column 1 of Table 3 refers to the Serious Defect with corresponding numbering that appears in Table 1 and 2 of the Order, located as described in the corresponding Column 2 of Table 1 or 2.

Table 3 – 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.	Mechanical services	There are no safety markings provided around the entry of the vertical stack pit.	Safety markings provide a visible warning for users of the space to prevent fall injuries into stacker space	The lack of safety markings demonstrates a failure to comply with relevant Approved Plan for the Klaus Multiparking ANZ titled Specifications – Contents – Specification SD-0.00a.	There is a risk of fall from height for users of the parking area that could result in injury or death.
2.	Fire safety system	Side wall sprinklers have not been installed at mid and lower levels of car stacker space	Sufficient fire protection must be provided around the stacker to prevent rapid spread of fire	<p>The insufficient side wall sprinklers demonstrates a failure to comply with Australian Standard 2118.1 Automatic fire sprinkler systems Part 1: General systems, Section 10.6 Car stackers, 10.6.2.4m Within stacker sprinkler design.</p> <p>And</p> <p>The Approved Plans titled <i>Fire Services Basement Floor Plan 19117 F02 Issue WAE1</i>, which states: <i>“provide sidewall sprinkler protection to car stack at mid and lower level as per AS2118.1:2017 clause 10.6 (typical)”</i></p>	Lack of fire safety systems may result in an uncontrolled spread of fire in the building and loss of property and life.

3.	Fire safety system	Sprinklers installed over the car stacker have not been fitted with metal guards	Sprinklers must be protected from damage to ensure safe operation during foreseeable operating conditions	<p>The inadequate protection demonstrates a failure to comply with Australian Standard 2118.1 Automatic fire sprinkler systems Part 1: General systems, Section 10.6 Car stackers, 10.6.2.4f Within stacker sprinkler design –</p> <p><i>“Sprinklers within and over stackers shall be fitted with metal guards in accordance with the requirements of Clause 6.9 to prevent mechanical damage.”</i></p>	Damage to fire safety systems may result in an uncontrolled spread of fire in the building and loss of property and life.
4.	Mechanical services	Safety limit switch is operating at all times and has not been installed in a position to prevent it being damaged or inoperable.	The safety limit switch prevents the exposure of persons to moving machinery	<p>The improper installation of the safety limit switch demonstrates a failure to comply with AS 5124.2017 as stated in the Certificate of Compliance (11 February 2022 Klaus Multiparking ANZ) for the works as executed specifically, clause 5.2 Control devices and equipment used for safety purposes, 5.2.2.1 Safety device –</p> <p><i>“Safety devices, e.g. trip devices, ultimate-position valves, overspeed governors, shall be located and installed to prevent them being damaged or rendered inoperative during any foreseeable operating conditions. They shall only be adjustable using tools and shall be accessible for inspection purpose from working areas.”</i></p>	Public exposed to moving machinery which may result in a shear or crush injury.

5.	Mechanical services	Wheel stops have not been installed on several load carriers	Vehicles may overrun the designated parking area on the load carriers, causing damage to the vehicle or machinery	<p>The absence of wheel stops demonstrates a failure to comply with AS 5124.2017 as stated in the Certificate of Compliance (11 February 2022 Klaus Multiparking ANZ) for the works as executed specifically, clause 5.5 Load carrier, 5.5.5 –</p> <p><i>“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 is ensured.”</i></p>	Drivers are not prevented from overrunning the designated parking area which may result in damage to property, the building and the parking equipment when the parking system is rising/descending
6.	Mechanical services	The load carrier accessed by the user does not have a continuous surface	A continuous surface must be provided to allow safe access and minimise trip risk	<p>The lack of continuous surface demonstrates a failure to comply with AS 5124.2017 as stated in the Certificate of Compliance (11 February 2022 Klaus Multiparking ANZ) for the works as executed specifically, clause 5.5 Load carrier, 5.5.6 –</p> <p><i>“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 of the load carrier shall be anti-slip, e.g. ridged.”</i></p>	Public exposed to trip hazard which may result in a fall and injury
7.	Mechanical services	The lower and upper car parking spaces	The approved plans for the double car stacker provided for	The insufficient headroom demonstrates a failure to comply with the minimum clear	The low parking space headroom potentially limits

		have headroom of less than 2200mm clear	a minimum headroom that has not been achieved	<p>space requirements prescribed in the BCA, DA Consent and approved plans.</p> <p>NCC 2019 Volume 1 Amendment 1 F3.1 Height of rooms and other spaces, F3.1 (b) in a Class 5, 6, 7 or 8 building:</p> <p>(i) ...</p> <p>(ii) <i>A corridor, passageway, or the like – 2.1 m</i></p> <p>Approved plan BKA Architecture Basement Plan 17060 A-090 Rev 2 – <i>“Headroom clearance to be 2200mm minimum as per AS2890.1 including services, ducts and lighting”</i></p> <p>AS 2890.1:2004 5.3 Headroom, 5.3.1 General requirements – <i>“To permit access for both cars and light vans, the height between the floor and an overhead obstruction shall be minimum of 2200”.</i></p>	the type of vehicle that can be parked such that the building may not be used for its intended purpose
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Consideration of written representations

- The decision maker will consider any written representations pursuant to section 47 of the Act.

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

- Considering the potential consequences as outlined in my reasons and the order, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defects 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.

7. 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 Defects.
8. I am of the view that the periods above for Defect 1 through 23 (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*.

owners 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*).

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).