

Attn: Proper Officer
Parkmeng Pty Ltd (ACN 601 875 398)
Suite 204
460 Church St
Parramatta NSW 2150

Service: By registered post and by email

20 March 2023

Building Work Rectification Order

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

Parkmeng Pty Ltd (ACN 601 875 398) is being given this Building Work Rectification Order (Order) in relation to address 5-7 Parkes St Parramatta (Lot 511 DP 866023) (the Development).

Parkmeng Pty Ltd (ACN 601 875 398) is required to cause building work to be carried out to remediate the potential serious defects as set out in 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. Matthew Whitton, Assistant Building Commissioner & Director (Building & Construction Compliance: NSW Fair Trading, Department of Customer Service) is an authorised delegate of the Secretary of the Department.
5. **Parkmeng Pty Ltd (ACN 601 875 398)** is the developer of the residential apartment building known as “Observatory Place” **5-7 Parkes St Parramatta NSW 2150 (Lot 511 DP 866023) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development comprises of a 24 storey mixed-use building consisting of 173 apartment units, commercial retail space and underground carpark. The Act applies to building work at the Development.
7. On 18 October 2022, authorised officers conducted a lawful inspection of the Development.
8. On 24 February 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier. The Developer, Local Council, Office of the Registrar General and Certifier were invited to provide written representations relating to the Order to the Department by 3 March 2023.

- a. On 3 March 2023 written submissions were received from the Developer.
- b. As at the date of this Order no submissions were received from the Local Council, Office of the Registrar General or Certifier.

Requirements in relation to Serious Defects

9. I, Matthew Whitton, under section 33 of the Act, require you **Parkmeng Pty Ltd (ACN 601 875 398)** 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 Number	Location of Serious Defect	General description of Serious Defect	Requirement (under section 33(2)(a) to carry out the following specified building work)	Time for compliance with Requirement (commencing from the date this order is given)
1	Basement level B4	Inappropriate fall provided to perimeter drainage outlets	Provide appropriate fall to the perimeter drain so that the surface water is collected and conveyed via inlets to the site drainage system.	2 months

10. 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 **Parkmeng Pty Ltd (ACN 601 875 398)** 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 Number	Location of Serious Defect	Description of Serious Defect	Specified standard of building work	Requirement	Time for compliance with Requirement (commencing from the date this order is given)
2	Basement levels B1, B2, B3 and vehicle ramps	No perimeter drainage measure implemented for the basement wet walls resulting in uncontrolled water flow	Ensure adequate drainage of water from the basement wet walls.	<p>Within the time period specified in column 6,</p> <p>Stage 1 - Submit a written report and drawings prepared for surface water drainage measure to OC Audit team via email to ocaudits@customerservice.nsw.gov.au</p> <p>The written report required to be submitted must:</p> <ol style="list-style-type: none"> i. be prepared by a suitably qualified and experienced person or specialist, being a registered hydraulic engineer; ii. be prepared with consideration to this Order and the Reasons for this Order; iii. be prepared with consideration to drainage design and installation specifications; and iv. detail the specific building work necessary to meet the specified standard. <p>Stage 2 – Provide the drainage provision in accordance with the report and drawings provided at the stage 1.</p>	<p>Stage 1 - 1 month</p> <p>Stage 2 - 3 months</p>

Duration of this Order

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

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

Matthew Whitton
NSW Assistant Building Commissioner
Building and Construction Compliance
NSW Fair Trading Department of Customer Service

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 17 March 2023 issued to **Parkmeng Pty Ltd (ACN 601 875 398)** 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 31 October 2022 prepared by authorised officers of the Department, who conducted an inspection of the Development pursuant to s 20 of the Act on 18 October 2022.
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 Column 2 of Table 1 and 2 of the Order.

Table 3 – basis of reasonable belief as to serious defects

Serious Defect Reference	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	Plumbing	Insufficient fall provided to perimeter drainage outlets	Surface water has not been collected and conveyed to the drainage system. In the basement level B4, water ponding was observed due to insufficient fall to inlets and debris within the drainage system. Water ponding has resulted in unhealthy and dangerous conditions.	BCA Volume One, Section F Health and amenity, Part F1 Damp and weatherproofing, performance requirement FP1.5 Rising damp, which states: Moisture from the ground must be prevented from causing – (a) undue dampness or deterioration of building elements; and (b) unhealthy or dangerous conditions, or loss of amenity for occupants	Dangerous conditions for residents accessing the basement which could result in injury
2	Plumbing	No perimeter drainage measure implemented for the basement wet walls	Surface water entering from the wet walls has not been collected and conveyed to the drainage system. Absence of perimeter drainage allows surface water to run onto the slab causing water ponding which has led to unhealthy and dangerous conditions.	BCA Volume One, Section F Health and amenity, Part F1 Damp and weatherproofing, performance requirement FP1.5 Rising damp, which states: Moisture from the ground must be prevented from causing – (a) undue dampness or deterioration of building elements; and (b) unhealthy or dangerous conditions, or loss of amenity for occupants.	Dangerous conditions for residents accessing the basement which could result in injury

Consideration of written representations

5. On 24 February 2023, a notice of intention to issue the Order and draft copy of the Order was served on the Developer, Local Council, Office of the Registrar General and Certifier. The Developer, Local Council, Office of the Registrar General and Certifier were invited to provide written representations relating to the Order to the Department by 3 March 2023.
 - a. On 3 March 2023 written submissions were received from the Developer
 - b. As at the date of this Order no submissions were received from the Local Council, Office of the Registrar General or Certifier
6. The Developer provided me with a written submission dated 3 March 2023 which included the following information **(Developer Representations)**.
 - a. The Developer advises that both defects 1 and 2 are works in progress and therefore have not been completed.
 - b. Upon completion of the works a Hydraulic Engineer will certify the works have been constructed in accordance with the approved design and in compliance with the BCA Volume, Section F Health and Amenity, Part F1 and FP1.5
7. I have reviewed the Developer representations. In relation to the issues raised in the Developer representations, I make the following observations:
 - a. I acknowledge that the works are currently in progress and works will be undertaken to rectify the defects.

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

8. I am of the view that the periods above for Defect 1 through 2 (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.
9. Considering the consequences as outlined in my reasons, I give greater weight to the seriousness of the Serious Defects identified and the associated failures to comply with the BCA 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.
10. 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.

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—

- 1) 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
- 2) a defect in a building product or building element that—
 - a. is attributable to defective design, defective or faulty workmanship or defective materials, and
 - b. 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
- 3) a defect of a kind that is prescribed by the regulations as a serious defect, or
- 4) 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*).

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).