



Attn. the Proper Officer  
Goldenia Developments Pty Ltd (ACN 164 693 181)  
C/- Newcombe & Co Pty  
Suite 202, 118 Great North Road  
FIVE DOCK NSW 2000

Service: to registered address and by email

3 March 2021

# Building Work Rectification Order

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

Goldenia Developments Pty Ltd (ACN 164 693 181) is being issued with this Building Work Rectification Order in relation to the residential apartment building under construction at **93 Auburn Road, Auburn NSW 2144 (SP97827, SP97827B)** ("the Building").

This Order requires Goldenia Developments Pty Ltd to carry out building work to eliminate, minimise, or remediate the serious defect or potential serious defect as set out in **Schedule A** to this Order.

Please read this Order carefully and comply with the Order and its conditions. You must comply with this Order within 56 days from the date of this Order and it will remain in force until such time as it is revoked by the Secretary.

Failure to comply with this Order or its conditions is a criminal offence.

### A. Background

1. The Department of Customer Service (the Department) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the Act).
2. Goldenia Developments Pty Ltd (ACN 164 693 181) is the developer of the residential apartment building known as 93 Auburn Road, Auburn NSW 2144 (SP97827, SP97827B) ("the Building") for the purposes of s 4 of the Act.
3. David Chandler is an authorised delegate of the Secretary of the Department.

4. On 24 December 2020, notices of a proposed building work rectification order were sent in accordance with sections 44 and 45 of the Act. The developer responded to the notice and made a rectification proposal, which did not address all of the serious defects in Schedule A. At the date of this Order, no representations have been received in response to the notices sent to the Local Council, Principal Certifier or Registrar General.

## **B. Powers**

5. Under s 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was or is being carried out in a manner that could result in a serious defect in relation to the Building, the Secretary, or their authorised delegate, may give a building work rectification order ordering the developer to carry out building work or refrain from carrying out building work to eliminate, minimise or remediate the serious defect or potential serious defect.
6. A “serious defect” is defined in s 3 of the Act as follows:
- (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.*

## **C. Grounds**

7. On 8 October 2020, Compliance Officers from the Department conducted an inspection of the Building.
8. During the inspection, the Compliance Officers observed building work that had been carried out that could result in serious defects in relation to the following building elements:
- 8.1. waterproofing;
  - 8.2. adhesion of wall tiles;
  - 8.3. falls to floor tiles in bathrooms
9. Further details of the building work and the nature of the serious defects and/or potential serious defects are provided in **Schedule A** to this Order.

## D. Order

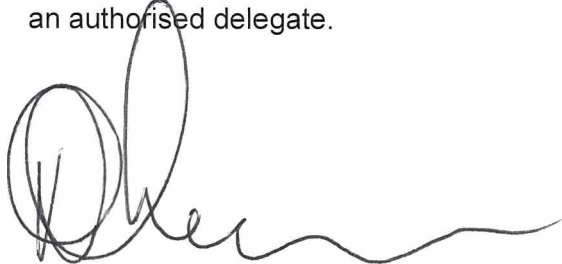
10. I, David Chandler, an authorised delegate of the Secretary, reasonably believe that the building work was or is being carried out in a manner that has resulted in a serious defect and make the following Order:
  - 10.1. Goldenia Developments Pty Ltd must cause building work to be carried out to eliminate Defect Number 1 in Schedule A, being building work meeting Australian Standard AS 4654.2 (waterproofing membranes of external above ground use) clause 2.13 (planter boxes) in respect of waterproofing all planter boxes in or on the Building, being building work in the nature of:
    - a) providing sufficient height for termination of the waterproof membranes on each planter box;
    - b) installing a mechanical protection board in each planter box to minimise root damage to the waterproofing membrane; and
    - c) installing a suitable overflow in each planter box.
  - 10.2. Goldenia Developments Pty Ltd must cause building work to be carried out to eliminate Defect Number 2 in Schedule A, being building work meeting Australian Standard AS 3958.1 and National Construction Code FP1.7 in respect of all wall tiles in bathrooms and ensuites of the Building, being building work in the nature of ensuring 90% coverage of tile adhesive.
  - 10.3. Goldenia Developments Pty Ltd must cause building work to be carried out to eliminate Defect Number 3 in Schedule A, being building work meeting the Australian Standard AS 4654.2 (waterproofing membranes of external above ground use) in respect of waterproofing in or on the Building, being building work in the nature of:
    - a) applying waterproofing membrane under the base wall on all balconies with sufficient membrane upturn height;
    - b) installing water stop angles on all main entrance and internal and external balcony door subsills;
    - c) providing sufficient height for termination of the waterproof membranes under all main entrance and internal and external balcony door subsills;
    - d) installing suitable substrates to receive the application of the membrane system under all balcony doorsills.
  - 10.4. Goldenia Developments Pty Ltd must cause building work to be carried out to eliminate Defect Number 4 in Schedule A being building work meeting Australian Standard AS 3958.1 in respect of falls in tiled floor finishes to bathrooms and ensuites in the Building, being building work in the nature of ensuring that falls in bathrooms have surface drainage that is no flatter than 1 in 100.
11. Goldenia Developments Pty Ltd must complete the rectification work required by Clause 9 within 56 days of this Order.



12. Goldenia Developments Pty Ltd must notify Sean O'Hara, Principal Compliance Officer, in writing, by email sent to [ocaudits@customerservice.nsw.gov.au](mailto:ocaudits@customerservice.nsw.gov.au) within 5 business days of the work required by Clause 9 being completed.

#### **E. Duration of Order**

This Order continues to have effect until it is complied with or until it is revoked by the Secretary, or an authorised delegate.



**David Chandler**

Building Commissioner

Department of Customer Service

#### **Notes**

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* (NSW) 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:
  - o the relevant local council,
  - o if the local council is not the certifier in relation to the building work—the principal certifier,
  - o if you are not the owner of the land concerned—the owner of the land concerned,
  - o the Registrar-General,
  - o if the order relates to a strata building—the relevant owners corporation,
  - o 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.

## Schedule A

### Building work and serious or potential serious defects

Defect number	Building element	Building Work	Observations	Serious Defect
1.	Waterproofing	Construction of planter boxes	<p>On 8 October 2020, Compliance Officers inspected the planter boxes and observed the following:</p> <ul style="list-style-type: none"> <li>a) insufficient height for termination of the waterproof membranes on planter boxes;</li> <li>b) no mechanical protection board to minimise root damage to the waterproofing membrane in the planter box.</li> <li>c) no suitable overflow for the planter box.</li> </ul>	<p>The building work constitutes a serious defect because of the following:</p> <ul style="list-style-type: none"> <li>1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS 4654.2 (waterproofing membranes of external above ground use) clause 2.13 (planter boxes) because of the following factors: <ul style="list-style-type: none"> <li>a) insufficient height for termination of the waterproof membranes on planter boxes;</li> <li>b) no mechanical protection board to minimise root damage to the waterproofing membrane in the planter box; and</li> <li>c) no suitable overflow for the planter box.</li> </ul> </li> <li>2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following: <ul style="list-style-type: none"> <li>a) inability to inhabit or use the building (or part of the building) for its intended purpose due to water ingress behind the waterproofing membrane and water accumulation on the base of the planter box;</li> <li>b) poor drainage and waterproofing of planter boxes could cause "concrete cancer", and</li> <li>c) water egress, humidity or mould growth.</li> </ul> </li> </ul>

2.	Construction of wall tiles	Adhesion of wall tiles	On 8 October 2020, Compliance Officers inspected the wall tiles and observed inadequate adhesive, namely, that adhesive failed to cover 90% of each tile.	<p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> <li>1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS3958.1 (ceramic tiles), clause 5.6.4.2 (adhesive coverage) and National Construction Code FP1.7, because of the following factors: <ol style="list-style-type: none"> <li>a) inadequate use of adhesive to wall tiles, namely that adhesive failed to cover 90% of each tile.</li> </ol> </li> <li>2. It is a defect in a building element that is attributable to defective or faulty workmanship and is likely to cause the following: <ol style="list-style-type: none"> <li>a) the accumulation of moisture and mould growth behind the tiles causing loosening of the tiles;</li> <li>b) the tiles to eventually fall off the wall.</li> </ol> </li> </ol>
3.	Waterproofing	Waterproofing to the external sliding balcony door and main entrance thresholds.	<p>On 8 October 2020, Compliance Officers inspected the balconies and main entrance thresholds and observed that:</p> <ol style="list-style-type: none"> <li>a) there is no evidence of water-stop angles at the internal balcony door subsill,</li> <li>b) insufficient height for termination of the waterproof</li> <li>c) membrane under the balcony door subsill, and</li> <li>d) the use of unsuitable substrates to receive the application of the membrane system.</li> </ol>	<ol style="list-style-type: none"> <li>1. The building work constitutes a serious defect because of the following: <ol style="list-style-type: none"> <li>a) there is no evidence of water-stop angles at the internal balcony door subsill and main entrance thresholds;</li> <li>b) insufficient height for termination of the waterproof membrane under the balcony doorsill, and</li> <li>c) the use of unsuitable substrates to receive the application of the membrane system.</li> </ol> </li> <li>2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following: <ol style="list-style-type: none"> <li>a) the inability to inhabit or use the building (or part of the building) for its intended purpose due to water egress, humidity and/or mould growth, or</li> <li>b) the destruction of the building or any part of the building due to water egress, humidity and/or mould growth.</li> </ol> </li> </ol>

4.	Falls	Falls in bathroom floor finishes	<p>On 8 October 2020, Compliance Officers inspected the bathrooms and observed the following:</p> <p>a) when there is a shower screen, hob, step-down or waste stop, the falls had surface drainage which is flatter than 1 in 100.</p>	<p>The building work constitutes a serious defect because of the following:</p> <ol style="list-style-type: none"> <li>1. it is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard 3958.1 because the falls in the bathroom had surface drainage which is flatter than 1:100.</li> <li>2. it is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the drain waste to accumulate and create puddles without reaching the floor waste.</li> </ol>
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