

Building Commission NSW



Attn: Proper Officer
Skymark Luxury Living Pty Ltd (ACN 653 414 003)
12 GLENABBAY STREET
MARSDEN PARK, NSW 2765

CAS Ref- 11194391

26 March 2024

Rectification Order

Section 49B of the Home Building Act 1989

Skymark Luxury Living Pty Ltd (ACN 653 414 003) is being given this Rectification Order (Order) in relation to 95 Opah Street, Melonba, NSW 2765 (Lot 8211) (the Development)

Skymark Luxury Living Pty Ltd (ACN 653 414 003) required to cause building work to be carried out to remediate the 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 Home Building Act 1989 (**the Act**).
2. Under section 49B(1) of the Act, if the Secretary of the Department, or their authorised delegate, may by written order given to a contractor, require the contractor to take steps specified in the order to ensure that a defect in residential building work or damage is rectified, if satisfied that:
 - (a) the residential building work done by the contractor or on the contractor's behalf is defective, or
 - (b) the residential building work done by the contractor or on the contractor's behalf was or is being carried out in a way that could result in a defect, or
 - (c) the contractor or a person acting on the contractor's behalf has, in the course of doing residential building work, caused damage to a structure or work, or
 - (d) as a consequence of defective residential building work done by the contractor or on the contractor's behalf, a structure or work has been damaged.
3. I, Stewart Scarlett, Acting Director (Building Compliance, Building Commission NSW, Department of Customer Service) am an authorised delegate of the Secretary of the Department.
4. The Development is comprised of a two story brick veneer dwelling with a tiled clad roof . The Act applies to building work at the Development.
5. On 20/12/2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Defects

6. I, Stewart Scarlett, under section 49B(1) of the Act, require you **Skymark Luxury Living Pty Ltd (ACN 653 414 003)** to do the things specified in column 6 in Table 1 to ensure that each respective defect described in columns 2, 3 and 4 of Table 1 is rectified. The time for compliance with each of the requirements in respect of the defects in this Order is **60 days** from the date of issue of this Order.

Table 1: Requirements in respect of Defects

Defect Ref Number	Location of Defect	Observations	Description of Defect	Technical Reference	Requirement to take steps specified (s 49B(1))
1	Perimeter of external masonry skin around the dwelling at internal ground floor level.	Onsite no visual evidence of the Damp-proof Course flashing was observed extending through the entire masonry leaf.	Failure to correctly install the Damp-proof course allows moisture from the earth and soil to rise up the walls through capillary action (also known as rising damp) and damaging the property as a result.	<p>The defect is a failure to comply with:</p> <p>NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.4 Damp-proof course, and flashings- installation and,</p> <p>AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.6 Damp-proof courses, flashings, and weepholes.</p>	<p>Rectify the Damp-proof course to ensure the Damp-proof course extends through the entire masonry leaf and is visible at the finished face of the wall, complying with:</p> <p>NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.4 Damp-proof course, and flashings- installation and,</p> <p>AS 4773.2: 2015 Masonry in small buildings Part 2: Construction. Clause 9.6 Damp-proof courses, flashings, and weepholes.</p>
4	Damp proof course, sill flashings throughout the dwelling	Onsite observed mortar debris that had not been cleaned out of the damp proof course and	Excess mortar being held in the damp proof course and sill flashings obstructs moisture being drained from the wall cavity via the weep holes as intended.	<p>The defect is a failure to comply with:</p> <p>NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.4</p>	Remove the excess mortar held within the damp proof course and sill flashings ensuring the damp proof course and sill flashings installation complies with:

		sill flashings in multiple locations.		Damp-proof course, and flashings- installation and, AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.6 Damp-proof courses, flashings, and weepholes.	NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.4 Damp-proof course, and flashings- installation and, AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.6 Damp-proof courses, flashings, and weepholes.
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Duration of this Order

- 7. This Order remains in force until it is revoked by the Secretary, or their authorised delegate.
- 8. This Order is given on the date that is listed above in accordance with section 49B of the Act.



Stewart Scarlett
Acting Director Building Compliance
Building Commission NSW

Date: 26/03/2024

Reasons for Rectification Order

1. These Reasons for Order are with respect to the Order dated 26 March 2024 issued to **Skymark Luxury Living Pty Ltd (ACN 653 414 003)** under the *Home Building Act 1989* (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, Stewart Scarlett, am satisfied that the Development has one or more defects.
3. I have formed this belief after:
 - a. Reviewing an inspection report dated 20 December 2023 prepared by an authorised officer (**Inspector**) of the Building Commission NSW, who conducted an inspection of the **residential building work** pursuant to section 49A of the Act on 20 December 2023.

Consideration of written representations

4. The Secretary must consider written submissions made within the specified period pursuant to section 49B of the Act.
 - a. Photographic evidence provided in the submission confirms that the DPC does not extend to the front face of the brickwork.
 - b. Photographic evidence provided in the submission confirms the defect has been rectified.
 - c. Photographic evidence provided in the submission confirms the defect has been rectified.
 - d. No evidence provided in the submission confirms the defect has been rectified.

Why is it appropriate to give the Rectification Order?

5. I am of the view that the period above for defect 1 through 4 (inclusive) is a reasonable period for compliance in all the circumstances for the specified steps required by the Order to be taken. I have formed this belief balancing the risks that the defects pose against the period of time it will take to carry out the specified steps.

6. Considering the potential consequences, I give greater weight to the seriousness of the defects identified and the benefits arising from remediating the defects and I find that it is appropriate, in the exercise of my discretion, to make the Order to carry out the specified steps 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 steps to be taken that may be costly. I give this consideration moderate weight. However, the cost to the contractor must be balanced against the benefit to the occupiers to be gained from having the defects rectified.

NOTES

49D Appeals to Tribunal against rectification orders.

- (1) A contractor may appeal to the Tribunal against a rectification order.
- (2) The appeal must be made within 30 days after notice of the order is given unless the Tribunal grants leave for the appeal to be made after that time.
- (3) The lodging of an appeal does not, except to the extent the Tribunal otherwise directs in relation to the appeal, operate to stay action on the order appealed against.

49E Offence – failure to comply with rectification order.

A person must not, without reasonable excuse, fail to comply with a rectification order. Maximum penalty –

- (a) for a corporation – 3,000 penalty units and, for a continuing offence, a further penalty of 300 penalty units for each day the offence continues, or
- (b) otherwise – 1,000 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.