

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

CAS Ref: 11194630

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 77 Opah Street Melonba, NSW 2765 (Lot 8202) (the Development).**

**Skymark Luxury Living Pty Ltd (ACN 653 414 003) is 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 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**

<b>Defect Ref Number</b>	<b>Location of Defect</b>	<b>Observations</b>	<b>Description of Defect</b>	<b>Technical Reference</b>	<b>Requirement to take steps specified (s 49B(1))</b>
<b>1</b>	Perimeter of external masonry skin around the dwelling at internal ground floor level.	There was no visual evidence of the presence of Damp-proof Course flashing 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) causing damage to the structure as a result.	The incorrect installation of the damp-proof course demonstrates a failure to comply with:  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.	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, in accordance with:  1. NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.4 Damp-proof course, and flashings- installation and,  2. AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.6 Damp-proof courses, flashings, and weepholes.
<b>2</b>	First floor front balcony	The front balcony has been constructed with a solid hob around the entirety of balcony.	The balcony is susceptible to flooding and external surface water may enter into the dwelling due to the absence of overflow provision.	The lack of overflow provision demonstrates a failure to comply with:  NCC 2022 BCA Volume 2, Housing Provisions Standard Part H2D8 External above ground membranes.	Rectify the front balcony to ensure overflow provisions are installed in accordance with:  1. NCC 2022 BCA Volume 2, Housing Provisions Standard Part H2D8 External above ground membranes.

		The hob is taller than the door threshold and no overflow provision has been provided.		And AS 4654.2:2012 Waterproofing membranes for external above ground use +-Part 2: design and installation Clause 2.11 Overflows.	2. AS 4654.2:2012 Waterproofing membranes for external above ground use Part 2: design and installation Clause 2.11 Overflows.
<b>3</b>	Front entrance of dwelling	The front of the masonry pier was excessively overhanging the concrete ground floor slab.	Excessive overhang of brickwork over the concrete slab may compromise the structural integrity of the masonry pier.	The excessive overhang demonstrates a failure to comply with:  NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.2 Cavities.  And  AS 3700:2018 Masonry structures, Clause 12.5.1 Tolerances in masonry - General & Table 12.1 (a) - Tolerances in masonry construction.	Rectify the pier to ensure the tolerances in masonry construction are not exceeded in accordance with:  1. NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.7.2 Cavities.  2. AS 3700:2018 Masonry structures, Clause 12.5.1 Tolerances in masonry - General & Table 12.1 (a) - Tolerances in masonry construction.
<b>5</b>	Perimeter of external masonry skin around the dwelling at internal ground floor level.	Photographic evidence provided in the builder's submissions show no evidence of the Termite barrier	Failure to correctly install the perimeter termite barrier system will allow termites to find entry points into the building that will affect the structural integrity of the building.	The incorrect installation of the perimeter termite barrier demonstrates a failure to comply with:  NCC Housing Provisions-2022- Section 3 Part 3.1.4.3 (a), (b), (c) & (d) Termite management systems.	Rectify the termite management system to ensure the termite barrier extends through the entire masonry leaf and is visible at the finished face of the wall, in accordance with:

		extending to outside face of the building.		AS 3660.1:2014 Termite Management Part 1 New Building Work- Termite management Part 1 New building work 5.3.8 External walls 5.3.8.1 General".	NCC Housing Provisions- 2022- Section 3 Part 3.1.4.3 (a), (b), (c) & (d) Termite management systems.  AS 3660.1:2014 Termite Management Part 1 New Building Work- Termite management Part 1 New building work 5.3.8 External walls 5.3.8.1 General".
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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: 26/03/24

# 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 does not provide evidence that overflow provisions to the first-floor balcony have been installed.
  - c. Photographic evidence provided in the submission confirms rectification has been attempted. Remedial scope and specifications have not been provided.
  - d. Photographic 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 3 and 5 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.