



Attn: Proper Officer
Maryland Developments Pty Ltd (ACN 128 686 064)
27 Daphne Street
Botany NSW 2019

Service: By registered post and by email

26 June 2023

Building Work Rectification Order

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

Maryland Developments Pty Ltd (ACN 128 686 064) is being given this Building Work Rectification Order (Order) in relation to address 9A Cooper Park Road Bellevue Hill NSW 2023 (Lot 101 of DP 827011) (the Development).
Maryland Developments Pty Ltd (ACN 128 686 064) is required to cause building work to be carried out to remediate the serious defects 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.

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. **Maryland Developments Pty Ltd (ACN 128 686 064)** is the developer of the residential apartment building known as ‘**The Acre**’ at **9A Cooper Park Road Bellevue Hill NSW 2023 (Lot 101 of DP 827011) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development consists of 32 units in 3 buildings: Build A, 3 Storeys, 15 units; Building B, 3 storeys, 13 units; Building C, 2 storeys, 4 units, over an underground basement car park.
7. On 4 May 2023, authorised officers conducted a lawful inspection of the Development.

Requirements in relation to Serious Defects

8. I, Matthew Whitton, under section 33 of the Act, require you **Maryland Developments Pty Ltd (ACN 128 686 064)** 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	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.	Roofs throughout the development	The waterproofing membrane is damaged with cuts and penetrations evident throughout the development.	<p>Rectify the serious defects to comply with the Building Code of Australia:</p> <ol style="list-style-type: none"> 1. Grind back existing membrane and remove. 2. Suitably prepare substrate in accordance with Australian Standard AS4654.2 3. Apply a membrane that complies with Australian Standard AS4654.1 and the BCA to the substrate. Ensure surface is primed and prepared in accordance with the manufacturer's specifications. 4. Allow membrane to cure in accordance with the manufacturer's specifications. Apply multiple coats in order to achieve the minimum dry film thickness. 5. Rectify any consequential damage. 6. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party inspection reports. 	3 months

2.	Roofs throughout the development	The rooftop substrate surface has been inadequately prepared prior to waterproofing.	<p>The developer is to take the following steps to rectify the serious defects to comply with the Building Code of Australia:</p> <ol style="list-style-type: none"> 1. Grind back existing membrane and remove. 2. Suitably prepare substrate in accordance with Australian Standard AS4654.2 inclusive of; removing protrusions, filling voids and pinholes and topping low spots. 3. Apply a membrane that complies with Australian Standard AS4654.1 and the BCA to the substrate. Ensure surface is primed and prepared in accordance with the manufacturer's specifications. 4. Allow membrane to cure in accordance with the manufacturer's specifications. Apply multiple coats in order to achieve the minimum dry film thickness. 5. Rectify any consequential damage. 6. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party inspection reports. 	6 months
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3.	Block B roof and unit B104 balcony	There are depressions in the substrate where water can be retained on the surface and unable to be conveyed to the drainage outlet. The drainage outlets have an elevated lip which prevents water escaping without ponding. This can lead to membrane failure.	<ol style="list-style-type: none"> 1. Survey the roof and identify high and low spots. 2. Fill the low spots with a suitable non-shrink grout and remove depressions where water can be retained on the surface. 3. Grind back high spots to ensure there are consistent falls towards the drainage outlet. 4. Apply a membrane that complies with Australian Standard AS4654.1 and the BCA to the substrate. Ensure surface is primed and prepared in accordance with the manufacturer's specifications. 5. Allow membrane to cure in accordance with the manufacturer's specifications. Apply multiple coats in order to achieve the minimum dry film thickness. 6. Rectify any consequential damage. 7. Demonstrate compliance of remediation works by providing evidence to ocaudits@customerservice.nsw.gov.au including but not limited to photographs of work in progress, installer compliance certificates and any third-party inspection reports. 	3 months
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9. 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 **Maryland Developments Pty Ltd (ACN**

128 686 064) 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	Requirement	Time for compliance with Requirement from the date of issue of this order
4.	All bathrooms and shower areas throughout the development	The bathrooms have no floor gradient to fall towards the drainage outlet. The shower was not separated from the rest of the bathroom.	Ensure all bathrooms floors have falls towards a drainage outlet (with minimum 1:80 gradient) and all non-shower bathroom wet areas fall towards a drainage outlet (with minimum 1:100 gradient).	<p>Within the time period specified in column 6,</p> <p>Stage 1 Submit a written report to the OC Audit team via email to ocaudits@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 registered architect and/or waterproofing consultant; ii) be prepared with consideration to this Order and the Reasons for this Order; iii) provide a survey of all bathroom wet areas to identify which bathrooms have insufficient falls, and 	<p>Stage 1: 2 months</p> <p>Stage 2: 9 months</p>

				iv) detail the specific building work necessary eliminate the serious defect and meet the specified standard. 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.	
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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.



Matthew Whitton
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 26 June 2023 issued to **Maryland Developments Pty Ltd (ACN 128 686 064)** 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 11 May 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 4 May 2023.
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 Reference 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.	Waterproofing	The waterproofing membrane is damaged with cuts and penetrations evident	The waterproofing has been prepared with defective or faulty workmanship and is likely to cause the inability to inhabit the building. Water will penetrate	The multiple cuts and physical damage to the membrane demonstrates defective and faulty workmanship. The breaches in the membrane means that the building can no longer	Further degradation of the waterproof membrane and entry of water into habitable parts of the building

			through the broken waterproofing membrane.	<p>comply with BCA 2016 Volume One, Section F, Part F1 Damp and Weatherproofing, FP1.4, which states:</p> <p><i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <ul style="list-style-type: none"> <i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>(b) Undue dampness or deterioration of building elements.”</i> 	
2.	Waterproofing	The rooftop substrate surface has been inadequately prepared prior to waterproofing	Substrate should be adequately prepared to ensure waterproofing membrane is smooth, free from protrusions, voids or distortions, and is clean, dry and free from dust and confirmation. Inadequately prepared substrate means the waterproofing membrane will fail.	<p>The failure to adequately prepare the substrate demonstrates a failure to comply with BCA 2016 Volume One, Section F, Part F1, DTS Provision F1.4 External above ground membranes, states:</p> <p><i>“Waterproofing membranes for external above ground use must comply with AS 4654 Parts 1 and 2.”</i></p> <p>And</p>	Inadequate waterproofing will cause water ingress into the building, causing unhealthy conditions, loss of amenity for occupants and deterioration of building elements.

				<p>AS 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, Clause 2.5.3.1 states: <i>“The preparation of the substrate for fully bonded or liquid-applied membranes shall result in the surface of the substrate being smooth, without protrusions, voids or formwork distortions, and clean, dry, and free from dust and contamination.”</i></p> <p>F1.4 is a pathway to satisfy BCA 2016 Volume One, Section F, Part F1 Damp and Weatherproofing, FP1.4, which states: <i>“A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i> <i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i> <i>(b) Undue dampness or deterioration of building elements.”</i></p>	
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3.	Waterproofing	Inadequate falls in substrate to drainage outlets	There are depressions in the substrate where water can be retained on the surface and unable to be conveyed to the drainage outlet. The drainage outlets have an elevated lip which prevents water escaping without ponding.	<p>The depressions in the substrate and inadequately installed drainage outlet demonstrate a failure to comply with BCA 2016 Volume One, Section F, Part F1, DTS Provision F1.4 External above ground membranes, states: <i>“Waterproofing membranes for external above ground use must comply with AS 4654 Parts 1 and 2.”</i></p> <p>AS 4654.2-2012 Waterproofing membranes for external above-ground use – Design and installation, Clause 2.5.2 states: <i>“Falls in finishes shall ensure water drains to the drainage outlet. Water shall not be retained on the finished surface with the exception of residual water remaining due to surface tension.”</i></p> <p>F1.4 is a pathway to satisfy BCA 2016 Volume One, Section F, Part F1 Damp and Weatherproofing, FP1.4, which states:</p>	The inadequately prepared substrate could lead to membrane failure, allowing the ingress of water into the building, causing unhealthy conditions, loss of amenity for occupants and deterioration of building elements.
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				<p><i>"A roof and external wall (including openings around windows and doors) must prevent the penetration of water that could cause –</i></p> <p><i>(a) Unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p> <p><i>(b) Undue dampness or deterioration of building elements."</i></p>	
4.	Waterproofing	<p>The bathrooms have no floor gradient to fall towards the drainage outlet. The shower was not separated from the rest of the bathroom.</p>	<p>Water will not fall towards the drainage outlet in wet areas and instead will pool and lead to damage of the waterproof membrane</p>	<p>The lack of appropriate fall and separation demonstrates a failure to comply with BCA 2016 Volume One, Section F, Part F1, DTS Provision F1.7 External above ground membranes, which states:</p> <p><i>"In a Class 2 and 3 building and a Class 4 part of a building, building elements in wet areas must –</i></p> <p><i>(i) be water resistant or waterproof in accordance with Table F1.7; and</i></p> <p><i>(ii) comply with AS 3740."</i></p> <p>AS 3740-2010 Waterproofing of domestic wet areas, Section 3 Installation, part</p>	<p>Damaged waterproofing membrane, causing unhealthy conditions, loss of amenity for occupants and deterioration of building elements.</p>

				<p>3.3 Falls in floor finishes, states: <i>"Where required, falls in floor finishes shall allow all surface water to drain without ponding except for residual water remaining due to surface tension. For general bathroom floor area, the minimum fall to the waste shall be 1:100"</i></p> <p>AS 3740-2010 Waterproofing of domestic wet areas, Section 3 Installation, part 3.4 Shower floors, states:</p> <p><i>"Falls in shower floors shall be sufficient to prevent –</i> (a) <i>surface water from being retained on the shower floor (except for residual water remaining due to surface tension; and</i> (b) <i>water from discharging outside the shower area.</i></p> <p><i>For shower areas with a vertical separation between the shower area and the wet area, such as a shower screen, hob, step-down or water stop,</i></p>	
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				<p><i>the fall to the waste shall be 1:100.</i></p> <p><i>As a minimum for other shower areas, the fall shall be a minimum of 1:80."</i></p>	
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Consideration of written representations

5. On 2 June 2023, a notice of intention to issue a building work rectification order, including a draft copy of the Order, was served on the Developer, Local Council, Office of the Registrar General, and Certifier.
6. 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 9 June 2023. No submissions were received from any of the parties served.
7. On 7 June 2023, the legal representatives of the Developer wrote to the Department stating that they had only be provided with a copy of a draft Prohibition Order and a Notice of Intention to issue a Prohibition Order.
8. I am satisfied that the Developer has been given an opportunity to provide representations concerning the Order. I am satisfied that the Order was properly served on the Developer in accordance with s 67 of the Act. The Department is not obliged to serve a copy on the legal representatives of the Developer. In circumstances where the Order was appropriately served and no submissions have been made in response to the draft, I am satisfied that it is appropriate to give the Order.

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

9. 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.
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.

11. I am of the view that the periods above for Defect 1 through 4 (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).