

Building Commission NSW



Attn: Proper Officer
All Star Tech Pty Ltd (ACN 630 198 257)
100 Siding Terrace
NIRIMBA, NSW 2763

CAS Ref- 11194587

28 March 2024

Rectification Order

Section 49B of the Home Building Act 1989

All Star Tech Pty Ltd (CAN 630 198 257) is being given this Rectification Order (Order) in relation to 366 Abell Road, Melonba NSW 2765 (Lot 7857/DP 1272576) (the Development)

All Star Tech Pty Ltd (ACN 630 198 257) 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-storey brick veneer and weatherboard 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 **All Star Tech Pty Ltd (ACN 630 198 257)** 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 **42 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	First floor front balcony	The front balcony has been constructed with a solid hob around the entirety of balcony. The hob is taller than the aluminium door threshold and no overflow provision has been provided.	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 And AS 4654.2:2012 Waterproofing membranes for external above ground use +-Part 2: design and installation Clause 2.11 Overflows	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. 2. AS 4654.2:2012 Waterproofing membranes for external above ground use Part 2: design and installation Clause 2.11 Overflows.
2	Ground floor brickwork	Brick ties have been installed angled toward the frame instead of to the brick. In addition, some brick ties were not nailed to the timber frame.	Water entering the wall cavity will hit the brick ties and be directed to the inside of the building, instead of to the outside.	The incorrect angle of brick ties demonstrates a failure to comply with NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.6.5 Wall ties, Table Notes. And AS 4773.2: 2015 Masonry in small buildings Part 2: Construction	Rectify the brick ties to be installed in compliance with: 1. NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.6.5 Wall ties, Table Notes. 2. AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.5 Allowance for timber shrinkage.

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3	Ground floor external wall	The pliable building membrane (wall wrap) was installed poorly around the electrical meter box.	Incorrect wall wrap installation may affect the intended performance of the building. Further, it is likely to direct water in the wall cavity to the inside of the building.	The improper installation of the building membrane demonstrates a failure to comply with NCC 2022 BCA Volume 2, Housing Provisions Standard Part 10.8.1 External Wall Construction And AS 4200.2:2017 Pliable building membranes and underlays Part 2: Installation design and installation Clause 3.2 General Requirements	Rectify the pliable building membrane to comply with: 1. NCC 2022 BCA Volume 2, Housing Provisions Standard Part 10.8.1 External Wall Construction 2. AS 4200.2:2017 Pliable building membranes and underlays Part 2: Installation design and installation Clause 3.2 General Requirements
4	Ground floor framing	The bottom plate and studs in some areas of the building had excessive cut-outs to accommodate services.	Excessive cut-outs will compromise the structural integrity of the timber frame.	The excessive cut-outs demonstrate a failure to comply with NCC 2022 BCA Volume 2 H1P1 Structural reliability and resistance. And AS 1684.2-2021 Residential timber-framed construction Part 2: Non-cyclonic areas Clause 6.2.1.4.	Rectify the timber framing to comply with: 1. NCC 2022 BCA Volume 2 H1P1 Structural reliability and resistance. 2. AS 1684.2-2021 Residential timber-framed construction Part 2: Non-cyclonic areas Clause 6.2.1.4.

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: 28/03/2024

Reasons for Rectification Order

1. These Reasons for Order are with respect to the Order dated 28 March 2024 issued to **All Star Tech Pty Ltd (ACN 630 198 257)** 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. The submissions provided do not satisfy the rectification requirements of items 1-4 specified in table 1 (above)

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.