

Building Commission NSW



Attn: Proper Officer
Scarlet Homes Pty Ltd (ACN 656 894 352)
Unit 33 4-8 Bouvardia Street
ASQUITH, NSW 2077

CAS Ref- 11194402

26 March 2024

Rectification Order

Section 49B of the Home Building Act 1989

Scarlet Homes Pty Ltd (ACN 656 894 352) is being given this Rectification Order (Order) in relation to 386 Abell Road, Melonba (Lot 8114 DP1272735) (the Development)

Scarlet Homes Pty Ltd (ACN 656 894 352) 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, metal roof dwelling. 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 Scarlet Homes Pty Ltd (ACN 656 894 352) 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. Each requirement must be complied with by the compliance date listed in item 7:

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	External masonry door and window openings. (Generally, throughout)	Onsite observed the brick ties exceeding the maximum spacing around the external openings. This was a common issue.	Inadequate wall ties around openings compromises the structural integrity of the masonry wall as these areas are known to induce high tensile stresses from wind loads.	The defect is a failure to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.6.5 Wall ties. AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.7 Wall Tiles.	Provide additional veneer ties where required to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part 5.6.5 Wall ties. AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.7 Wall Tiles.
2	Between garage & bedroom	Onsite observed the installation of a self-adhesive flashing affixed to the brickwork and metal roofing. The flashing had not been returned to the flashing installed under the adjacent cladding.	Inadequate/incorrect roof flashing installed. It does not return to lap the adjacent wall flashing allowing water ingress into the bedroom behind the garage.	The defect is a failure to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part 7.2.7(1) Flashings and cappings. AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.6.2.4 Flashing at roof abutment.	Rectify roof flashings to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part 7.2.7(1) Flashings and cappings. AS 4773.2: 2015 Masonry in small buildings Part 2: Construction Clause 9.6.2.4 Flashing at roof abutment.

3	First floor main bathroom & ensuite	Onsite observed the waterstop to the shower area in the main bathroom and ensuite is not flush or above the top of the floor tiles.	The shower waterstops have been installed below the floor tiles allowing water to migrate outside the shower, causing possible discolour to floor tiles. Efflorescence may also form in the tile joints outside the shower area and building elements such as vanity skirtings on the floor may deteriorate.	The defect is a failure to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part 10.2.17 Enclosed showers with level threshold (without hob or set down), Part 10.2.18 Unenclosed showers. AS 3740:2021 Waterproofing of domestic wet areas Clause 4.8 Waterstops	Rectify waterstops to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part 10.2.17 Enclosed showers with level threshold (without hob or set down), Part 10.2.18 Unenclosed showers. AS 3740:2021 Waterproofing of domestic wet areas Clause 4.8 Waterstops
4	Front balcony	Onsite observed the front balcony to be constructed with a solid hob around the entirety of balcony. The hob is taller than the door threshold and no overflow provision has been constructed	Balcony susceptible to flooding and external surface water may enter into the dwelling due to no overflow provision installed.	The defect is a failure to comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part H2D8 External above ground membranes. 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 comply with: NCC 2022 BCA Volume 2, Housing Provisions Standard Part H2D8 External above ground membranes. AS 4654.2:2012 Waterproofing membranes for external above ground use Part 2: design and installation Clause 2.11 Overflows.

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

These Reasons for Order are with respect to the Order dated 26 March 2024 issued to Scarlet Homes Pty Ltd (ACN 656 894 352)

1. 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. No submissions received for defects 1 to 4.

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.