

Attn: Proper Officer  
SEKISUI HOUSE AUSTRALIA PTY LIMITED (ACN: 135 313 236)  
Ground Floor, 68 Waterloo Road  
MACQUARIE PARK NSW 2113

CAS Ref: 11217090

Service: By express post and by email

17 April 2024

# Building Work Rectification Order

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

SEKISUI HOUSE AUSTRALIA PTY LIMITED is being given this Building Work Rectification Order (Order) in relation to 46 Savona Dr Wentworth Point 2127 (SP96216) (the Development).

SEKISUI HOUSE AUSTRALIA PTY LIMITED (ACN: 135 313 236) is required to cause building work to be carried out or take other specified action to remediate the 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. I, Matt Press, Director (Building Compliance, Building Commission NSW, Department of Customer Service) am an authorised delegate of the Secretary of the Department.
5. SEKISUI HOUSE AUSTRALIA PTY LIMITED (ACN 135 313 236) is the developer of the residential apartment building known as **46 Savona Dr Wentworth Point 2127 (SP96216) (the Development)** for the purposes of section 4(a) of the Act.
6. The Development consists of a residential flat complex encompassing two 8 storey buildings and a 26-storey building containing a total of 383 strata lots.
7. On 27<sup>th</sup> February 2024, authorised officers conducted a lawful inspection of the Development.

## Requirements in relation to Serious Defects

8. I, Matt Press, 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 SEKISUI HOUSE AUSTRALIA PTY LIMITED (ACN: 135 313 236) 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 1:

**Table 1: Requirement in relation to specified standard**

Serious Defect Ref: No.	Location of Serious Defect	Description of Serious Defect	Specified standard of building work (s 34(1)(a))	Requirement (s 34(1A))	Time for compliance with Requirement from the date this order is given (s 39(1))
1.	Common area and single occupancy windows.	<p>Improper sealing of penetrations in the facade backpan (sheet metal behind the facade cladding), allowing water ingress into the building, specifically:</p> <ol style="list-style-type: none"> <li>1. Applied sealant has 3 points of contact instead of limiting to 2.</li> <li>2. Applied sealant does not meet the required aspect ratio and has split.</li> <li>3. Sealant not fit for purpose and</li> </ol>	<p>All buildings are required to comply with the performance requirements of NCC Volume 1. NCC Volume has specific requirements for weatherproofing of the external envelope of the building. NCC 2019 Amendment 1, Part F1 Damp and Weatherproofing, FP1.4 Weatherproofing 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> <p><i>(a)unhealthy or dangerous conditions, or loss of amenity for occupants; and</i></p>	<p>Within the time period specified in column 6,</p> <p><b>Stage 1</b> Submit a written report to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ol style="list-style-type: none"> <li>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building façade engineer to assess the remediation of inadequate subframe structure and flashing to windows that have allowed the ingress of water. ;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ol> <p><b>Stage 2</b> 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.</p>	<p>Stage 1</p> <p>1 Month</p> <p>Stage 2</p> <p>7 Months</p>

		has deteriorated.	<p><i>(b)undue dampness or deterioration of building elements.”</i></p> <p>The evidence of water damage inside the building demonstrates that the building has failed to achieve compliance with the performance requirement of the NCC.</p>		
2.	Exterior Façade of building above windows.	The corrosion of the awning brackets and steel support angles on the façade.	<p>The corrosion identified demonstrates a failure to comply with Australian Standard AS4100 – 1998 Steel Structures, Section 3 General design requirements, 3.5 Serviceability limit state, 3.5.6 Corrosion protection, which states:</p> <p><i>“Where steelwork in a structure is to be exposed to a corrosive environment, the steelwork shall be given protection against corrosion. The degree of protection</i></p>	<p>Within the time period specified in column 6,</p> <p><b>Stage 1</b> Submit a written report to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building façade engineer to assess the remediation of the steel brackets;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b> Carry out the work to rectify the serious defect in accordance with the written report submitted in</p>	<p>Stage 1 1 Month Stage 2 7 Months</p>

			<i>to be employed shall be determined after consideration has been given to the use of the structure, its maintenance, and the climatic or other localities.”</i>	compliance with Stage 1 and make good any resultant consequential damage.	
3.	Exterior facades of the building	Cladding panels affixed directly to metal studs instead of top hats. Cladding panels have spans exceeding 900mm.	<p>Lightweight cladding is required to be affixed to tophats at regular spacings for support.</p> <p>The failure to install the cladding panels onto top hats demonstrates a failure to comply with the BCA Volume One, Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1 which states:</p> <p><i>“Structural reliability(a)A building or structure, during construction and use, with appropriate degrees of reliability, must-(i) Perform adequately under all</i></p>	<p>Within the time period specified in column 6,</p> <p><b>Stage 1</b> Submit a written report to the OC Audit team via email to <a href="mailto:ocaudits@customerservice.nsw.gov.au">ocaudits@customerservice.nsw.gov.au</a></p> <p>The written report required to be submitted must:</p> <ul style="list-style-type: none"> <li>i) be prepared by a suitably qualified and experienced person or specialist appropriate to the subject areas of the building façade engineer to assess the underlying structure supporting the facade;</li> <li>ii) be prepared with consideration to this Order and the Reasons for this Order; and</li> <li>iii) detail the specific building work necessary to eliminate the serious defect and meet the specified standard.</li> </ul> <p><b>Stage 2</b> 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.</p>	<p>Stage 1</p> <p>1 month</p> <p>Stage 2</p> <p>7 months</p>

			<i>reasonably expected design actions; and</i>  <i>(ii) Withstand extreme or frequently repeated design actions</i>		
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**Duration of this Order**

- 9. This Order remains in force until it is revoked by the Secretary.
- 10. This Order is given on the date that is listed above in accordance with section 67 of the Act.



Matt Press  
**Director Building Compliance**  
**Building Commission NSW**

Date: 17/04/24

# Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 17 April 2024 issued to **SEKISUI HOUSE AUSTRALIA PTY LIMITED (ACN: 135 313 236)** 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, Matt Press, have formed a reasonable belief that the Development has serious defects.
3. I have formed this belief after reviewing:
  - (a) An inspection report dated 27 February 2024 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 27 February 2024;
  - (b) Attending the building on 27 February 2024.
4. My belief is also based upon the following matters, set out in Table 2. I note that Column 1 of Table 2 refers to the Serious Defect with corresponding numbering that appears in Table 1 of the Order, located as described in the corresponding Column 2 of Table 1.

**Table 2 – Basis of reasonable belief as to serious defects**

<b>Serious Defect Ref: No.</b>	<b>Building element in which serious defect has been identified</b>	<b>Defect</b>	<b>Reason why defect is a serious defect</b>	<b>Applicable approved plan, Code or Australian Standard</b>	<b>Consequences of serious defect</b>
1.	Building enclosure	<p>Improper sealing of penetrations in the facade backpan (sheet metal behind the facade cladding), allowing water ingress into the building, specifically:</p> <ol style="list-style-type: none"> <li>1. Applied sealant has 3 points of contact instead of limiting to 2.</li> <li>2. Applied sealant does not meet the required aspect ratio and has split.</li> <li>3. Sealant not fit for purpose and has deteriorated.</li> </ol>	This is a serious defect because it is a defect in a building element that is attributable to a failure to comply with the performance requirements of the Building Code of Australia.	NCC Volume 1, Part F1 Part F1 Damp and Weatherproofing, FP1.4 Weatherproofing.	The improper sealing of the façade backpans can allow water and moisture to enter the building, causing unhealthy or dangerous conditions and/or loss of amenity for occupants.
2.	Building Enclosure	The corrosion of the awning brackets and steel support angles on the façade.	This is a serious defect because it is a defect in a building element that is attributable to a failure to comply with	AS4100-1998 Steel structures.	The ongoing corrosion of the angle brackets will reduce the structural capacity of the bracket and will result in the collapse of



			the relevant Australian Standards.		a part of the building (façade fins, sunhoods, and transoms).
3.	Building Enclosure	Cladding panels affixed directly to metal studs instead of top hats. Cladding panels have spans exceeding 900mm.	This is a serious defect because it is a defect in a building element that is attributable to defective design or faulty workmanship and is likely to cause a threat of collapse of a part of the building (cladding panels).	NCC Volume One, Section B Structure, Part B1 Structural Provisions, Performance Requirements BP1.1	The failure to provide suitable tophats means that the façade panels are not adequately supported. This is likely to cause the destruction of part of the building because the cladding panels could fail during high wind events.

### Consideration of written representations

5. On 1 March 2024, 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, Owners Corporation and Certifier.
6. The Developer, Local Council, Office of the Registrar General, Owners Corporation and Certifier were invited to provide written representations relating to the Order to the Department by 5pm on 7 March 2024.
7. To date, no submissions have been received from any of the served parties.
8. In circumstances where no submissions have been received, I am satisfied it is appropriate to issue 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 Defect identified and the associated failures to comply with the BCA and approved plans and the benefits arising from remediating the Serious Defect 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 Defect.
11. I am of the view that the periods above for Defect 1 through 3 (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).



### Notes about this Order

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of a Building Work Rectification Order.
- It is an offence to fail to comply with this Order. The maximum penalty for a company is 3,000 penalty units and in addition, for every day the offence continues, 300 penalty units. For an individual the maximum penalty is 1,000 penalty units and in addition, for every day the offence continues, 100 penalty units.
- You may appeal to the Land and Environment Court against this Order within 30 days after this Order is given, unless the Land and Environment Court grants leave for it to be made after that time. Lodging an appeal does not operate to stop the effect of this Order unless ordered by the Court.
- You are entitled to be given reasons for this Order, unless it has been given in an emergency. The reasons have been included within this Order and are not provided separately.
- The Secretary has given the following persons notice of the making of this building work rectification order:
  - o the relevant local council,
  - o if the local council is not the certifier in relation to the building work—the principal certifier,
  - o if you are not the owner of the land concerned—the owner of the land concerned,
  - o if the order relates to a strata building—the relevant owners corporation,
  - o any other person prescribed by the regulations.
- This Order specifies a time by which, or period within which, the order must be complied with. This Order continues to have effect until it is complied with even though the time has passed, or the period has expired, unless any requirement under this Order is revoked.