

Attn: Proper Officer
Greenland (Sydney) Lachlan's Lind Macquarie Park Development Pty Ltd (ACN 608 744 234)
Suite 201, Level 2, 233 Castlereagh Street
SYDNEY NSW 2000

Service: By registered post and by email

15 January 2024

Building Work Rectification Order

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

Greenland (Sydney) Lachlan's Line Macquarie Park Development Pty Ltd (ACN 608 744 234) is being given this Building Work Rectification Order (Order) in relation to address 23 Halifax St, Macquarie Park NSW 2113 (Lot 1 DP 1207368) (the Development). Greenland (Sydney) Lachlan's Line Macquarie Park Development Pty Ltd (ACN 608 744 234) is required to cause building work to be carried out to remediate the serious 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. Matt Press, Acting Executive Director Building Operations and Acting Assistant Building Commissioner, Building Commission NSW is an authorised delegate of the Secretary of the Department.
5. **Greenland (Sydney) Lachlan’s Line Macquarie Park Development Pty Ltd (ACN 608 744 234)** is the developer of the residential apartment building known as ‘**Lachlan’s Line**’ 23 Halifax St, Macquarie Park NSW 2113 (Lot 01 DP 1207368) (**the Development**) for the purposes of section 4(a) of the Act.
6. The Development consists of four (4) buildings containing a total of 900 apartments.
7. On 4 August 2023, authorised officers conducted a lawful inspection of the Development.
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 1 below and under section 34(1A) of the Act require that you **Greenland (Sydney) Lachlan’s Line Macquarie Park Development Pty Ltd (ACN 608 744 234)** do the things specified in column 5 of Table 1 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 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
1.	Basement 00, basement 01 and ground floor grid lines L6, L11, L17, L22 and L31.	Serious damage and spalling of the concrete slab at the joint locations in basements and the ground floor.	Ensure the slabs and beams can adequately support the structure.	<p>Within the time period specified in column 6,</p> <p>Stage 1 Slab scanning to be carried out on site at the joint locations at grid lines L6, L11, L17, L22 and L31 to confirm steel reinforcements, dowels and Hercules are installed as per the approved plan in basement 00 and 01 and the ground floor.</p> <p>Stage 2 Submit written report by a suitably qualified consulting engineering firm which must:</p> <ul style="list-style-type: none"> a) Provide details of the structural adequacy of the joints identified in Stage 1. b) Provide rectification methodology for the concrete spalling and any inadequate or excessive concrete cover of concrete beam U-Bars at the joints identified in Stage 1. Specifically, the Developer is to: <ul style="list-style-type: none"> a. Address all defects identified in the “<i>Response to Draft Building Work Rectification Order</i>” dated 27 October 2023 authored by 	<p>Stage 1: 2 months</p> <p>Stage 2: 4 months</p> <p>Stage 3: 8 months</p>

				<p>Mr. Paul Siewert of SCP Consulting Pty Ltd;</p> <ul style="list-style-type: none"> b. Address the misalignment of loads caused by the U-Bars at the corbel being placed 130mm inboard from the extremity of the beam at location B0-31-H as identified in the above report; c. Address the inadequate cover of 15-25mm at B0-31-I as identified in the above report. The rectification must satisfy both the durability requirements and fire resistance level requirements of AS3600; d. Ensure proposed rectification work does not cause any breaches in minimum head height for the affected levels or clashes with existing services; and e. Any other corbel related defects on Basement 00, 01 and Ground Floor identified during the course of the rectification, noting that the Developer has stated that additional scanning is ongoing/required. <p>Stage 3 Carry out the work to rectify the serious defect in accordance with the written report produced in Stage 2 and make good any resultant consequential damage. Developer to demonstrate compliance of remediation works by providing evidence</p>	
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				including but not limited to comprehensive photographs of work in progress, installer compliance certificates and any third-party inspection reports to the OC Audit team via email to ocaudits@customerservice.nsw.gov.au .	
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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
Acting Executive, Director Building Operations & Acting Assistant Building Commissioner
Building Commission NSW

Reasons for Building Work Rectification Order

1. These Reasons for Order are with respect to the Order dated 15 January 2024 issued to **Greenland (Sydney) Lachlan's Line Macquarie Park Development Pty Ltd (ACN 608 744 234)** 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 10 August 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 August 2023;
 - b) Structural report issued by SCP to Greenland surrounding the structural props delivered on site on 18 Aug 2023;
 - c) Structural report issued by Northrop on 21 August 2023;
 - d) Structural drawings received by the OC audit team on 24th August 2023.
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

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.	An internal load-bearing component of a building that is essential to the stability of the building or part of it.	Serious damage and spalling of the concrete slab at the joint locations in basements and the ground floor caused by defective workmanship.	This is a defect in a building product or building element that causes or is likely to cause the basement slab to fail, namely, to fracture and collapse, leading to the destruction of the building or any part, or the threat of collapse of the building or any part.	N/A	This issue compromises structural performance and structural adequacy of the concrete slab. As a result, it is likely to cause inability of the concrete slab to withstand the carpark and ground floor loads.

Consideration of written representations

5. On 27 October 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, Certifier and Owners Corporation. The served parties were invited to provide written representations relating to the Order to the Department by 17 November 2023.
6. On 17 November 2023 the Developer requested an extension of time to make written representations in response to the draft Order until 1 December 2023. The request was approved, and an extension granted to the Developer until 1 December 2023.
7. On 1 December 2023 submissions were received from the Developer. No other submissions were received from the remainder of the served parties.
8. The submissions made by the Developer were accompanied by:

- (a) An interim scanning report by Slab Scan ty Ltd dated 1 December 2023; and
 - (b) A structural report by Mr Paul Siewert of SCP Consulting Pty Ltd dated 1 December 2023.
9. In relation to Defect 1, the submissions made by the Developer request that the Department exercise discretion to not issue the Order. The Developer also requested amendments to:
- (a) The periods of compliance;
 - (b) The areas required to be slab scanned; and
 - (c) The number of expert reports required under the Order.
10. I note the Developer's request that the Department exercise discretion to not issue the Order. In circumstances where the defect is not disputed, it is my view that it is appropriate to issue the Order.
11. I have considered those submissions in relation to Defect 1 and note the following:
- (a) The periods of compliance have been amended as set out above;
 - (b) For abundant clarity, the areas required to be slab scanned have not been amended to remove those areas already scanned; and
 - (c) The number of expert reports required has been reduced from two to one.
12. In relation to Defect 2, the submissions made by the Developer requested that defect be removed on the basis that it is not a serious defect.
13. I have considered those submissions in relation to Defect 2 and agree that it is appropriate to remove it from the Order.
14. Having regard to the submissions by the Developer, I am satisfied that it is appropriate to give the Order as amended.

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

15. 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.

16. 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.
17. I am of the view that the periods above for Defect 1 through 2 (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).