



Proper Officer
Hillsdale Rebel MH Bent Street Unit Trust
ABN (29 866 453 511)
Suite 4, Level 8
14 Martin Place
SYDNEY NSW 2000

Service: to registered address and by email

12 February 2021

Prohibition Order

Section 9 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*

This Prohibition Order is being made in relation to the residential apartment building located at 1 Lower Bent Street, Neutral Bay NSW 2089 (Lot 1 in DP656458), (the Building). This order prohibits:

- the issue of an occupation certificate in relation to the Building until the Order is revoked by the Secretary, and
- the registration of a strata plan for a strata scheme in relation to the Building until the Order is revoked by the Secretary.

Please read this Prohibition Order carefully and comply with the conditions by the date specified.

Failure to comply with this Order or its conditions is a criminal offence.

A. Background

1. The Department of Customer Service (the Department) administers the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (the Act).
2. The building work carried out at the Building is building work as defined in s 5 of the Act.
3. Hillsdale Rebel MH Bent Street Unit Trust, ABN (29 866 453 511) is the developer of the Building for the purposes of s 4 of the Act.
4. The Building is a residential apartment building to which the Act applies, pursuant to s 6 of the Act.

5. Hillsdale Rebel MH Bent Street Unit Trust, ABN (29 866 453 511) is the owner of the land on which the Building is located.
6. Mr David Chandler is an authorised delegate of the Secretary of the Department.
7. On 23 December 2020, notice of a proposed prohibition order was given to the developer, who has made a rectification proposal, which requires certification and has challenged two of the serious defects identified in Schedule A.

On 18 January 2021, notices of a proposed prohibition order were given to North Sydney Council, the Principal Certifier and the Registrar General. At the date of this Order, no representations have been received from North Sydney Council, Principal Certifier or the Registrar General.

B. Powers under the Act

8. Under s 9 of the Act, the Secretary of the Department, or their authorised delegate, may make an order prohibiting the issue of an occupation certificate in relation to a residential apartment building and/or the registration of a strata plan for a strata scheme in relation to a residential apartment building if any one or more of the following apply:
 - a. the expected completion notice required to be given to the Secretary under the Act was not given or was given less than 6 months before the application for the occupation certificate was made (unless the expected completion notice was duly given under s 7(3) of the Act),
 - b. an expected completion amendment notice of a new expected date required to be given to the Secretary under the Act was not given or was given less than 6 months before the application for the occupation certificate was made,
 - c. the Secretary is satisfied that a serious defect in the building exists,
 - d. any building bond required under s 207 of the *Strata Schemes Management Act 2015* in relation to the building has not been given to the Secretary.

C. What are the reasons for making this Order?

Serious defect in the building exists

9. As an authorised delegate of the Secretary, I am satisfied that a serious defect in the Building exists because:
 - a. A building work rectification order (attached) has been made in relation to the Building and has not been revoked.
 - b. During the inspection, the Compliance Officers observed building work that had been carried out that has resulted in serious defects in relation to the Mechanical Car Stacker Multi Parking System.

Further details of the building work and the nature of the serious defects are provided in **Schedule A** to this Order.

D. What Order is being made?

10. I, David Chandler, an authorised delegate of the Secretary, am satisfied that there is a serious defect in the Building and accordingly make an Order under s 9 of the Act prohibiting the issue of an occupation certificate and the registration of a strata plan in relation to the Building.

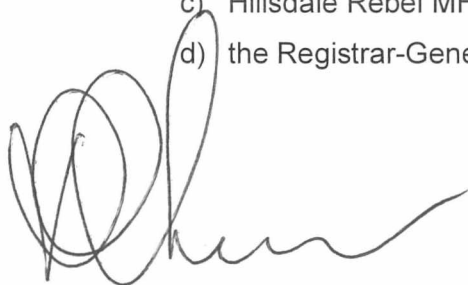
E. How long is the Order in force?

11. This order remains in force until it is revoked by the Secretary or their authorised delegate.

F. Who has been given notice of the Order?

12. The following persons have been given notice of the making of this order:

- a) North Sydney Council;
- b) AE&D Pty Ltd (ACN 15 149 587 495);
- c) Hillsdale Rebel MH Bent Street Unit Trust, (ABN 29 866 453 511), and
- d) the Registrar-General.

A handwritten signature in black ink, appearing to read 'David Chandler', with a large, stylized initial 'D'.

David Chandler
Building Commissioner
Department of Customer Service

Notes about this Order

- An occupation certificate issued in contravention of this prohibition order is invalid.
- It is an offence for a principal certifier (other than a council) to issue an occupation certificate in contravention of this order. The maximum penalty for a company is 1,000 penalty units. For an individual the maximum penalty is 200 penalty units.
- A penalty notice of \$3,000 for an individual or \$11,000 for a corporation may be issued if a principal certifier (other than a council) issues an occupation certificate in contravention of this prohibition order.
- A developer in relation to the residential apartment building to which this prohibition order applies may appeal against this order to the Land and Environment Court within 30 days of the notice of the order being given unless the Court grants leave allowing an appeal to be made after that time. Lodging an appeal does not, except to the extent that the Land and Environment Court otherwise directs, operate to stay action on the order.

Schedule A

Building work and serious or potential serious defects

Defect number	Building Element	Building Work	Observations	Serious Defect
1.	Construction of mechanical car stacker parking system	Construction of fall barriers, handrails, safety signage and fire safety measures.	<p>On 9 November 2020, Compliance Officers inspected the mechanical car stacker parking system and observed the following:</p> <ul style="list-style-type: none"> a. no visible barriers have been installed in the mechanical car stacker parking system to avoid fall hazards to drivers and/or passengers through the stacking system; b. no visible safety and information signage have been provided to alert of the risk of usage and the relevant safety measures to be followed in the operation of this system, and c. no fire mitigation strategies have been provided for special hazards (for the mechanical car stacker parking system). 	<p>The building work or ongoing work, constitutes a serious defect because of the following:</p> <ul style="list-style-type: none"> 1. It is a defect in a building element that is attributable to a failure to comply with the performance requirements of Australian Standard AS 5124.2017, clause 5.5.3 (Fall Barrier), clause 5.11.9 (Handrails), clause 7.2.1 (Markings), clause ZX2 (NCC), BCA clauses E1.10 and E2.3 (provision for special hazards), because of the following factors: <ul style="list-style-type: none"> a. no visible barriers have been installed in the mechanical car stack parking system to avoid fall hazards to drivers and/or passengers through the stacking system; b. no visible safety and information signage have been provided to alert of the risk of usage and the relevant safety measures to be followed in the operation of this system, and c. no fire mitigation strategies have been provided for special hazards for the mechanical car stacker parking system.

				<p>2. It is a defect in a building element that is attributable to defective design and/or defective or faulty workmanship and causes or is likely to cause the following:</p> <ul style="list-style-type: none">a. potential serious harm to people and cars using the mechanical car stacker parking system due to fall hazards, lack of handrails, lack of safety warnings and information signage and fire mitigation strategies.
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