



Customer
Service

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

Building Work Rectification Order

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

Hillsdale Rebel MH Bent Street Unit Trust ABN (29 866 453 511), is being issued with this Building Work Rectification Order in relation to the residential apartment building under construction at 1 Lower Bent Street, Neutral Bay NSW 2089 (Lot 1 in DP656458), (“the Building”).

This Order requires Hillsdale Rebel MH Bent Street Unit Trust, to carry out building work to eliminate, minimise, or remediate the serious defect or potential serious defect as set out in Schedule A to this Order.

Please read this Order carefully and comply with the Order and its conditions. You must comply with this Order within 28 days from the date of this Order and it will remain in force until such time as it is revoked by the Secretary.

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* (NSW) (the Act).
2. Hillsdale Rebel MH Bent Street Unit Trust, ABN (29 866 453 511), is the developer of the residential apartments located at 1 Lower Bent Street, Neutral Bay, 2089, NSW (Lot 1 in DP656458), (the Building) for the purposes of s 4 of the Act.
3. David Chandler is an authorised delegate of the Secretary of the Department.

4. On 23 December 2020 and 18 January 2021, notices of a proposed building work rectification order were sent in accordance with sections 44 and 45 of the Act. The developer responded to the notice and made a rectification proposal, which requires certification and has challenged two of the serious defects in Schedule A. At the date of this Order, no representations have been received in response to the notices sent to North Sydney Council, the Principal Certifier or Registrar General.

B. Powers

5. Under s 33 of the Act, if the Secretary of the Department, or their authorised delegate, has a reasonable belief that building work was or is being carried out in a manner that could result in a serious defect in relation to the Building, the Secretary, or their authorised delegate, may give a building work rectification order ordering the developer to carry out building work or refrain from carrying out building work to eliminate, minimise or remediate the serious defect or potential serious defect.
6. A “serious defect” is defined in s 3 of the Act as follows:
 - (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.*

C. Grounds

7. On 9 November 2020, Compliance Officers from the Department conducted an inspection of the Building.
8. During the inspection, the Compliance Officers observed building work that had been carried out that could result in serious defects in relation to the following building element:
 - 8.1. Mechanical Car Stacker Multi Parking System
9. Further details of the building work and the nature of the serious defects and/or potential serious defect are provided in **Schedule A** to this Order.

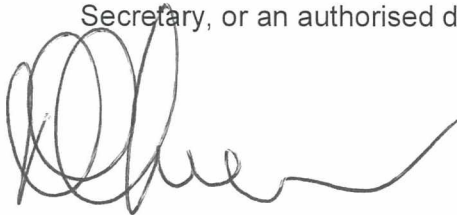
D. Order

10. I, David Chandler, an authorised delegate of the Secretary, reasonably believe that the building work was or is being carried out in a manner that could result in a serious defect and make the following Orders:

- 10.1. Hillsdale Rebel MH Bent Street Unit Trust must cause building work to be carried out to eliminate the defect in Schedule A, being building work meeting Australian Standard 5124.2017 – clause 5.5.3 (Fall Barrier) in respect of the mechanical car stacker multi parking system, being building work in the nature of providing sufficient fall barriers with protection provision of at least 1 metre high where a person could fall more than 1 metre from the load carrier service.
 - 10.2. Hillsdale Rebel MH Bent Street Unit Trust must cause building work to be carried out to eliminate the defect in Schedule A, being building work meeting Australian Standard 5124.2017- clause 5.11.9 (walkways, control stations and platforms) in respect of the mechanical car stacker multi parking system, being building work in the nature of providing sufficient handrails to the operating platform of the car stacking system.
 - 10.3. Hillsdale Rebel MH Bent Street Unit Trust must cause building work to be carried out to eliminate the defect in Schedule A, being building work meeting Australian Standard 5124.2017- clause 7.2 (Marking) in respect of the mechanical car stacker multi parking system, being building work in the nature of providing visible safety and information signage to include appropriate warning signs and abbreviated operating instructions near any control device.
 - 10.4. Hillsdale Rebel MH Bent Street Unit Trust must cause building work to be carried out to eliminate the defect in Schedule A, being building working meeting Australian Standard 5124.2017 Clause ZX2 National Construction Code NCC, Building Code of Australia BCA Clauses E1.10 and E2.3 (provision for special hazards) being building work in the nature of providing adequate fire mitigation strategies in respect of the mechanical car stacker multi parking system.
11. Hillsdale Rebel MH Bent Street Unit Trust must complete the rectification work required by Clause 9 within 28 days of this Order.
 12. Hillsdale Rebel MH Bent Street Unit Trust must notify, in writing, by email sent to ocaudits@customerservice.nsw.gov.au within 5 business days of the work required by Clause 9 being completed.

E. Duration of Order

13. This Order continues to have effect until it is complied with or until it is revoked by the Secretary, or an authorised delegate.



David Chandler
Building Commissioner
Department of Customer Service

Notes

- A person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* (NSW) 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 the Registrar-General,
 - 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.

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 stacker parking system to avoid fall hazards to drivers and/or passengers through the 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). 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: <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.