



D P C

STATUTORY COMPLIANCE REPORT

LAHC Seniors Housing Development
2-10 Birch St, North St Marys

Client	NSW Land & Housing Corporation
Report No.	J4409
Revision	FINAL
Date	22/05/2023

EXECUTIVE SUMMARY

Building

TABLE 1: BUILDING AND LOCATION

Client	NSW Land & Housing Corporation
Building:	LAHC Seniors Housing Development
Project Address	2-10 Birch St, North St Marys

Assessment - Requirements

TABLE 2: REQUIRED CONSIDERATIONS IN LEGISLATION

Clause	Issue	Applicable	Assessed
Environmental Planning and Assessment Act 1979			
s6.28	Proposed works to comply with BCA	Yes	Yes
Disability (Access to Premises – Buildings) Standards 2010			
DAPS	New part to comply with Access Code	Yes	No
DAPS	Affected part upgrading required	No	No

Assessment – Outcomes

Proposed Performance Solutions – New works

TABLE 3: DTS NON-COMPLIANCES TO BE ADDRESSED PERFORMANCE BASED DESIGN SOLUTIONS

No.	Issue	BCA
1.	Nil	

Notable Compliance Matters – Proposed Works

TABLE 4: NOTABLE BCA COMPLIANCE MATTERS TO BE INCLUDED IN COMPLETED DESIGN

No.	Issue	BCA
2.	For the purposes of assessment, the internal boundaries between the adjoining lots comprised in the development have not been considered as Fire Source Features to each of the buildings. It is assumed that the adjoining lots will be consolidated into a single lot on the completion of the development and therefore only the broader perimeter boundaries around the resultant consolidated lot have been considered as the Fire Source Feature to the buildings.	S5C2
3.	Proposed works are to be constructed of Type of Construction (Type B). Each building element listed in BCA Tables S5C21 must achieve the FRL's specified. Of note; <ul style="list-style-type: none">Any loadbearing lightweight framed walls are to be lined with fire rated linings (both sides) to achieve a minimum FRL of 60/-/- (internal walls) and 90/60/30 (external walls) respectively.The floor slab separating ground and first floor levels must achieve a minimum FRL of 30/30/30.Internal bounding walls separating between sole occupancy units and between units and the public corridors must achieve a minimum FRL of 60/60/60 and must extend up to the underside of the non-combustible roof covering and must not be crossed by timber or other combustible building elements with the exception roof battens of dimensions 75mm x 50mm or less.	Spec S5C21

No.	Issue	BCA
4.	The building receives concession from the non-combustibility requirements of BCA cl C2D10, whereby timber framing may be used for the construction of; <ul style="list-style-type: none"> External walls, and Non-loadbearing internal walls which are required to be fire-resisting, and Loadbearing internal walls. A part of a building that provides support to a part of a building constructed of timber framing. Notwithstanding, it should be noted that all other components comprised in the identified wall systems including any external wall render, insulation installed in the cavity etc, must be non-combustible. It is recommended that as part of the tender stage design documentation, details verifying compliance with these requirements (e.g. fire test reports) are provided for each of the materials comprised in the wall systems.	S5C23
5.	The Elec & Comms cupboards beneath the stairs in the lobby areas must be smoke and fire isolated from the lobby and stair above. Compliance can be achieved by enclosing the equipment in 1-hr fire rated construction with a 1-hr rated self-closing fire door and with any openings including the doorway suitably sealed against smoke spreading from the enclosure.	D3D8 & D3D9
6.	The building is required to be protected by a fire hydrant system complying with AS2419.1-2021. Importantly, careful consideration should be given to the location of the fire hydrant booster assembly (if required) to ensure compliance with the relevant requirements of the standard.	E1D2

Glossary of Terms

ATTACHMENT A: Glossary includes definitions and/or explanations of the various terms used throughout this report.

Basis

The inspections and information relied upon in the preparation of this report are detailed in ATTACHMENT B: Basis

Application

This report applies to 2-10 Birch St, North St Marys and is for the exclusive use of NSW Land & Housing Corporation.

This report should not be used in full or part to support any other development or any issue identified in relation to this or any other development. DPC do not warrant or will not accept any responsibility for misuse of the report as well as any discussions or outcomes within this report.

History

Date	Revision	Extent of Revision
09/03/2023	DRAFT	
22/05/2023	FINAL	

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INTRODUCTION

Brief & Scope

DPC have been engaged by NSW Land & Housing Corporation to undertake a review of the design documentation available with a view to determine the proposals **capability** to achieve compliance with the relevant statutory requirements, such as the Environmental Planning and Assessment Act 1979 (“the Act”) and provide recommendations as to the works required to achieve the specified outcomes of this legislation.

In accordance with Section 6.28 of the “the Act” it is the principal purpose of this report to provide surety to the project design team that the Crown building works if completed in accordance with the design documentation will *“comply with the Building Code of Australia in force as at the date of the invitation for tenders to carry out the Crown building work”*.

Summary Description

Proposed Development

The proposed development primarily includes the following components:

- Demolition of the existing buildings and structures on the site.
- Construction of 4 x separate two-storey residential unit buildings comprising a total of twenty-two (22) Sole Occupancy Units.

Property Description

TABLE 5: PROPERTY DESCRIPTIONS

Address	2-10 Birch Street & 20 Debrincat Ave, North St Marys NSW 2760
Title	Lots 346-350 in DP 31990 & Lot 305 in DP 30223
Surrounds	The development site affronts Birch Street to the West and is bounded by existing residential properties to the remaining boundaries.



FIGURE 1: SITE LOCATION AND SURROUNDS

BCA 'Description'

TABLE 6: CURRENT CODE OUTLINE DESCRIPTIONS

BCA Classifications:	Level	Use	Classification
	Ground Floor	Habitable	2
	First Floor	Habitable	2
Rise in Storeys	2		
Type of Construction	Type B		
Effective Height	3.1m		
Large Isolated Building	No		
Compartmentation	N/A – Of note, the following floor areas apply to each building; <ul style="list-style-type: none"> • Building containing Units 1 – 8 = 765sqm • Building containing Units 9 – 12 = 380sqm • Building containing Units 13 – 18 = 635sqm • Building containing Units 19 – 22 = 424sqm 		
United Building	N/A		
Existing Fire Fighting Equipment	N/A		

ASSESSMENT

The Environmental Planning and Assessment Act 1979 (the “Act”) and the Disability (Access to Premises – Buildings) Standards 2010 (“DAPS”) are the principal legislative instruments that detail the extent to which new crown building works are required to comply with the BCA and Access Code. Detailed discussions regarding the legislative requirements are included in ATTACHMENT D: Detailed Explanations.

Version of BCA

In relation to the new works the following version of the National Construction Code Volume 1 Building Code of Australia Class 2 to 9 Buildings (the “BCA”) that has been considered is

- BCA 2022

Assessment Summary

TABLE 7: REQUIRED CONSIDERATIONS IN LEGISLATION

Clause	Issue	Applicable	Assessed
Environmental Planning and Assessment Act 1979			
s6.28	Proposed works to comply with BCA	Yes	Yes
Disability (Access to Premises – Buildings) Standards 2010			
DAPS	New part to comply with Access Code	Yes	No
DAPS	Affected part upgrading required	No	No

Scope

Based on the legislative framework above, the following assessment schedules include our assessment of the proposed development are against the provisions of the BCA in the context of the legislative requirements previously outlined.

BCA CAPABILITY SCHEDULE

The following is a summary assessment of the **capability** of the proposed **residential development** to comply with the DtS provisions of the BCA. It is important to note that:

- This assessment relates to only to “key” compliance elements of the proposed works.
- Issue of detail have not been considered and have been assumed will be resolved in the for the application for construction certificate.

In no way should this review be considered as verification that the design documentation assessed complies with all aspects of the BCA.

Assessment

Based on our review of the provided design and other documentation listed in ATTACHMENT B: Basis, it is our considered opinion that compliance with the BCA can be achieved, without recourse to a section 4.55 application, subject the inclusion of detail elements and resolution of the following matters:

Section B - Structure

1. Design documentation is to demonstrate compliance with the structural provisions of Section B of the BCA.

Section C – Fire Resistance

2. The development is proposed to be constructed over multiple allotments. It is assumed that the adjoining lots will be consolidated into a single lot on the completion of the development which will eliminate the internal boundaries between the lots being considered as Fire Source Features to each of the buildings. For the purposes of assessment, only the broader perimeter boundaries around what will form the resultant consolidated lot have been considered as the Fire Source Feature to the buildings.
3. Proposed works are to be constructed of Type of Construction (Type B). Each building element listed in BCA Tables S5C21 must achieve the FRL's specified. Of note;
 - o Any loadbearing lightweight framed walls are to be lined with fire rated linings (both sides) to achieve a minimum FRL of 60/-/- (internal walls) and 90/60/30 (external walls) respectively.
 - o The floor slab separating ground and first floor levels must achieve a minimum FRL of 30/30/30.
 - o Internal bounding walls separating between sole occupancy units and between units and the public corridors must achieve a minimum FRL of 60/60/60 and must extend up to the underside of the non-combustible roof covering and must not be crossed by timber or other combustible building elements with the exception roof battens of dimensions 75mm x 50mm or less.
4. The building receives concession from the non-combustibility requirements of BCA cl C2D10, whereby timber framing may be used for the construction of;
 - o External walls, and
 - o Non-loadbearing internal walls which are required to be fire-resisting, and
 - o Loadbearing internal walls.
 - o A part of a building that provides support to a part of a building constructed of timber framing

Notwithstanding, it should be noted that all other components comprised in the identified wall systems including any external wall render, insulation installed in the cavity etc, must be non-combustible.

It is recommended that as part of the tender stage design documentation, details verifying compliance with these requirements (e.g. fire test reports) are provided for each of the materials comprised in the wall systems.

Section D – Access and Egress

5. Paths of travel between elements are to maintain a minimum 1000mm in clear width (e.g. corridors, ramp & stair handrails, etc). These are currently dimensioned or scaled as compliant.
6. Travel distances to and between exits are currently dimensioned or scaled as compliant.
7. The Elec & Comms cupboards beneath the stairs in the lobby areas must be smoke and fire isolated from the lobby area and stair above. Compliance can be achieved by enclosing the equipment in 1-hr fire rated construction with a 1-hr fire rated self-closing door and with any openings including the doorway being suitably sealed against smoke spreading from the enclosure.

Note: Accessibility requirements of the BCA and DAPS to be assessed by others.

Section E – Services and Equipment

8. A fire hydrant system complying with BCA Clause E1D2 and AS2419.1-2021 is to be provided to protect the 2 x buildings containing units 1 -8 & 13 – 18. *Note careful consideration should be given to the location of the fire hydrant booster assembly (if required) to ensure compliance with the relevant e of the standard.
9. Portable fire extinguishers complying with BCA Clause E1D14 & AS2444-2001 are required to be distributed outside every residential unit at a distance of not more than 10m from the unit entry doorway. *Note – protection to residential units is only applicable if hydrant coverage to the buildings is provided by way of internal hydrant installations.
10. An automatic smoke detection and alarm system is required to be provided throughout each of the buildings in accordance with BCA Specification 20, comprising smoke detectors complying with AS1670.1-2018 within the common areas and smoke alarms complying with AS3786-2014 within the residential units.
11. Emergency lighting and exit signage compliant with BCA clauses E4D4, E4D5 & E4D8 & AS2293.1-2018 is required to be provided throughout the common areas of the building.

Section F – Health and Amenity

1. The weatherproofing of external roof and wall cladding materials must comply with either BCA clauses F3D2 and F3D5 or the performance requirements of F3P1 of the BCA.
2. All stormwater is to be disposed of in accordance with AS/NS 3500.3-2018.
3. All new sanitary facilities are to be waterproofed in accordance with BCA clause F2D2 & AS3740- 2010
4. AS1668.2-2012 compliant mechanical exhaust systems are to be provided to enclosed sanitary facilities and mechanical ventilation is to be provided to all enclosed occupied spaces of the building.
5. AS1680.0-2009 compliant artificial lighting is to be provided to all areas of the building.
6. Acoustic separation is to be provided between adjoining residential units, and between the residential units and adjacent public corridors in the building in accordance with BCA Part F7.
7. The design of each of the sole occupancy units must comply with the condensation and water vapour management provisions of BCA Part F8

Note: Accessibility requirements of the BCA And DAPS to be assessed by others.

Section G- Ancillary Provisions

8. Nil

Section H – Special Use Buildings

9. Nil

Section I

10. No provisions

Section J – Energy Efficiency

11. BASIX applies in NSW to all new building works associated with Class 1 and 2 buildings. For those matters not regulated under BASIX the provisions of Section J apply. As these requirements relate to the construction of the new building fabric and services only it is considered that any requirement can be readily accommodated in the Tender design documentation.

ATTACHMENT A: GLOSSARY

“The Act” and “EPA Act” means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the Act also mean amendments and references to the Regulations.

“Access Code” means the Access Code contained in the Premises Standards. Includes design requirements for a building to be accessible

“Access way” means a continuous accessible path of travel (as defined in AS1428.1) to, into or within a building.

“Accredited Certifier” or “AC” has the same meaning as “Accredited Certifier” in the Act.

“Affected Part” has the same meaning as that in the Premises Standards, being the Principal Public Entrance to a building and access way to new work.

“Alternative Solution” has the same meaning as “Performance Solution”.

“Ambulant Disabilities” means mobility disability that does not prevent persons from being able to walk.

“AS1428.1” means AS1428 ‘Design for access and mobility’ Part 1: 2009; General requirements for access – New building work’, unless specified.

“AS” means Australia Standard

“Assessment Guidelines” means IFEG and/or the Australian Building Codes Board’s “Development of Performance Solutions – Guidance Document”.

“Building” means that the building or part of the building which is the subject of the Building Works.

“BCA” if not otherwise specified, means National Construction Code 2016 Volume 1 Building Code of Australia Class 2 to 9 Buildings.

“Certificates” mean statutory certificates and non-statutory certificates.

“Certifying Authority” or “CA” means a Certifying Authority within the meaning of the Act.

“Circulation Space” means a clear unobstructed area to enable persons using mobility aids to manoeuvre.

“Competent people” means people authorised to carry out any work associated with Building Works under the Act and includes contractors or independent consultants appropriately experienced and qualified, licenced, accredited or the like to provide design and consultancy services relative to the discipline, building element or service of the Building Works concerned.

“Compliant” means to the standards specified by the Access Code & BCA. Note: works may be specified in this report and may omit reference to ‘compliant’ or a specific standard. Those works are to be ‘compliant’ to the extent required by this definition.

“CDC” or “Complying Development Certificate” or “CDC” means a Complying Development Certificate within the meaning of the Act.

“Consent Authority” or “CA” means a Consent Authority within the meaning of the Act. This is the entity that issues development consents and can include local Council as well as State Government Agencies.

“Construction Certificate” or “CC” means a Construction Certificate within the meaning of the Act. This is the building approval issued by a CA subsequent to the issue of the development consent and prior to the commencement of works.

“DAPS” means the same as Premises Standards.

“Deemed to Satisfy Provision” has the same meaning as the same term in Volumes 1 & 2 of the National Construction Code. These are the prescriptive design standards deemed to achieve compliance with the BCA or Access Code, as applicable.

“Development Consent” means a Development Consent within the meaning of the Act.

“DDA” means the “Disability Discrimination Act 1992”

“DPC”, “we” or “us” means DP Property Consulting Pty Ltd and its staff.

“Fire Engineering Brief”, “FEB” or “Brief” has the same meaning as the term in the IFEG. It is a summary document of proposed assessment methods and goals for a Performance Solution relating to a fire safety matter.

“Fire Engineering Report” or “FER” has the same meaning as the term in the IFEG. It is a detailed report of assessment methods, calculations and outcomes of a Performance Solution relating to a fire safety matter.

“Fire Safety Certificate” means a Fire Safety Certificate within the meaning of the Act.

“Hazard” means any area or fixed object in or immediately adjacent to a direction of travel, which may place people at risk of injury.

“IFEG” means the International Fire Engineering Guidelines 2005.

“Luminance Contrast” means the light reflected from one surface or component, compared to the light reflected from another surface or component.

“Occupation Certificate” or “OC” means an Occupation Certificate within the meaning of the Act. Is required prior to the occupation of a building and/or commencement of a use.

“Order” means an Order within the meaning of the Act.

“Performance Requirement” or “PR” has the same meaning as the term in Volumes 1 & 2 of the National Construction Code.

“Premises Standards” means the “Disability (Access to Premises – Buildings) Standards 2010”

“Performance Solution” has the same meaning as the term in Volumes 1 & 2 of the National Construction Code as in force at the time of application for a CDC or CC including all applicable amendments.

“Principal Certifying Authority” or “PCA” is a building practitioner as defined by the Act

“Regulations” or “EP&A Reg” means the Environmental Planning and Assessment Regulation 2000 (NSW) (as amended) and all applicable amendments.

“State Environmental Planning Policy” or “SEPP” is in n EPI and has the same meaning as in the Act. These apply to specified regions or the entirety of the state of New South Wales as specified in the SEP

Sanitary Compartment” means a room or space containing a closet pan or urinal.

“Slip Resistant” means a property of a surface having a frictional force-opposing movement of an object across a surface.

“Tactile Ground Surface Indicators” or “TGSIs” means truncated cones and / or bars installed on the ground or floor surface, designed to provide pedestrians who are blind or vision-impaired with warning or directional orientation information.

“Tactile Signs” means signage incorporating raised text, and / or symbols and Braille to enable touch reading by people who are blind or who are vision-impaired.

ATTACHMENT B: BASIS

Reference Documentation

Architectural

Designer

DTA

Project No.

2202.011

Sheet No.	Title	Date	Rev
04 of 28	DEMOLITION PLAN	16.05.23	A
05 of 28	SUBDIVISION PLAN	16.05.23	A
06 of 28	DATA PLAN	16.05.23	A
07 of 28	SITE PLAN	16.05.23	A
08 of 28	GROUND FLOOR PLAN	16.05.23	A
09 of 28	FIRST FLOOR PLAN	16.05.23	A
10 of 28	ROOF PLAN	16.05.23	A
11 of 28	ELEVATIONS	16.05.23	A
12 of 28	ELEVATIONS AND INTERNAL ELEVATIONS	16.05.23	A
13 of 28	INTERNAL ELEVATIONS	16.05.23	A
14 of 28	SECTIONS	16.05.23	A
15 of 28	SECTIONS	16.05.23	A

ATTACHMENT C: FIRE SERVICES

Proposed Fire Safety Schedule

Measure	Type				Minimum Standards of Performance
	Critical	Existing	Proposed	Modified	Proposed /Modified
Automatic Fire Detection and Alarm Systems	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Spec 20 & AS3786-2014 and/ or AS1670.1-2018 (as applicable)
Emergency Lighting	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Clause E4D4 & AS/NZS 2293.1-2018
Exit Signs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Clause E4D5 & E4D8 & AS/NZS 2293.1-2018
Fire Doors; SOU Doors	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Clauses C4D12, AS1905.1-2005
Fire Hydrants	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Clause E1D2 & AS2419.1-2021
Fire seals protecting openings in fire resisting components of the building	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Clause and Specification C4D15, AS4072.1-2005, AS1530.4-2005 & Manufacturer's specifications
Portable Fire Extinguishers	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BCA Clause E1D14 & AS2444-2001

END OF SCHEDULE

ATTACHMENT D: DETAILED EXPLANATIONS

BCA Compliance

The introduction of the Building Code of Australia 1996 (adopted 1 July 1997) commenced the use of 'performance based building codes' in Australia. BCA 1996 and subsequent amendments and revisions, nominate a series of Performance Requirements that *"outline the levels of accomplishment different buildings must attain. The Performance Requirements are the only NCC hierarchy levels that must be satisfied."*¹ Compliance with a relevant Performance Requirement is achieved in one of three (3) ways:

1. Adherence to the prescriptive "deemed-to-satisfy" provisions.
2. Development of a Performance Based Design Solution – "Performance Solution" or "Alternative Solution"
3. A combination of both.

Performance solutions can address all aspects building code compliance including, but not limited to, fire resistance, emergency escape, sanitary facilities, building amenity, accessibility and energy efficiency. Whilst performance based design solutions can relate to any matter of BCA compliance, those typically worthy of the most attention generally relate to fire safety matters.

The current BCA and guidelines to its application and performance based can be accessed on-line – [click here](#).

It is important to note that **the BCA is a design document for new building work**. The BCA contains no provisions regarding its application or the administration of building approvals nor does it directly provide for retrospective application to existing building elements. These are administered in legislation.

Performance (Alternative) Solutions

Performance based design solutions provide greater flexibility in achieving an appropriate building solution specific to the parameters and limitations of the proposed building, its fuel loads and the capabilities of its occupants. Performance based solutions are typical advantageous in building design.

However sometimes, because of this flexibility, the underlying design as well as the outcomes and recommendations of the reports can impact on the building's ongoing operation, use and maintenance. This can include:

- Solutions relating to specific scenarios that can limit future use types.
- Increased training and ongoing management-in-use plans to be developed and implemented.
- Potential impacts on future uses and design.
- Fire Services can have atypical and/or enhanced operational requirements which are unlikely to be familiar to the maintenance contractors and to the fit-out designers.
- Additional maintenance costs.

Dispensations

Currently and prior to the introduction of the performance based building codes, in most states enable an appropriate authority to allow exemptions from compliance with the BCA, where the individual circumstances of the building or use permit. These are considered on a case-by-case basis.

¹ABCB, 2016, Guide to the NCC, Volume 1

Disability Discrimination Act 1992

The Disability Discrimination Act 1992 (“DDA”) – [click here](#) - was introduced to protect persons against discrimination based on a disability. The DDA applies to the entire gamut of societal interactions, however this report only considers the extent to which the built structure of the building/s described may result in discrimination occurring.

To this extent section 23 of the DDA states that “It is unlawful for a person to discriminate against another person on the ground of the other person's disability:

- (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
- (b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
- (c) in relation to the provision of means of access to such premises; or
- (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- (e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities; or
- (f) by requiring the other person to leave such premises or cease to use such facilities.”

Disability discrimination occurs when a person with a disability or a person associated with someone that has a disability is treated unfairly.

The DDA provides no measurable standards by which an existing built structure can be considered against to determine whether unlawful discrimination is occurring or is likely to occur. Please note that the DDA is binding to the Crown, including in the right of the State or New South Wales.

As a result, the DDA serves as a mechanism for complaints to be made to the Australian Human Rights Commission for their consideration regarding potential punishments and/or in the implementation of remedial works.

Disability (Access to Premises – Buildings) Standards 2010

The Disability (Access to Premises – Buildings) Standards 2010 (the “Premises Standards” or “DAPS”) came into effect on 1 May 2011 – [click here](#). *“The purpose of the Premises Standards is to both:*

- *provide for equitable and dignified access to new buildings and those areas of existing buildings that undergo renovation or upgrade that requires a building approval, and*
- *provide greater certainty to those involved in the design, construction, certification and management of buildings in relation to the level of access required in the buildings covered by the Premises Standards.”²*

Effectively the Premises Standards:

- Specifies when new building works are required to comply with measurable standards; and
- Specifies when existing building elements are required to be Upgrade to comply with the most current measurable standards;
- Provides nationally consistent measurable standards; and
- In combination with DDA provisions, provides protection from a successful complaint being made against the building element.

It is important to note that the measurable standards, and protections, do not automatically apply to existing building elements. The Premises Standards applies only to works approved, to the extent necessary, and completed in accordance with the Access Code

² Australian Human Rights Commission, 2011 “Guideline on the application of the Premises Standards”

Access Code for Buildings

Schedule 1 of the Premises Standards contains the “Access Code for Buildings” (the “Access Code”) which is a design based document that provides both the overarching “Performance Requirements” as well as the prescriptive “deemed-to-satisfy” (“DtS”) provisions. These are the measurable standards to which compliance with the Premises Standards and thereby the DDA is determined.

Whilst clause 3.2 of the Premises Standards enables compliance with the Premises Standards to be achieved by strict adherence to the DtS provisions of the BCA, it is not limiting and provides opportunity for the development of “performance solutions” that otherwise demonstrate the compliance with the “Performance Requirements” have been achieved.

Reference Standards

The DtS provisions of the Access Code includes reference to specific Australian Standards or other normative documents that provide specific detail regarding the design and construction of various building elements.

Affected Part

The Premises Standards introduced the concept of the “Affected Part”, which it defines to be:

- “(a) the principal pedestrian entrance of an existing building that contains a new part; and*
- (b) any part of an existing building, that contains a new part, that is necessary to provide a continuous accessible path of travel from the entrance to the new part.”*

The Premises Standards includes scenarios where the ‘affected part’ is required to be upgraded to comply with the Access Code.

Applications for Building Works

Typically, the Affected Part is required to be upgraded where an application is made for building works, except where the application is made by a lessee in a building containing more than one (1) lessee (“exemption criteria”).

Upgrading Risks

Building Code of Australia

It is important to note that **the BCA is a design document for new building work**. The BCA contains no provisions regarding its application or the administration of building approvals nor does it directly provide for retrospective application to existing building elements. These are administered in legislation.

Environmental Planning and Assessment Act 1979

Approvals

The Act sets out the framework to achieve approval for development works. Details of approval system, particularly in relation to existing building upgrading, is included in the regulation (see below)

Orders

The local Council has the capacity to issue orders for various matters listed under section 121B of the Act – [click here](#) – which can relate to the demolition, alteration, repair or improvements to unauthorised or dilapidated buildings and structures, fire safety upgrading as well as ceasing the unauthorised use of a building, amongst others.

Environmental Planning and Assessment Regulation 2021

Development Applications – Major Works / Inadequate Fire Safety Measures

Clauses 64 of the Reg requires the consent authority in assessing a development application, where the proposed alterations, and any alterations in the preceding 3 years, to an existing building or structure represent >50% of the total volume of the building, or where they consider the fire safety is inadequate to decide whether if the existing building to be brought up to compliance, in part or full, with the current requirements of the BCA.

Development Applications – Change of Building Use

Clauses 62 of the EP&A Reg 2021 & 14 of the EP&A (DC&FS) Reg 2021 requires the consent authority and certifying authority assessing an application that will result in a change of BCA classification (e.g. Class 5 office to Class 6 retail), to ensure that the fire protection and structural adequacy of the building will be appropriate to the new use and the particularly fire services are provided to the use. This clause can impose upgrading works as a result.

Complying Development & Part 4A Certificates – Significant Fire Safety Issues

Clauses 135 of the EP&A Reg 2021 & 60 of the EP&A (DC&FS) Reg 2021 require that if certifying authority in carrying out the required inspections of the areas subject of proposed works as well as egress routes from those areas identify any significant fire safety issue/s, they must notify the local council for their consideration and action. Given the nature of the notification, it is likely that upgrading works will be required.

Complying Development Certificates – Safe Egress

Clause 143 of the EP&A Reg 2021 prevents a certifying authority from issuing a complying development certificate unless safe egress is achievable, or will be achievable, from the subject space once upgrading works have been completed as part of the development. Upgrading works to buildings may be required to facilitate the approval of a complying development certificate as well as the issue of the corresponding occupation certificate.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The when an application for a Complying Development Certificate is made under the “Codes SEPP” (most common) for the fit out or change of use of an existing building and the proposal involves

- >500m² of commercial space; OR
- >1000m² of industrial space

The area of the building involved is to comply with, and therefore potentially upgraded to comply with the following Performance Requirements of the National Construction Code – Volume 1 Building Code of Australia – Class 2 to 9 buildings (the “BCA”):

- DP2 – Stairways and Ramps
- DP3 - Balustrades
- DP4 – Travel distances and exit dimensions
- DP5 – Fire Isolation of exits
- FP2.1 – Sanitary facilities, including accessible and ambulant accessible
- FP2.5 – Ability to remove unconscious persons from sanitary facilities.
- FP4.1 – Natural lighting
- FP4.2 – Artificial lighting
- FP4.3 – Natural ventilation
- FP4.4 – Mechanical ventilation
- FP4.5 – Exhaust of contaminated air.

Note: This only applies where an application for a complying development certificate is made under the Codes SEPP.

Premises Standards

Refer to commentary above regarding the Premises Standards and Affected Part Upgrading

ATTACHMENT E: LIMITATIONS

Unless specifically stated otherwise within the report, our Report is limited as follows: -

- Applies only the described building at 2-10 Birch St, North St Marys.
- This report has been prepared solely for the benefit of NSW Land & Housing Corporation.
- Where applicable, parts of this report may include limitations as to the reporting provided. These are additional to the general limitations.
- When Draft, the content, recommendations or conclusions shall not be relied upon.
- Relies on the accuracy of the documents provided by others which form the basis of the analysis and DPC accepts on responsibility for inaccuracies in our assessments because of inaccuracies in documents provided by others.
- Detailed engineering assessments with regard structure and services have not been carried out, nor have detailed testing, auditing or maintenance of services been carried out. Commentary regarding structure and services in the building relate on to the visual condition of the element or service as can be reasonably deduced from the inspection or documentation referenced.
- Unless otherwise stated it has been assumed that all services are in full working order.
- Defects, non-compliances or potential non-compliances with building codes that could not be readily deduced from the inspection/s and documentation have not been commented on and are outside the scope of the report. We do not warrant that the building is free of any such defects, non-compliance or potential non-compliances.
- Compliance of termite barriers or the existence of termite activity, past or present, in the building is outside the scope of this report.
- Where limited parts of the building have been inspected, for reporting, we have assumed these to be representative of the overall condition. We do not warrant that parts of the building not inspection are not free from defects, non-compliances or potential non-compliances with building codes.
- This is not a certification or guarantee of compliance and has been prepared in accordance with the instructions given.
- This report is not certification under legislation or a replacement for such certification.
- The scope of the Report is described in the accepted fee proposal and/or as outlined within the body of the report. Separate verbal or email instructions have not been included unless specific stated.
- The outcomes and recommendations of this report are valid for six (6) months from the issue of the Draft or Final report, whichever is the earlier.
- This report may include budget costs regarding issues identified. About costs nominated –
 - GST is excluded.
 - All costs are ‘Present Value’ and do not include for inflation or other influences on the future value of the element/works.
 - Include for business hours’ access for works to occur.
 - Are reasonable budget estimates as should not be considered a detail cost analysis.
- Are indicative and intended to represent the comparable significance of the issue.
- A comparative level of finish is assumed for the works, determined against the underlying quality of the existing building or part.
- Unless specified, third party expert reports are not included.
- Builders fees including preliminaries, margins and overheads are excluded
- Approval fees, levies and contributions that may be payable are not included.
- Design and project management fees are not included.
- Replacement and maintenance costs assume a like for like replacement.
- Where a performance solution is recommended in response to an issue it has been assumed that such solution is obtainable from an appropriate qualified and competent person. The report and recommendation does not guarantee such a solution can be obtained nor extensive works would not be required rectify the issue if a performance solution is not obtained.
- Where a performance solution is recommended, the outcomes and requirements of such report have not been included. These are unknown at the time of reporting.
- Do not include Lost Net Lettable Area.
- The report does not include WH&S / OH&S risks, electrical and water authority requirements or any land title based controls or limitations.
- Incorporates all reasonable and practical efforts into producing strategies commensurate with the client's objectives, expectations and operations.
- Assumes that any future design is expected to meet the requirements of all relevant codes and legislation at the time of construction
- Is based on our interpretation of the condition of the building, element of the building or service contained in the building as apparent from the inspection.
- Is not to be reproduced, in whole or in part, without our express written authorisation
- May include cost estimates. All cost estimates provided throughout the Report are indicative only and are provided as a budgetary guide and are provided to represent the significance of the costed item. Costs do not include implications from lost lettable areas, preliminaries, builder's margins, overheads, professional fees, project management fees, WHS obligations, planning and building approval fees, taxes, levies or contributions.