

Summary

If Council issues its proposed orders, additional levies will need to be raised of approx. \$5000/yr for each owner for the next 2 years

However, some orders (especially the costly ones) have a doubtful basis:

1. There is no factual basis for six (6) BCP recommended remedial actions (which Council has reproduced in their orders). This is because BCP have made an obvious error in calculating the “effective height” of the building (see below and attachment 1):
2. One of BCP’s recommended remedial action (in Summary) is broader than that described in the body of the report
3. Seven (7) of BCP’s recommended remedial actions (in Summary) are for standards that BCP “Deemed to satisfy” and did NOT find as ‘non-compliant’ (ie the Summarised remedial action is inconsistent with the BCP’s Conclusions and Comments). While some of these actions may be desirable, it is a different matter to elevate them to an action needed to comply and is inconsistent with how other issues in the report have been treated. These inconsistencies therefore introduce substantial doubt about the report’s reliability) :
4. However, five (5) of Council’s orders are broader than that recommended by BCP and are likely to unnecessarily and significantly increase costs and timeframes:
5. One (1) of Council’s orders may require the Owners Corporation to implement something which it has no legal authority to do
6. Also, Council has given an unreasonable timeframe for the works to be completed.

Given these errors, if we continue with the current engagements and arrangements, there is a real risk that Owners will end up being liable for substantial amounts of money unnecessarily as well as breach of Council Orders and resulting enforcement action

Recommended next steps for Strata Committee to minimise the risks:

1. Confirm that Council has agreed to 3 month extension
2. Inform the owners of the situation and seek input from any who have relevant experience
3. Select a reliable and competent fire specialist to ascertain exactly what work is reasonable and necessary (to the standard that we could use to obtain quotes in a tender process), and estimated cost
4. re-engage with Council to redefine and confirm the terms of the proposed order, including the timeframe for completion
5. hold an extraordinary general meeting to get approval to spend monies and raise levies to meet the projected costs
6. Select and engage a project manager with relevant qualifications and expertise
7. Delegate responsibility to two committee members to deal risk manage project, liaise with project manager, Council and other authorities as well as give regular reports to the Committee/Owners
8. Run a tender process for the required remedial works
9. Engage the successful tender(s), obtain relevantly experienced lawyer’s clearance for the contracts and schedule the works.
- Re-engage with Council to obtain final compliance certification and finalisation

Background:

NCC

The National Construction Code (NCC) sets out the minimum standards for buildings' fire safety measures (among other things) and effectively has the force of law

Non-compliance with the NCC can be addressed by either:

- fixing the shortcoming so that the standard is met (e.g. if a fire door doesn't have the required type of door handle, then replacing the handle with a type that complies with the NCC), or,
- implementing a "performance solution" which was designed by a Registered Design Practitioner (Fire Safety Engineering) (e.g. where fixing the shortcoming would result in disproportionate costs/work – such as having to demolish and rebuild part of a building)

BCP report

BCP gave a report (in December 2021) that assessed the building's compliance with the NCC's fire safety standards. Against each standard, BCP

- Concluded (BCP's conclusions) that the building either:
 - Was "deemed to satisfy" the standard,
 - Required a "Performance Solution", or
 - both
- Gave comments for each conclusion (BCP's comments) and, in some cases their observations and recommendations, which either were headed:
 - "Complies"
 - "Building to comply"
 - "Non-compliant"

BCP gave a summary of recommended actions on pages 50-52 of the report ('BCP's summary of recommended actions') and a proposed schedule for the actions over 3 years.

Council's proposed orders

Council's letter, received February 2023, which listed orders it proposed to issue (Council's orders)

Council's orders effectively reproduce the BCP's summary remedial actions that BCP's summary of recommended actions, with two additional actions that go to obtaining final certification after all works are completed to evidence the building's compliance.

Analysis

1. if Council issues its proposed orders:

additional levies will need to be raised of approx. \$5000/yr for each owner for the next 2 years, based on:

- 1.5 million in total costs over 2 years, based on a rough guesstimate (a Fire Safety Engineer would be able to give a more accurate estimate)
- i.e. for every \$320,000 in total costs, each owner must pay an extra \$1000/yr for 2 years
- unlikely we can use much of the sinking fund (if any) as these costs are remedial works and not upgrade of capital items we have previously identified

2. However, the basis for a number of orders is doubtful

There is no factual basis for six (6) BCP recommended remedial actions (which Council has reproduced in their orders). This is because BCP have made an obvious error in calculating the “effective height” of the building (see below and attachment 1):

- Engage Registered Design Practitioner (Fire Safety Engineering) to report on how the following NCC requirements can be met:
- Installing second stairways for each residential tower (see NCC D.12; Council Order h)
- Installing an automatic sprinkler system throughout the building (see NCC E1.5; Council Order 1.w and Order 1.cc)
- Installing a fire control room (see NCC E.18; Council Order a)
- Installing an emergency stretcher lift (see NCC E3.0 – E3.10)
- Installing an EWIS (see NCC E4.9; Council Order d)

One of BCP’s recommended remedial action (in Summary) is broader than that described in the body of the report

- Install compliant balustrades/handrails in all comm areas, where the body of the report limits this action to all stairways (see NCC D2.16, D2.17; Council Order 1.dd)

Seven (7) of BCP’s recommended remedial actions (in Summary) are for standards that BCP “Deemed to satisfy” and did NOT find as ‘non-compliant’ (ie the Summarised remedial action is inconsistent with the BCP’s Conclusions and Comments). While some of these actions may be desirable, it is a different matter to evaluate them to an action needed to comply and is inconsistent with how other issues in the report have been treated. These inconsistencies therefore introduce substantial doubt about the report’s reliability):

- Upgrade any identified defective fire doors, as per C2.12-13, C3.5, C3.8, C3.11 (See Council Order 1.t)
- Engage FPAS Accredited Fire Systems Certifier to inspect and report on all fire doors (See NCC C3.8; Council Order 1.o, Order 1.r)
- Install Steel bollards in front of all fire exit/pathways in all basement carparks (see NCC D1.10, Council Order 1.s)
- Enclose electrical services room/enclosures with non-combustable and smoke sealed construction (see NCC D2.7(d); Council Order 1.ii)
- Install Portable fire extinguishers throughout building (see NCC E1.6; Council Order 1.g)
- Sliding entry door in Main lobby to fail safe to open position when power fails (NCC D2.19; Council order 1.c)
- Engage FPAS Accredited Fire Systems Certifier to Inspect and certify existing lift landing doors (See NCC C3.10; Council Order 1.q)

However, five (5) of Council's orders are broader than that recommended by BCP and are likely to unnecessarily and significantly increase costs and timeframes:

- Order 1.1l – which orders us to reswing the main entry fire doors near Units 142, 143, 149, 150, 156 and 157, but omitted BCP's recommended alternative of developing a Performance Solution
- Order 1.1i – which orders us to upgrade all electrical services enclosures throughout the building, whereas BCP only recommended this for those enclosures which open onto a fire exit travel path
- Order 1.b – which orders us to install a new automatic fire detection and alarm system, but omitted BCP's recommended alternative of developing a Performance Solution
- Order 1.x – which orders us to install air pressurisation systems in all fire isolated stairways (except those going to the carpark), but omitted BCP's recommended alternative of developing a Performance Solution
- Order 1.d – which orders us to install an Early Warning Identification System (EWIS), but omitted BCP's recommended alternative of developing a Performance Solution
- One (1) of Council's orders may require the Owners Corporation to implement something which it has no legal authority to do
- Order 1.w and Order 1.cc – which orders us to install an automatic sprinkler system throughout the building, however, the OC may not have legal authority to install one which extends into the space of each owner's unit

Also, Council has given an unreasonable timeframe for the works to be completed.

- On page 52 of BCP's report, BCP states that opinion that the timeframe for compliance should be set at 3 years or more, as anything less would "be unreasonable"

For more detail see next sheet "Proposed orders and their basis"

Calculation of Effective Height

BCP's failed to apply NCC's method for calculating the effective height of the building (see also attachment 1):

1. The NCC calculation for "effective height" excludes below ground levels: NCC
2. BCP's Report says 11 storeys above ground = 27.7m effective height;
3. In fact, only 8 storeys above ground = 21m effective height
4. Evidence: Fire Brigade plan (on wall opp. Manager's office); Architectural plans (using Surveyor's peg readings)
5. Verification: Anyone can look for themselves and count the storeys