

# Proposed Resolutions and supporting material

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## Recommendations

The sub-committee recommends that the owner's committee (**Committee**) resolve:

### Engage AED

1. to engage AED in accordance with the attached proposal;

### Determine if all-owner approval needed for those costs that will arise before tender process started

2. to determine whether it is first required to obtain unit owners approval to make allocation in the capital funds budget for the following expected costs:

- a. \$37,000 to engage the project manager (comprising \$32,230 as per AED's proposal and the remainder as a contingency);
- b. \$7,000 in anticipated costs of legal advice on contracts (comprising \$2,500 for the project manager contract and \$4,500 for the tenderers' contracts);
- c. \$20,000 in anticipated cost for the design of 'performance solutions' that may be required in order to fulfil Council's order (noting that the requirement for such solutions cannot be reliably identified until Council has finalised their Order, which itself is effectively contingent on Strata's engagement of a project manager);

### Immediately convene extraordinary meeting, if such approval needed

3. if such allocations in recommendation 2 may not be made without first obtaining unit owner's approval, then to arrange an extraordinary meeting immediately to obtain such approval;

### Start making arrangements to convene extraordinary meeting to obtain all-owner approval for successful tenderers and method to fund works

4. to commence preparations for an extraordinary meeting of all unit holders to obtain approval to engage the contractors who will conduct the remedial works required by Council, including propositions to approve Committee recommendations with respect to:

- a. the contractors to be engaged (who will be identified as a result of a tender process that the project manager will assist with and manage); and
- b. how the engagement of those contractors will be funded (e.g. by raising a special levy and/or by borrowing money).

## Key considerations

The sub-committee recommends that owner's committee engage AED in accordance with their proposal. Essentially, AED will develop tender documentation and project manage rectification works in satisfaction of an imminent North Sydney Council order.

See attached:

“AED 12672 Superintendent for Fire Rectification Works FP\_Rev01.pdf”

“RE: Attn: Service Manager...” email document.

## **Project manager’s deliverables**

In summary, the engagement will deliver:

- engagement with Council on Strata’s behalf, including confirmation of scope of works required to achieve NCC requirements
- preparation of satisfactory tender documentation
- management of the tender process, including recommendations on candidate selection
- oversight of contractors engaged to ensure satisfactory completion of work to specification and recommendations regarding any proposed variations
- obtaining all needed certifications to obtain Council’s final approval in satisfaction of their order.

The engagement will NOT deliver:

- *Design of performance solutions* – This will be additional cost as the need for and design of any ‘performance solutions’ depend on the terms that Council specifies in the order it issues. The terms currently proposed may change, depending on whether the building has an effective height of 25 metres or more for NCC 2019 purposes. Strata is obtaining legal advice on this issue. However, given then ambitious time frame Council is likely to set for completion of the works and that tender documentation will need to incorporate any performance solutions, it is recommended that \$20,000 be allocated in the budget to allow for expected costs of approximately, \$5,000 per required performance solution. Such costs however depend on the nature of the solution required.
- *Variations of specifications suggested by the Committee* – Variations of proposed specifications for the tender documentation will attract an additional fee.
- *Legal advice on contracts* – The project manager will suggest the pro forma contract that should be used, based on the standard contracts recommended by the Department of Fair Trading. However, advice on the legal risks and effectiveness of the contracts to appropriately allocate those risks is a matter for the Committee to resolve via independent legal advice. The recommended amount is based on the \$3,500 cost that Strata incurred in 2018 when it obtained legal advice on the Project A Balcony Works, which is the closest comparable we have until quotes on suggested contracts are obtained.

## **Need for urgency**

Strata delay in engaging a project manager increases the risk that Council will issue the order it proposes when the deadline for Strata's submission expires on or around 14 May 2023. If Council issues an order on the same terms in its January 2023 proposal, there is a high risk that Strata will be required to incur substantial unnecessary and excessive costs. This is because there is substantial doubt about the existence of a key fact on the most costly terms of the proposed order are based. From Council's perspective, they had first alerted Strata to the issue in July 2022 and suffered significant delay at the request/action of Strata.

As time passes, it could be reasonably expected that Council will not further extend time frames and place little weight on any further assurances about more time needed, unless Strata can demonstrate that substantial action is being taken, such as by committing funds to engage practitioners to address the issue.

## **Some costs cannot be reliably quantified before project manager is engaged**

The exact scope of work and resulting costs cannot be accurately identified at this point in time as:

1. the scope of works required by Council will depend on the outcome of the dispute regarding the building's effective height; and
2. irrespective of the building's effective height, there are works whose scope will be determined by the results of other required exploratory (e.g. assessment of electrical wiring by registered electrician), design (e.g. works to reduce the length of fire exit egress) and/or alternative work (such as 'performance solutions').

Further, as with all construction works, unforeseeable issues arise that require further costs to be incurred. This risk can be minimised by allocating an accepted industry standard for contingencies – e.g. 15% of the total contracted amount.

# Background

## Requirement for Strata to take action to avoid legal liability for substantial penalties

- In January 2023, the North Sydney Council proposed to issue Strata Plan 47991 (**Strata**) with an order which will effectively require Strata to satisfactorily complete specified works (**Works**) to rectify non-compliance with the fire safety requirements in the National Construction Code 2019 (**NCC**). These types of orders are enforceable by law and ongoing non-compliance would expose Strata to substantial penalties.
- The proposed Order is based on a registered building surveyor's report that was given to Council in December 2022. The report identified non-compliance with various fire safety requirements in Part C of the NCC.

## Substantial doubt about basis for more costly aspects of order - expert opinion needed

- There is substantial doubt whether a key fact relied upon by Council is correct – i.e. Council relies on an assertion in the building surveyor's report that our building has an effective height of more than 25 metres for NCC purposes. Buildings that are more than this height are required to implement more costly and difficult works in order to comply with the fire safety requirements in Part C of the NCC (see the “fire orders” excel document previously circulated to the Committee in March 2023) – e.g.
  - Installing second stairways for each residential tower (see NCC D.12; Council Order h)
  - Installing a fire control room (see NCC E.18; Council Order a)
  - Installing an emergency stretcher lift (see NCC E3.0 – E3.10)
- As Council's decision relies on a registered building surveyor's opinion, reconsideration of that decision will be likely if expert opinion shows that:
  - 1. the method applied to determine our building's effective height was incorrect at law (as a 2012 NSW Supreme Court judgement confirmed that construction of the meaning of the effective height in the NCC's predecessor was a legal question); and
  - 2. our building's effective height is less than 25 metres when the correct method is applied (which is a question of fact for a registered building surveyor to determine).
- Strata is obtaining legal advice on the issue and a second opinion from another registered building surveyor will be needed (which the project manager can provide).

## Considerations

### **Engaging a project manager will minimise risks of non-compliance with Council order**

- There are substantial risks in the execution of the Works (**Execution Risks**) due as the order will require Strata to:
  - engage a range of experts, including registered fire safety practitioners and other professionals and tradesmen;
  - equip itself with access to specialist expertise and knowledge to ensure all ordered works are completed to the required standard and the relevant certifications are obtained;
  - ensure that all works are satisfactorily completed and Council's final approval is obtained within an ambitious 2-year time frame;
  - resolve significant ambiguity with some of the major required works, as the completion of some of the terms of the proposed order are contingent on the results of other terms that require exploratory, design and/or alternative work (such as 'performance solutions') to be completed by registered practitioners in a variety of specialisations and trades;
  - coordinate the range of works to ensure timely completion within the deadline, noting that some works depend on the outcomes of earlier works and their timely completion.
- Strata can minimise the Execution Risks if Strata engages a suitable project manager with the requisite experience and expertise to successfully to complete the required Works.

### **Engaging a project manager with requisite skills and experience will assist with obtaining most appropriate outcome with Council**

- For the reasons set out elsewhere in this document, a project manager with satisfactory experience in fire safety rectification work is more likely to be persuasive with Council than Strata's direct representations to Council.

## Procurement method

The sub-committee directly approached firms with the requisite accreditation and apparent expertise for Strata's purposes.

- The December 2022 building surveyor report was reviewed to identify the practitioners that would be required to complete the works as proposed by Council (see the “Fire Report” excel document emailed to Committee Members in March 2023).
- Fire Safety Practitioners were identified as critical to the completion of the works.
- The subcommittee referred to the Fire Protection Association Australia’s (FPAA) accredited practitioner register which publishes the list of accredited fire safety practitioners and identifies those with the relevant specialisations servicing the Wollstonecraft locality. (see <https://connect.fpaa.com.au/Connect/FPAS/FSA.aspx> )
- The steps taken to approach and obtain quotes are set out in the Chairman’s “Progress Report” that was emailed to the committee on 16 April 2023.
- Subsequent to that progress report, clarification of AED’s proposal was confirmed in writing (see attached “RE: Attn: Service Manager...” email document.
- It is also noted that AED has been recommended from 2 sources independently: another client of Strata’s building manager who has used AED, and the partner of the owner of Unit 140 who is using AED for similar works in a unit she owns in the city.

## **Summary of Sub-committee’s considerations**

The sub-Committee considers AED is suitable to engage for Strata’s purposes in addressing the proposed Council fire order, when the following is taken into account:

- impending finalisation of a disproportionate Council Order should further action be delayed,
- limited pool of practitioners with required accreditation and experience,
- apparent expertise and experience,
- level of interest from practitioners approached,
- the comparative comprehensiveness of quotes obtained,
- reasonable range of price quoted for a project of this size, and
- independent recommendations and inferences in accommodating dealings to date.