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# STATUTORY COMPLIANCE REPORT

Existing resource recovery facility  
16 Kerr Road, Ingleburn NSW

Client	Bulk Recovery Solutions Pty Ltd
Report No.	J2546
Revision	FINAL
Date	3/07/2018

# EXECUTIVE SUMMARY

## Building

TABLE 1: BUILDING AND LOCATION

Client	Bulk Recovery Solutions Pty Ltd
Building:	Existing resource recovery facility
Project Address	16 Kerr Road, Ingleburn NSW

## Assessment - Requirements

TABLE 2: REQUIRED CONSIDERATIONS IN LEGISLATION

Clause	Issue	Applicable	Assessed
<b>Environmental Planning and Assessment Regulation 2000</b>			
93	Change of building use (BCA classification proposed)	No	No
94	Proposed building work involves >50% of volume of building, including any previous building work within the previous 3 years.	No	No
94	Inadequate egress &/or prevention of fire spread measures	<b>Yes</b>	<b>Yes</b>
98	Condition on DA, new works to comply with BCA	No	No
143	Change of building use (BCA classification proposed)	No	No
143	No upgrading conditions – development will not reduce existing level of fire safety	No	No
143	Proposed works not to reduce structural capacity of the building	No	No
143B	Restriction on issue of CC until inspection of parts.	No	No
145	Proposed works to comply with BCA	No	No
162D	Notification of significant fire safety issues	No	No
<b>Disability (Access to Premises – Buildings) Standards 2010</b>			
DAPS	New part to comply with Access Code	No	No
DAPS	Affected part upgrading required	No	No

## Assessment – Outcomes

### Scopes of Work

1. The State Significant Development Application relates to the proposed expansion of operations carried out at the existing resource recovery facility to increase the capacity of the materials handled by the site. **No building works are proposed.**

### Approval

2. As the proposal results in an intensification of the existing use, development consent is required.

### Commentary

3. No change in BCA classification or physical additions or alterations are proposed for the existing building.
4. The proposed development is limited to the intensification of the existing approved use for the site as a resource recovery facility.



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# INTRODUCTION

## Brief & Scope

DPC have been engaged by Bulk Recovery Solutions Pty Ltd to provide a report in direct response to the Secretary's Environmental Assessment Requirements letter dated 27 September 2017, prepared by the NSW Department of Planning & Environment ('the Department') in response to the State Significant Development Application. In particular the requirement for *an audit of the development to be undertaken to determine the level of compliance with Volume one of the National Construction Code*.

The Department's Letter is in ATTACHMENT C of this report.

## Glossary of Terms

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

## Application

This report applies to 16 Kerr Road, Ingleburn NSW and is for the exclusive use of Bulk Recovery Solutions Pty Ltd.

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.

## Background

We understand that the Departments letter of requirements exists as a result of referrals from Campbelltown Council to the Department in relation to a State Significant Development Application made for the subject expansion of site operations.

## Scopes of Work Considered

We understand that the development application relates to the proposed expansion of the existing resource recovery facility operations to increase the capacity of materials handled by the site.

**No change in BCA classification or physical additions or alterations are proposed to the building.** The proposed development is limited to the intensification of the existing approved use for the site as a resource recovery facility.

Accordingly, this report relates only to the provisions of the Environmental Planning and Assessment Regulation 2000 (the "Regulation") and the Disability (Access to Premises – Buildings) Standards 2010 (the "Premises Standards") that are required to be considered by the consent authority as part of the development application.

We understand that the three-storey office portion of the building is the subject of correspondence and Building Certificate applications with Campbelltown Council. Importantly, we note that **the office portion of the development, has not been considered in preparing this report as the compliance of that part of the is otherwise being resolved with Council and the development application does not relate to the office component of the building.**

# DESCRIPTION

## Property Description

TABLE 3: PROPERTY DESCRIPTIONS

Address	16 Kerr Road, Ingleburn NSW
Title	Lot 16 DP 717203
Surrounds	The site is bounded by industrial land uses forming part of the Ingleburn industrial area to the north and west. East of the site across Henderson Road is Milton Park recreational area. Running from north east to south west is a rail corridor. Directly across the rail corridor to the south and south east are residential land uses.



FIGURE 2: SITE LOCATION AND SURROUNDS

## BCA 'Description'

TABLE 4: CURRENT CODE OUTLINE DESCRIPTIONS

BCA Classifications:	<b>Level</b>	<b>Use</b>	<b>Classification</b>
	Ground	Manufacturing / Process	7b
		Office	5
	First & Second	Office	5
Rise in Storeys	3		
Floor Area	~4950m <sup>2</sup> (includes the office portions of the building for conservatism).		
Volume	~50,000m <sup>3</sup> (determined from best estimates)		
Type of Construction	Type A		
Effective Height	~7.0m		
Large Isolated Building	Yes		
Compartmentation	One (1) overall fire compartment		
United Building	No		
Egress Systems	The main warehouse building is provided with access to multiple exits in the form of both pedestrian swing doors and roller shutters, accessed on either side of the building and discharging to open space that is then connected to Kerr Rd.		

Existing Fire Fighting  
Equipment

- Fire hydrants
- Fire hose reels
- Portable fire extinguishers
- Emergency lighting
- Exit Signage

## Existing Performance Solutions

### Base Building – Fire Safety

TABLE 5: FIRE ENGINEERING REPORTS – BASE BUILDING

Fire Engineer	Report No.	Date	Matters Address
None identified on AFSS			

### Base Building – Others

TABLE 6: PERFORMANCE BASED DESIGN SOLUTIONS – BASE BUILDING

Consultant	Report No.	Date	Matters Address
None Identified			

### Tenant – Fire Safety

TABLE 7: FIRE ENGINEERING REPORTS - TENANT

Fire Engineer	Report No.	Date	Matters Address
None identified on AFSS			

### Tenant – Others

TABLE 8: PERFORMANCE BASED DESIGN SOLUTIONS

Consultant	Report No.	Date	Matters Address
None sighted			

# ASSESSMENT

The Environmental Planning and Assessment Regulation 2000 ("the Regulation"), Codes SEPP and the Disability (Access to Premises – Buildings) Standards 2010 ("DAPS") are the principal legislative instruments that detail the extent to which the fire safety, access, egress and structural capacity of the building must be considered when a development application is lodged for a change in building use &/or additions, alterations or refurbishments are proposed and establishes the criteria as to when upgrading is required and, in some instances, the extent to which that upgrading must occur. Detailed discussions regarding the legislative requirements are included in ATTACHMENT E: Detailed Explanations.

## Assessment Summary

As a result of a development application being required, Table 9 outlines the provisions of the Regulation and Premises Standards that are required to be considered as part of the development application.

TABLE 9: REQUIRED CONSIDERATIONS IN LEGISLATION

Clause	Issue	Applicable	Assessed
<b>Environmental Planning and Assessment Regulation 2000</b>			
93	Change of building use (BCA classification proposed)	No	No
94	Proposed building work involves >50% of volume of building, including any previous building work within the previous 3 years.	No	No
94	Inadequate egress &/or prevention of fire spread measures	<b>Yes</b>	<b>Yes</b>
98	Condition on DA, new works to comply with BCA	No	No
143	Change of building use (BCA classification proposed)	No	No
143	No upgrading conditions – development will not reduce existing level of fire safety	No	No
143	Proposed works not to reduce structural capacity of the building	No	No
143B	Restriction on issue of CC until inspection of parts.	No	No
145	Proposed works to comply with BCA	No	No
162D	Notification of significant fire safety issues	No	No
<b>Disability (Access to Premises – Buildings) Standards 2010</b>			
DAPS	New part to comply with Access Code	No	No
DAPS	Affected part upgrading required	No	No

## Clause 93 – Change of Building Use

A 'change of building use' is defined by the Regulation to mean change in classification under the BCA. Clause 93 of the Regulation specifies BCA and other matters required to be achieved for this to occur.

### Comment

A 'change of building use' does not form part of the development application and has therefore not been considered.

## Clause 94 – 50% Rule

Clause 94(1)(a) of the EP&A Regulation requires the consent authority (e.g. council) to consider the potential BCA upgrading of the building where the application/s relate to >50% of the **volume** of the building. Specifically, this part of the clause states that it *"applies to a development application for development involving the rebuilding, alteration, enlargement or extension of an existing building where...the proposed building work, together with any other building work completed or authorised within*



*the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls”*

## Comment

The proposal does not include development involving the rebuilding, alteration, enlargement or extension of the existing building where the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than 50% of the total volume of the building, and therefore this clause has not been considered.

## Clause 94 – Inadequate Egress and Fire Protection

Ultimately clause 94(2) charges Council with the responsibility that *“in determining a development application to which this clause applies, (the) consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.”*

Therefore, much as clause 94 of the Regulation applies to the development application, as demonstrated above, given:

- The intent of the application is an intensification of the existing use to increase the capacity of materials handled by the site. No change in building use is proposed.
- No physical alterations or additions are proposed to the existing building.

It is our considered opinion in this instance that to require upgrading of the building, either full or partial, as part of the development consent would **not be an appropriate application of clause 94**.

In addition to the section above, Clause 94(1)(b) also requires the consent authority to consider total or partial BCA upgrading where it considers *“the measures contained in the building are inadequate...to protect persons using the building, and to facilitate their egress from the building, in the event of fire...to restrict the spread of fire from the building to other buildings nearby”*.

### Facilitation of Egress.

Whilst the building is capable of achieving DtS compliant travel distances to exits. It is noted that egress from the main warehouse building currently relies on travel through roller shutters provided in the external walls of the building which would not comply with the requirements of the current BCA. Notwithstanding, the following commentary is offered with regard to the adequacy of the measures to facilitate egress from the building, in the context of the development proposed;

- Fundamentally, the egress systems for the warehouse are consistent with the requirements at the time of construction and are not inconsistent with the requirements of the current provisions of the BCA.
- The roller shutters typically would be in the open position when the building is lawfully occupied, therefore there is minimal risk of the obstruction of exits.
- In the event that an exit is unavailable, the open floor plan of the warehouse allows access to alternative paths of travel in opposite directions to another exit.
- The warehouse is provided with high ceilings with significant reservoir for smoke compared to the minimum heights required by the DtS provision of the BCA. Therefore, providing increased time for escaping occupants to safely exit the building prior to the onset of untenable conditions within egress paths.
- The occupants of the building are staff who are expected to be familiar with the layout of the areas and can locate the exits promptly in a fire event.
- The total number of staff in the building at any one time is expected to be low. In the event of a fire whilst the building is occupied, occupants are expected to react promptly and move towards the exit without needing to queue at the exit.

- To assist escaping occupants in the building afterhours it is recommended that a double leaf pedestrian swing door complying with BCA Clause D2.19 and fitted with BCA Clause D2.21 compliant lever action door hardware is installed to replace the existing roller shutter in the north eastern corner of the main warehouse, as shown in the figure below. This will serve as a measure of redundancy in the event that all roller shutters are in the closed position to provide escaping occupants with an unobstructed point of exit.
- Subdivision 27 of the Code SEPP for 'Minor building alterations (external)' includes provision which would facilitate the alteration and replacement of the existing roller shutter as exempt development i.e. no approval required (refer to cl 2.53 of the Codes SEPP).

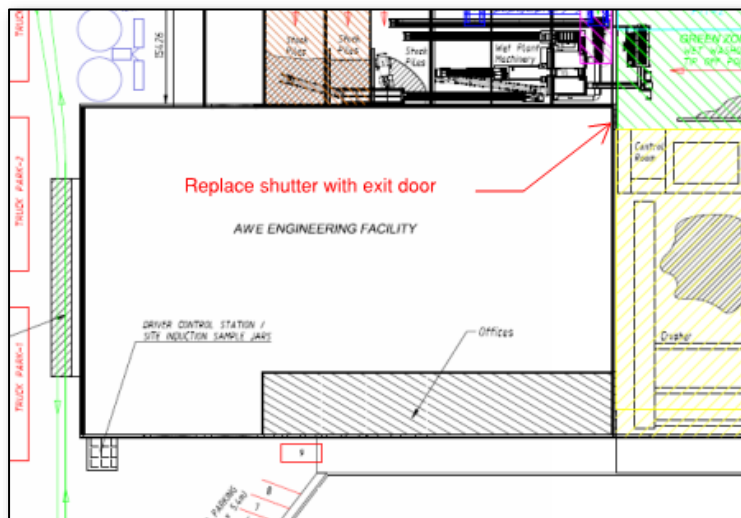


FIGURE 3: RECOMMENDED EXIT LOCATION

Therefore, having regard to the proposed development it could be reasonably considered that the measures contained in the building are **adequate** to protect persons and facilitate their egress from the building.

#### Restriction of fire spread from the building

The built form of the building and services therein remain as originally constructed. It is noted the building under the current BCA would be defined as a Large Isolated Building because of its size and potentially would require sprinkler protection throughout simply due to the size of the building without having regard to the use of the building. Notwithstanding, the following commentary is offered regarding the adequacy of the measures to restrict the spread of fire from the building, in the context of the development proposed;

- The activities that are occurring inside the building do not in isolation attract the need for sprinkler protection to be provided to the building, as the use is not considered to be an Occupancy of Excessive Hazard pursuant to BCA Table E1.5.
- The type of waste material currently processed and stored by the facility consists of organic inert materials e.g. crushed concrete and aggregate, foundry sand drilling mud, recovered aggregate, virgin excavated material etc, that largely either non-combustible or present minimal risk of combustion.
- Those parts of the external walls of the warehouse located in close proximity to the boundary are of heavy concrete and/or masonry construction typical to that expected to achieve the required FRL's (240/180/90).
- Unprotected window openings are located >3m from the allotment boundaries as permitted by the BCA.
- The fire separation of the warehouse is not inconsistent with the provisions of the BCA.

Therefore, having regard to the proposed development it could be reasonably considered that the measures contained in the building are **adequate** to restrict the spread of fire from the building to buildings nearby.

### Adequacy

Both provisions above relate to the 'adequacy' of the systems provided – not the 'compliance' with a relevant standard. Therefore, whilst an egress system may not comply with the most current provisions of the BCA, as would be expected of any existing building, the consideration of the assessment of the development application is to the adequacy of the systems concerned.

## Clause 143 – Fire Protection and Structural Adequacy

This clause applies to internal alteration works as proposed as they will involve the alteration of an existing building (no change of building use) and require the certifying authority *“not issue a construction certificate for the work unless, on completion of the building work, the fire protection and structural capacity of the building will not be reduced”*.

### Application

This clause applies with each application for construction certificate (“CC”), irrespective of the overarching nature of the subject development application’. Therefore, the requirements of clause 143(3) will need to be considered with each and every future application for CC.

Notably **the development does not incorporate building works** and therefore does not require an application for a construction certificate. **Therefore, it is considered that these provisions do not apply.**

### Fire Protection & Structural Capacity

EP&A Regulation defines this term to mean:

*“Fire protection and structural capacity of a building means:*

- (a) the structural strength and load-bearing capacity of the building, and*
- (b) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and*
- (c) the measures to restrict the spread of fire from the building to other buildings nearby.”*

### Structural Capacity

**The proposal does not include building works.** Therefore, no reduction in the structural capacity of the building is likely to occur.

### Facilitation of Egress

As per discussions above regarding the application of section 94(1)(b).

### Restriction of Fire Spread

As per discussions above regarding the application of section 94(1)(b).

## Clause 143B & 162D – Inspection & Notification

Again, these clauses apply with each application for construction certificate, irrespective of the overarching nature of the subject development application.

Therefore the 'pre-CC' inspection of clause 143B and the consideration to notify Council of a “significant fire safety issue” under clause 162D will apply to each and every application for construction and occupation certificates.

This is typical to any application for construction or complying development certificate and will not be impeded by the overarching development application.

## Clause 145 – BCA Compliance

Again, these clauses apply with each application for construction certificate, irrespective of the overarching nature of the subject development application.

In concert with the provisions of 143, these provisions required the certifying authority to ensure that *“the proposed building (not being a temporary building) will comply with the relevant requirements of the Building Code of Australia (as in force at the time the application for the construction certificate was made).”*

Again, **the development does not incorporate building works** and therefore does not require an application for a construction certificate. **Therefore, it is considered that these provisions do not apply.**

## DAPS – New Part to Comply

Clauses 2.1(2) & (4) of the Disability (Access to Premises – Buildings) Standards 2010 requires that *“a new part of the building ...(which is)...a modified part of the building about which...an application for approval for the building work is submitted”* is to comply with the provisions of the Access Code in Schedule 1 of the DAPS.

It is considered that the application for construction certificate, as opposed to the overarching development application, is the ‘application for the approval for building work’ which triggers the need to comply with the access code.

Again, **the development does not incorporate building works** and therefore does not require an application for a construction certificate. **Therefore, it is considered that these provisions do not apply.**

## DAPS – Affected Part Upgrading

Clauses 2.1(2) & (4) of the Disability (Access to Premises – Buildings) Standards 2010 requires that where an application for new work or the modification of a building is made, the ‘affected part’ of the building is to comply, and necessitates works if required, with the Access Code.

The affected part being the principal pedestrian entrance to the building and the continuous path of travel between the entrance and the new works / modified part. Upgrading of the affected part is not required where the application for CC is a lessee in this building.

It is considered that the application for construction certificate, as opposed to the overarching development application, is the ‘application for the approval for building work’ which triggers the need for the “affected part” to comply with the access code.

Again, **the development does not incorporate building works** and therefore does not require an application for a construction certificate. **Therefore, it is considered that these provisions do not apply.**

1. The State Significant Development Application relates to the proposed expansion of operations carried out at the existing resource recovery facility to increase the capacity of the materials handled by the site.

2. As the proposal results in an intensification of the existing use, development consent is required.

3. No change in BCA classification or physical additions or alterations are proposed for the existing building.
4. The proposed development is limited to the intensification of the existing approved use for the site as a resource recovery facility.

5. The proposal does not relate to development involving the rebuilding, alteration, enlargement or extension of the existing building where the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than 50% of the total volume of the building. Therefore, it is considered appropriate not to require partial or total BCA upgrading as a result of the development application.
6. **Clause 94(1)(b)** allows Council to consider total or partial BCA upgrading where it considers *“the measures contained in the building are inadequate...to protect persons using the building, and to facilitate their egress from the building, in the event of fire...to restrict the spread of fire from the building to other buildings nearby”*. As discussed in the body of the report, it is considered that for the most part the existing elements of the building are adequate to facilitate emergency escape and to restrict the spread of fire from the building.
7. Further to the above, to assist escaping occupants in the building afterhours it is recommended that a double leaf pedestrian swing door complying with BCA Clause D2.19 and fitted with BCA Clause D2.21 compliant lever action door hardware is installed to replace the existing roller shutter in the north eastern corner of the main warehouse, as shown in the figure below.



8. Subdivision 27 of the Code SEPP for 'Minor building alterations (external)' includes provision which would facilitate the alteration and replacement of the existing roller shutter as exempt development i.e. no approval required (refer to cl 2.53 of the Codes SEPP).

Therefore, based on the above, it is considered to be **appropriate** that the Department as a result of this application only require the extent upgrading for the building to be as outlined above.

# 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

## Inspection

1. Site inspection carried out by DPC 26 June 2018

## Documentation

2. Environmental Impact Statement prepared by KDC Pty Ltd, dated 21.08.2017.
3. Correspondence prepared by NSW Department of Planning & Environment titled 'State Significant Development – Secretary Environmental Assessment Requirements', dated 27.09.17.



# ATTACHMENT C: THE DEPARTMENTS LETTER

# 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."*<sup>1</sup> 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.

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<sup>1</sup>ABCB, 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.”<sup>2</sup>*

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

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<sup>2</sup> 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 2000

#### Development Applications – Major Works / Inadequate Fire Safety Measures

Clauses 94 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 93 & 143 of the Reg 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 129D & 162D 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**

Clauses 132 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

- >500m<sup>2</sup> of commercial space; OR
- >1000m<sup>2</sup> of industrial space

The area of the building involved is to comply with, and therefore potentially upgraded to, Performance Requirements DP2 – DP5 (various egress related issues), FP2.1& FP2.5 (sanitary facilities) as well as FP4.1-FP4.5 (light and ventilation) of the BCA.

### **Sanitary Facilities**

Notwithstanding all matters required to be addressed under the Codes SEPP provisions, a common notable upgrading results from these provisions include:

- Upgrading or installation of Unisex Accessible Sanitary Facilities
- Upgrading or installation of Ambulant Accessible Sanitary Facilities
- Installation of additional sanitary facilities for population numbers

## **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 16 Kerr Road, Ingleburn NSW.
- This report has been prepared solely for the benefit of Bulk Recovery Solutions Pty Ltd.
- 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 inspected 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.