

BUILDING APPEALS BOARD OF VICTORIA (BAB)

Building Act 1993

BAB CASE NO. 457103

Modification of Building Regulations

APPLICANT	Owners Corporation 1 Plan No. PS714683M (Subject Land owner)
FIRST INTERESTED PARTY	Municipal Building Surveyor for the Boroondara City Council
SECOND INTERESTED PARTY	Fire Rescue Commissioner
RELEVANT MUNICIPALITY	Boroondara City Council
SUBJECT LAND	347 Camberwell Road, Camberwell
NATURE OF THE PROCEEDING	Two applications made under s 160(2)(b) of the <i>Building Act 1993</i> to modify cls C3.15 and C3.16 of the <i>Building Code of Australia 2014, Volume One (BCA)</i> applying to a Class 2, 5, 6, and 7a building, having regard to the Fire Risk Assessment Report rev. 3.1, dated 2 February 2026, prepared by Basic Expert.
RELIEF SOUGHT	Application 1 – To permit the existing openings for service installations without the required Fire Resistance Level (FRL) with respect to integrity or insulation or a resistance to the incipient spread of fire, instead of meeting the requirements under cl C3.15 of the BCA. Application 2 – To permit the construction joint without the required FRL with respect to integrity and insulation, instead of meeting the requirements under cl C3.16 of the BCA.
BEFORE	Members T Saville (panel chair) and K Pedersen, A Hansen
LISTING TYPE	Hearing
DATE OF LISTING	4 August 2026, 20 October 2026 ¹
LAST DATE FOR FILING MATERIAL	18 September 2026
DATE OF DETERMINATIONS AND ORDERS	28 October 2026

¹ 20 October 2026 listing was 'on the papers'.

DETERMINATIONS AND ORDERS

Having considered all the submissions and information placed before it, the Building Appeals Board (**BAB**) is satisfied that it is reasonable and not detrimental to the public interest that cls C3.15 and C3.16 of the *Building Code of Australia 2014, Volume One* may apply to the building in a modified or varied form that would permit what is set out in the 'relief sought' and determines that pursuant to s 161 of the *Building Act 1993* the relief sought in:

1. Application 1 is granted.
2. Application 2 is granted.

Temple Saville

Member T Saville



A handwritten signature in blue ink, appearing to be "M Finlay", written over a horizontal line.

Registrar M Finlay

APPEARANCES AT THE HEARING DATED 4 AUGUST 2026

For the Applicant	Mr B Gleeson, representative
For the First Interested Party	In Person
For the Second Interested Party	Mr W Bui, delegate

REASONS

BACKGROUND

1. The Applicant is an owner's corporation and the owner of the common property situated at 347 Camberwell Road, Camberwell (**Subject Land**).
2. The First Interested Party is the municipal building surveyor for the Boroondara City Council.
3. The Second Interested Party is the Fire Rescue Commissioner.
4. On 21 November 2023 the Building Appeals Board (**BAB**) heard an application by the Applicant for a modification pursuant to s 160(2)(b) of the *Building Act* 1993 (**Act**) to modify cl 3.1(b) of Specification C1.1 of the *Building Code of Australia 2014 - Volume One* (**BCA**) to permit the partial retention of combustible cladding (**First Proceeding**).
5. On 22 December 2023 the BAB made the following orders in relation to the First Proceeding:

Having considered all the submissions and information placed before it, the Building Appeals Board (Board) is satisfied that modifying or varying the provision of the regulations is reasonable and not detrimental to the public interest and pursuant to s 161 of the Building Act 1993, the Board determines that the application is:

1. Approved, to allow the retention of the ACP-FR, blackbutt timber and Foilboard in accordance with what is specified in the application dated 12 September 2023 subject to the following conditions imposed by the Board:
 - (a) removing the Aluminium Composite Panels with 100% polyethylene content (ACP-PE);
 - (b) replacing the ACP-PE with a compliant product which meets the Deemed-to-Satisfy requirements under the Building Code of Australia 2022 - Volume One;
 - (c) extending sprinkler coverage to the Aluminium Composite Panels with 30% polyethylene content (ACP-FR) canopy on the west elevation;
 - (d) installing smoke treatment to penetrations, construction joints and similar components to the electrical and communications cupboards;
 - (e) installing fire stopping to penetrations, construction joints and the like to walls between units and common corridors;
 - (f) installation of fire-rated power point wall boxes to walls containing Foilboard;
 - (g) An audit of the wet fire systems to ensure compliance with AS 2118 and BCA clauses E1.5; and
 - (h) development of a maintenance schedule for the wet fire systems to be completed in accordance with Part 15 of the Building Regulations 2018. The

maintenance schedule should comply with AS1851-2005.²

6. The Applicant now makes the following two applications:
- (a) to permit the existing openings for service installations without the required Fire Resistance Level (FRL) with respect to integrity or insulation or a resistance to the incipient spread of fire, instead of meeting the requirements under cl C3.15 of the BCA; and
 - (b) to permit the construction joint without the required FRL with respect to integrity and insulation, instead of meeting the requirements under cl C3.16 of the BCA.

RELEVANT LEGISLATION

7. Clause C3.15 of the BCA is about preventing fire and smoke from spreading through penetrations made in fire-rated walls, floors and ceilings for pipes, cables and other services, it relevantly states:

- (a) Tested systems
 - (i) The service, building element and any protection method at the penetration are identical with a prototype assembly of the service, building element and protection method which has been tested in accordance with AS 4072.1 and AS 1530.4 and has achieved the required FRL or resistance to the incipient spread of fire.
 - (ii) It complies with (i) except for the insulation criteria relating to the service if—
 - (A) the service is a pipe system comprised entirely of metal (excluding pipe seals or the like); and
 - (B) any combustible building element is not located within 100 mm of the service for a distance of 2 m from the penetration; and
 - (C) combustible material is not able to be located within 100 mm of the service for a distance of 2 m from the penetration; and
 - (D) it is not located in a required exit.
- (b) Ventilation and air-conditioning — In the case of ventilating or air-conditioning ducts or equipment, the installation is in accordance with AS/NZS 1668.1.
- (c) Compliance with Specification C3.15
 - (i) The service is a pipe system comprised entirely of metal (excluding pipe seals or the like) and is installed in accordance with Specification C3.15 and it—

² Determination dated 22 December 2023 BAB Case No 455402

- (A) penetrates a wall, floor or ceiling, but not a ceiling required to have a resistance to the incipient spread of fire; and
- (B) connects not more than 2 fire compartments in addition to any fire-resisting service shafts; and
- (C) does not contain a flammable or combustible liquid or gas.

...

- (iii) The service is a wire or cable, or a cluster of wires or cables installed in accordance with Specification C3.15 and it—
 - (A) penetrates a wall, floor or ceiling, but not a ceiling required to have a resistance to the incipient spread of fire; and
 - (B) connects not more than 2 fire compartments in addition to any fire-resisting service shafts.

...

- 8. Clause C3.16 of the BCA intends to prevent fire spreading through gaps in and between building elements and relevantly states:

Construction joints, spaces and the like in and between building elements required to be fire-resisting with respect to integrity and insulation must be protected in a manner identical with a prototype tested in accordance with AS 1530.4 to achieve the required FRL.

- 9. Section 160(2) of the Act relevantly states:

- (2) An application may be made to the Building Appeals Board for a determination that a provision of the building regulations -

...

- (b) applies with the modifications or variations specified in the application to a building or land specified in the application.

- 10. Section 162 of the Act relevantly states:

- (3) The Building Appeals Board must not determine that a provision of the building regulations applies to a building or land in a modified or varied form unless satisfied that to do so is reasonable and not detrimental to the public interest.

- 11. Section 9 of the Act states, in part:

- (1) Regulations made under this Act may apply, adopt or incorporate, either wholly or in part and with or without any modification, any matter contained in a document—
 - (a) as in force or as issued, published or made at a particular time; or
 - (b) as in force or as issued, published or remade from time to time.

12. Regulation 10 of the *Building Regulations 2018* (**Regulations**) states 'The BCA is adopted by and forms part of these Regulations as modified by these Regulations'.
13. Having regard to s 9(1) and s 162(3) of the Act, the BAB has power to vary clause C3.15 and C3.16 of the BCA but can only do so if it is satisfied that it is reasonable and not detrimental to the public interest.

APPLICANT'S SUBMISSIONS

14. The Applicant relies upon its written submissions in support of its application. In summary the Applicant submits:
 - (a) since the First Proceeding it has started to implement the required rectifications to comply with the BAB determination;
 - (b) quotes were obtained to install fire-stopping to penetrations and construction joints between apartments, the cost is estimated to be approximately \$2 million;
 - (c) occupants would also need to be relocated;
 - (d) these factors are the basis for the application;
 - (e) it seeks to retain the current unsealed condition of all penetrations in party walls between Sole-Occupancy Units (**SOU**s), and to require fire stopping from the corridor side only for all penetrations in walls between SOUs and the common corridor;
 - (f) it relies upon the fire engineering Risk Assessment Revision 3.1 dated 2 February 2026 by Basic Expert (**Risk Assessment**);
 - (g) that the proposed approach achieves the required level of fire safety performance as required by the BCA; and
 - (h) it seeks a determination with reasons.
15. The Risk Assessment concludes as follows:
 - 9.1.1 External walls to SOUs, balconies, and above paths of egress are constructed with combustible ACP and Blackbutt timber cladding, with combustible Foilboard® insulation to the external concrete walls of SOUs.
 - 9.1.2 As the building currently stands the combustible cladding and insulation does not comply with the Deemed-to-Satisfy Provisions or Performance Requirements of the applicable version of the BCA (2014).
 - 9.1.3 The existing Performance Solution for the building does not address combustible cladding or insulation.
 - 9.1.4 The penetrations and construction joints on the walls between residential units are properly sealed, with only minor defects identified during inspection.
 - 9.1.5 Our risk assessment has identified unacceptable fire scenario risk ratings as the building currently stands.
 - 9.1.6 We propose a risk mitigation strategy involving retention of combustible cladding and insulation, extension of sprinkler system,

rectification of ESMs, retaining the current condition of penetrations and construction joint on wall bounding the residential units, and removal of all ACP-PE.

9.1.7 The proposed risk mitigation strategy reduces fire scenario risk ratings to acceptable levels and increases the reliance on Essential Safety Measures.

9.1.7.1 Alternative risk mitigation strategies would also reduce the risk ratings to acceptable levels but are neither practical nor financially viable.³

16. By directions and orders dated 19 August 2026 the BAB sought further submissions from the Applicant addressing the following issues:
 - (i) How the Applicant, or Applicant's expert, has considered concerns raised around a potential smouldering (e.g. bedroom) fire in one Sole Occupancy Unit (SoU) spreading to adjacent SOUs due to current as-constructed conditions;
 - (ii) Further details on how difficult, or easy, it is to fill gaps in walls between SOUs with mastic, filler or similar to mitigate against such smoke spread, specifically in relation to "cold" smoke spreading;
 - (iii) Further details around SOU ceilings, that is, are downlights and sprinkler pipes tight fitting to mitigate smoke seepage through the ceiling into the ceiling void; and
 - (iv) Further clarity and breakdown of the proposed cost associated with the rectification works rectifying and/or sealing cracks/untreated penetrations in walls between SOUs.
17. The Applicant through its fire engineer provided further submissions to the BAB addressing the matters raised above, in summary the Applicant's further submissions were:
 - (a) the building is sprinkler protected throughout;
 - (b) likelihood of a smouldering fire in one SOU causing injury to an occupant of an adjacent SOU is very low;
 - (c) rectification would require deconstruction of some bathrooms and kitchen walls and ceilings as well as associated fittings and cabinetry;
 - (d) downlights were fitted tightly and sprinkler heads are fitted with cover plates; and
 - (e) Mr Michael Pavey, the quantity surveyor supplied a breakdown of the considerations and calculations he used to arrive at the construction cost.

FIRST INTERESTED PARTY'S SUBMISSIONS

18. The First Interested Party relied upon brief written submissions, in summary:
 - (a) That the relevant walls are non-load bearing internal walls;

³ Basic Expert Report Revision No 3.0 dated 2 February 2026

- (b) that 'Vic H103.1(b)(ii) permits the deletion of the requirement for internal walls to have an FRL, subject to compliance with Clause 2.2 of Specification C1.1'⁴;
- (c) this is relevant to the application of cl C3.15;
- (d) there is presence of a compliant sprinkler system throughout the building;
- (e) the proposal is capable of satisfying the objectives of cl Vic H103.1 of the BCA;
- (f) the First Interested Party does not object to the following outcomes
 - the existing penetrations and construction joints in party walls between sole-occupancy units remaining in their current condition (not sealed to a tested fire-rated system); and
 - penetrations and construction joints in walls between sole-occupancy units and common corridors being fire-stopped from the corridor side only, with the unit side remaining in its current condition.⁵

SECOND INTERESTED PARTY'S SUBMISSIONS

19. The Second Interested Party relied upon oral submissions, which in summary were:
 - (a) there is a concern regarding the retention of unprotected penetrations between SOUs when considering a smouldering fire;
 - (b) there is potential for smoke spread between SOUs;
 - (c) temperatures would be insufficient for sprinkler activation;
 - (d) this may cause difficulties ascertaining the location of the fire;
 - (e) there was identification of combustible insulation in internal walls; and
 - (f) would favour a 'one out all out' evacuation system

FINDINGS

20. We have considered the applications to modify the requirements of clauses C3.15 and C3.16 of the BCA, together with the party's supporting documentation and fire engineering assessment.
21. We note that the existing fire-stopping arrangements do not strictly comply with the relevant Deemed-to-Satisfy provisions, as indicated by the Applicant. However, having regard to the nature and extent of the departures, the existing building configuration and the findings of the fire engineering assessments including the supplementary submission, we are satisfied that the proposed arrangements adequately address the risk

⁴ Interested Party's Statement of Contentions.

⁵ Ibid.

of fire and smoke spread through the affected service penetrations and construction joints.

22. We have also considered the practicality of achieving strict compliance with the relevant Deemed-to-Satisfy provisions, the extent of the rectification work that would otherwise be required and the proposed alternative fire protection measures. We have also had regard to the safety of the building occupants.
23. In the circumstances we are satisfied that the proposed modifications are reasonable and not detrimental to the public interest and therefore, we will grant the relief sought in both applications.

DATE OF DETERMINATION: 28 October 2026