

STANDARDS ALERT

BUILDING COMMISSION NSW | DEFECTIVE BUILDINGS AND PROPERTY VALUATIONS

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The API provides this professional standards alert to increase awareness for API Valuer Members (“Valuers”) who undertake valuations of units/apartments in NSW. More specifically this alert discusses the Building Commission NSW, its powers to issue building work rectification/prohibition orders, and issues and warnings for Valuers to consider when undertaking valuations of buildings impacted by such orders.

Valuers are reminded that when providing professional services¹ and or valuations², compliance with API Rules of Professional Conduct (“The Rules”) is mandatory.

Defective Buildings

In December 2023 the Building Commission NSW was established by the NSW government to introduce processes to monitor and then report upon defective building work across NSW. A key role of Building Commission NSW is “to provide an integrated and consistent approach to ensuring confidence in residential building quality in NSW”.³

In addition to other powers and authority under legislation, the Building Commission NSW has the power to inspect building sites, stop work, stop occupation certificates from being issued and order rectification work on residential apartment buildings.

The Building Commission NSW website contains a register of in-force prohibition orders, work rectification orders, stop work orders and enforceable undertakings for buildings with residential apartments.⁴

[Register of Building Work Orders](#)

¹ “professional services” means professional services provided by Members in compliance with: (a) their API membership category and certification; and (b) the instructions for the professional services, agreed between the Member and the client. (API Rules of Professional Conduct)

² “valuation” means an established evidence based valuation process for assessing the value, including but not limited to market value and market rent, of a tangible asset as at a specified date following a physical inspection of the asset by the Primary Valuer. (API Rules of Professional Conduct)

³ <https://www.nsw.gov.au/housing-and-construction/building-commission>

⁴ <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/rab-act-orders-register#stop-work-orders>

Considerations for Valuers

It is recommended that Valuers (and their employers) seek clarification from their Professional Indemnity Insurer regarding insurance coverage for valuation reports of units/apartments in buildings which are subject to existing Building Commission NSW orders. This recommendation is made notwithstanding any warnings, limitations or other qualifications included in valuation reports by Valuers.

It is critical for all Valuers to be aware of the breadth of their insurance coverage prior to accepting instructions to value units in buildings or developments subject to a Building Commission NSW order(s).

It is recommended that Valuers always check the Building Commission NSW register when requested to value or give advice concerning a unit/apartment in NSW. An examination of this register will enable the Valuer to ascertain the existence of and severity of any order issued against an apartment building and or unit/apartment contained within that building as at the date of such search, which should also be included and referenced in the valuation report or other advice. This could also include a comment that the investigations by the Valuer did not reveal the unit/apartment or building on the register (or otherwise as the case may be).

Whilst most Valuers are not building, engineering or construction experts, referral to the Building Commission NSW register could assist Valuers in deciding whether any instruction received can be completed pursuant to the Rules or necessitate referral back to the instructing party/client advising the reason for not proceeding with the instruction.

This may also be an issue for consideration regarding insurance cover.

As Valuers are not usually experts in building and construction faults, structural issues and/or engineering, they are unable to determine the extent of building defects independently, accurately assess associated rectification costs or anticipated timeframe for any required rectification works. Valuers should recommend that a suitably qualified building professional be engaged by the client to confirm and assess the listed building defects and any required rectification work(s) outlined in any order made by the Building Commission NSW including costs and timeframes.

In situations where there is no occupation certificate issued for a development, and/or the large extent and severity of the defects in rectification/prohibition orders, Valuers should consider not accepting such instructions, and at the same time set out reasons why they have decided not to accept instructions.

It is recommended that Valuers whose professional services¹ include valuations of home unit buildings, and also individual units/apartments, engage in discussions with their clients in relation to the ability to provide credible valuations given the existence of a Building Commission NSW order and the associated market resistance and uncertainty that is likely to follow.

The information and recommendations in this alert, should be considered in the light of some recent events including but not limited to Mascot Towers and media coverage relating to recently liquidated developers.

API Guidance

In light of this very important topic, the API will be drafting a Valuation Protocol relating to the role of the valuer in relation to building defects to provide Valuers further guidance in the future.

If there are any comments or feedback regarding this Standards Alert, please do not hesitate to contact us at standards@api.org.au.