

24 February 2016

Katherine Sharah

Assistant Policy Officer, Policy and Legislation
NSW Fair Trading
Department of Finance, Services and Innovation
Level 9, McKell Building, Rawson Place,
Sydney NSW 2000

Dear Katherine,

RE: DRAFT FIRE SAFETY AND BUILDING REGULATION

City Plan Services P/L (CPS) takes this opportunity to thank the government for consideration of our comments on an important matter such as the regulation of fire safety. The roundtable sessions held indicated in general terms what to expect, although it is difficult for us to see how the proposed regulatory changes fit into the larger picture that the NSW government has in mind. Whilst we support the need to reform the legislative framework for fire safety, we have many concerns with the detail of the proposed new regulations. We believe it would be of benefit to form a subcommittee to workshop and develop a road map of the changes that industry believes necessary to maintain community confidence in the safety of buildings.

Involvement of 'competent fire safety practitioners'

- i. A co-regulatory accreditation framework should extend to all building practitioners involved in the installation of critical building elements.
- ii. The fire safety reform should distinguish between design consultants and installation contractors to better align practitioner skills and current industry practices.
- iii. The co-regulatory accreditation framework as proposed for a '*competent fire safety practitioner*' should be limited to installation and maintenance contractors. It is our view that a design consultant requires very different skill set.
- iv. Design consultants for any '*relevant fire safety system*' should be undertaken by an '*accredited certifier*' rather than a '*competent fire safety practitioner*' which should integrate with the current planning system framework based on the mandatory issue of compliance certificates (Subject to a threshold test to exempt minor buildings)-
- v. Clause A2.2 of the BCA stipulates the Evidence of Suitability to support the design of a building. CPS is of the view that the regulations should provide a clear link between any practitioner involved in certifying the use of a material, form of construction or design is a '*professional engineer*' as defined. We are of the view that a 'designer' is to achieve this level of professionalism whereas an 'installer' may not.

Submission of fire safety system plans and specifications and their retention on site

- vi. The use of mandatory '(design) compliance certificate' is considered to be a better integrated approach to the proposed legislation to improve the quality and reliability of fire safety plans and specifications (Subject to a threshold test to exempt minor buildings).

- vii. CPS does not take lightly the importance of the functions and responsibility that our members have undertaking their role as an 'accredited certifier'. However, neither the current or proposed system for the submission of certified fire safety plans and specifications offers any appropriate delineation for liability protection. It is our view that mandatory compliance certificates would assist to rectify this issue in respect to design.
- viii. The legislation should also incorporate provisions that clarify the role of the 'accredited certifier' is to undertake in respect to assessment and acceptance of a certified fire safety system plans and specification. CPS is of the firm view that a high level check is required to ensure that the correct systems have been proposed to achieve BCA compliance and that the design of such systems are appropriately coordinated with respect to the building design.
- ix. The proposed system offers no disciplinary framework in respect to a '*competent fire safety practitioner*' which is vital to ensure consumer protection and confidence. The use of 'accredited certifiers' would benefit from the existing comprehensive disciplinary framework.
- x. The proposed reform provides no clarity or direction as to the level of documentation of certification necessary for the determination of a construction certificate. It is critical that this issue is addressed to remove ambiguity within the current regulation and achieve consistency.
- xi. The proposed reform will discourage industry from providing design details of a relevant '*fire safety system*' at the construction certificate stage, where it is subject to review and assessment. CPS supports the acknowledgment of a staged approval system to facilitate industry practice. We are of the view that the approval of design should be retained within the construction certificate process rather than allowing certain building components to be self-certified and submitted to the PCA. Such a system provides no overview assessment of compliance and impacts on the integrity of the fire safety schedule issued with the CC or CDC.
- xii. CPS is of the view that a better fire safety outcome would be achieved if such a condition imposed required a further "staged" CC or CDC to be approved by the 'accredited certifier' in respect to the design of any relevant 'fire safety system'. This approach would enhance the current approval process rather than risking fire safety through what appears to be the introduction of a self-certification process.

Limited exemptions from compliance with some Building Code of Australia standards

- xiii. The objective regarding discretion for limited exemptions from BCA compliance is generally supported and should bring some consistency to the certification of these kinds of matters.
- xiv. It is our view that this exemption should only apply to the modification or extension of existing relevant fire safety systems.
- xv. The role of the 'accredited certifier' in assessing or approving an exemption under proposed Clause 164B has not been clearly defined, other than to include details of the exemption on the fire safety schedule. The regulations should clearly articulate what is expected.
- xvi. CPS would be concerned if the endorsement of a third party '*competent fire safety practitioner*' is intended to replace the assessment and approval of such a report by the 'accredited certifier'. If an assessment process is required, it should be detailed in the regulation and in which case the need and additional cost associated with a third party endorsement is questioned.

New critical stage inspections

- xvii. CPS generally supports the objective regarding the new additional critical stage inspections.
- xviii. It is our view that the current process for missed inspections does not work and should be included in the holistic review.

- xix. CPS is concerned that the regulations fail to provide clear and unambiguous details for the purpose of undertaking the proposed new inspections to ensure consistency between PCA's and clarity for consumers. It is anticipated that such detail may be intended within guidelines, but implementation should not occur without the necessary industry input.
- xx. CPS is concerned that the regulations do not provide appropriate guidance to address systemic defects identified in respect to part inspections. It is possible that an inspection of 20 percent of total floor area could reveal serious deficiencies in critical fire safety measures. The regulations should clearly detail how to deal with such circumstances for consistence and consumer support as well as introducing a mechanism to impose sanction against poor installers and builders.
- xxi. CPS is concerned that there is no co-regulatory accreditation or licensing system for installers of critical fire safety building components. The chronic issue of skilled workmanship cannot be overcome by inspections alone. A detailed review of how best to incorporate enforcement & disciplinary action for non-conforming builders and installers is required to assist with expanding critical stage inspections into inspecting detailed and specialized building components for fire safety.
- xxii. The current regulations fail to require appropriate detailing and documentation of fire compartmentation and fire protection. The introduction of new critical stage inspections in this regard needs to be supported by clear obligations for the provision of appropriate documentation to adequately demonstrate work methods to align with installation methods prescribed within test reports. A consistent approach to documentation such as that suggested in ASXXXXX should be required.

Additional checks by Fire and Rescue NSW

- xxiii. The additional checks by FRNSW are not supported. If the other reforms (and the future reforms) are introduced there should be no need for duplicative checks. There is also still a concern that FRNSW will raise issues beyond the prescribed scope which will create significant delays for the completion of developments.
- xxiv. CPS is of the view that these reforms will simply create confusion and delays and return no benefits. It will also unduly expose the PCA to the elevated risk of litigation should a matter be raised at the completion of work. There is a natural default to comply with the requirements of FRNSW even though the PCA and other practitioners on the project disagree. The implementation of this regulation should be delayed until the ramifications are better understood by government.
- xxv. Concern is raised that Fire Rescue NSW are not undertaking their role in respect to all applications for initial and final fire safety reports (Clause 144 & 152) due to resourcing issues. CPS is concerned about the significant cost of a 10 day hold delay prior to the issue of an occupation certificate particularly given the lack of resources to deal with current workloads.

Assessment by competent fire safety practitioners before issue of fire safety certificate and standardised certificates

- xxvi. CPS generally supports the objective regarding the issue of fire safety certificates by a competent fire safety practitioner.
- xxvii. CPS is of the view that the regulations poorly define the role of the PCA and that industry input is required as part of a holistic review to properly address.
- xxviii. CPS does not agree that an owner has the appropriate skills to select a competent fire safety practitioner and we reject that this obligation should be imposed onto PCA's. This is NOT the role of a PCA to fulfil such a responsibility and it is unreasonable to regulate this requirement without extensive industry input.
- xxix. CPS is concerned that the proposed regulatory changes will not provide an appropriate system to address the necessary reform in respect to the issue of fire safety certificates.

Documenting, checking and endorsing of fire safety Alternative Solutions (non-standard fire safety designs)

- xxx. CPS generally supports the objective regarding the documentation of performance solutions.
- xxxi. However, we are alarmed that the current regulatory framework to require fire safety engineers to provide certain performance solutions relating to fire safety matters is being errored by allowing such statements to be provided by 'competent fire safety practitioners'. Self-certification in respect to the installation of such technical and critical life safety elements within a building is not appropriate.
- xxxii. CPS is also concerned that the removal of the current threshold test will significantly increase costs in respect to minor projects. The concept of the threshold test should be expanded to ensure that the proposed fire safety reforms do not result in overburdening expense for minor works.

Comment on proposed regulation changes

[2] Clause 130 Procedure for determining application for CDC

CPS is of the opinion that the current regulations offers a rigorous accreditation and disciplinary framework. It is also our view that a design consultant such as a fire safety engineer should be required to be accredited under the current BPB accreditation scheme. Therefore, we do not support the proposed clause 2A(a)(i).

CPS is of the view that a compliance certificate as detailed in the current Clause 2A(a) should be mandated.

CPS supports the proposed clauses 2A(a)(ii),(iii),(iv) and (v).

CPS does not support the introduction of clause 2A(b). The regulation provides no guidance as to how an accredited certifier is to determine if an alternative solution has been "appropriately prepared". Does this mean that a AC must assess and endorse the technical aspects of the alternative solution, or that it has been prepared in accordance with the International Fire Engineering Guidelines or that it meets some other criteria?

CPS supports 2A(c).

[3] Clause 134 Form of complying development certificate

CPS supports (f1) & (f2).

[4] Clause 134(2)

CPS supports 134(2).

[5] Clause 136AA Condition relating to fire safety systems in class 2-9 buildings

CPS is of the opinion that 136AA(2)(a) should mandate the provision of a (design) compliance certificate to be issued by a (design) Accredited Certifier. The design should be submitted to the (cc) Accredited Certifier for the purpose of a staged construction certificate as detailed above.

CPS supports the documentation requirements stipulated in 136AA(2)(a)(i) & (ii).

- CPS is of the opinion that 136AA(2)(b) a (design) compliance certificate.
- CPS supports 136AA(3).
- [6] Clause 144A Alternative solution report
- Please refer to comments provided in response to item [2].
- [7] Clause 146B Condition relating to fire safety systems in class 2-9 buildings
- Please refer to comments provided in response to item [5]
- [8] Clause 147 Form of CC
- CPS supports 147(1)(g) & (h).
- [9] Clause 147(2)
- CPS supports 147(2)
- [10] Clause 152 Reports of Fire Commissioner
- CPS does not support extending the time to respond from 7 days to 10 days.
- [11] Clauses 152A & 152B
- CPS does not support 152A in totality.
- Further in respect to 152A(1), we do not consider 2 days to be a reasonable time period to have requested a fire safety system report. It is necessary for a PCA to assess documentation and undertake a site inspection prior to lodging the FRNSW application form. The regulations should stipulate “as soon as reasonable practicable”.
- CPS does not support 152B in totality.
- An installation certificate should be provided by an accredited fire safety engineer responsible for the preparation of an alternative solution report relevant to fire safety requirements.
- [12] Clause 153 Fire safety certificates
- CPS supports 153(2A) subject to an appropriate disciplinary framework in respect to dealing with ‘competent fire safety practitioners’.
- [13] Clause 155 Form of OC
- CPS supports 155(1)(e)
- [14] Clause 162A Critical stage inspections
- CPS recommends that 162A(5)(a) & (a1) is deferred pending a holistic review and the establishment of a more comprehensive framework.
- [15] Clause 162A (6)(b)

CPS recommends that 162A(6)(b) is deferred pending a holistic review and the establishment of a more comprehensive framework.

[16] 164B Certain building works on fire safety systems

CPS supports 164B with the exception that 164B(5)(c) is considered unnecessary.

[17] 167A Competent fire safety practitioners

CPS supports the objective but is concerned about the current regulatory form. It is recommended that this provision is deferred pending a holistic review with industry.

CPS is totally opposed to 167A(4) and considers the provision to be unreasonable in terms of imposing responsibility to PCA's.

[18] Supported – subject to comments in item [17]

[19] Supported – subject to comments in item [17]

[20] Supported – subject to comments in item [17]

[21] Supported

[22] Supported

[23] Supported – subject to comments in item [17]

[24] Supported – subject to comments in item [17]

[25] Supported

[26] Supported

[27] Supported

In conclusion City Plan Services P/L is supportive of the objectives of the fire safety reform but is concerned with the proposed regulatory form. It is considered in some instances the proposed regulations will weaken the level of fire safety afforded by the current regulations and in other instances will not achieve the objectives in the most appropriate or efficient way. These issues could be refined through detailed industry involvement and we would welcome the chance to participate in such a review.

We thank you for the opportunity to comment.

Yours faithfully,



Brendan Bennett
Managing Director